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Presidential Documents

Title 3—

The President

Proclamation 9942 of October 4, 2019

Fire Prevention Week, 2019

By the President of the United States of America

A Proclamation

Since 1922, our Nation has observed Fire Prevention Week to promote emergency preparedness and reaffirm our enduring commitment to fire safety. This week, we honor and remember the heroic firefighters and first responders who made the ultimate sacrifice to save and protect our citizens, homes, and communities. We express our gratitude for their service to our country, and we encourage all Americans to do their part to prevent dangerous fires.

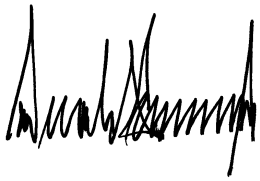
In 2017, more than 1.3 million fires killed 3,400 people and injured 14,000 more, while causing an estimated $23 billion in direct property loss. Sadly, the number of fire-related deaths continues to rise, even though the number of fires is falling. All Americans should take the dangers of fires seriously and conduct routine inspections of smoke alarms and plan and practice home fire escapes. Such concerted efforts are crucial to stopping fires and their devastating consequences.

While preventing fires in our homes, we also must take measures to prevent wildfires, such as the catastrophic Woolsey, Camp, and Mendocino Complex wildfires, all of which ravaged communities last year. The Camp fire killed at least 85 people, and the Mendocino Complex wildfire was the largest fire of its kind in California history. Improving the health of America's forests and rangelands is critical to reducing the frequency and severity of the kind of wildfires that have devastated communities and ecosystems across the Nation. This is why I signed legislation that improves support for the Department of Agriculture and the Department of the Interior's wildfire suppression operations, as well as the Agriculture Improvement Act of 2018, which includes robust fire risk reduction measures and important forest management provisions. These bills will empower Federal agencies to actively manage our forests and rangelands and aggressively fight wildfires. Further, I issued an Executive Order to promote active management of America's forests and Federal lands to reduce the risk of catastrophic wildfires in better partnership with State, local, and tribal officials.

This week, I urge all Americans to take special precautions to ensure fire safety in their homes and communities to help prevent fire-related tragedies. By staying vigilant, we can all do our part to protect our loved ones, homes, and communities. We recognize those who take such actions, and we pledge to continue our support for the Nation's firefighters, first responders, and EMS providers who answer the call to serve and risk their lives to safeguard their fellow Americans and our precious land.

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 6 through October 12, 2019, as Fire Prevention Week. On Sunday, October 6, 2019, in accordance with Public Law 107–51, the flag of the United States will be flown at half-staff at all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I call on all Americans to participate in this observance with appropriate programs and activities and by renewing their efforts to prevent fires and their tragic consequences.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, 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.



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Presidential Documents

Proclamation 9943 of October 4, 2019

German-American Day, 2019

By the President of the United States of America

A Proclamation

On German-American Day, we proudly celebrate the contributions German Americans have made to our Nation through their dedication and hard work. The seeds of German-American heritage sown over three centuries ago, when the 13 German families landed in Philadelphia in 1683, continue to flourish and prosper in our country.

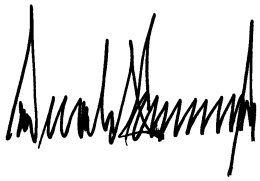
From our earliest days, German Americans have helped to secure the rights we hold dear and to sustain the American experience. General Friedrich von Steuben joined the noble American cause for independence, lending critical expertise in military drills, tactics, and discipline to train the soldiers of the Continental Army. As we expanded westward, the German-born businessman Levi Strauss and his iconic namesake clothing brand became emblematic of the resilient and pioneering American spirit. Charles M. Schwab, a descendant of German immigrants, strengthened America's steel industry, and his legacy as a business tycoon continues to be synonymous with innovation and success. Today, when we enjoy music played on a Steinway piano, read a Steinbeck novel, or admire the artwork collected by painter and philanthropist Hilla Rebay and displayed in New York's stunning Guggenheim Museum, we are reminded of the countless ways German Americans have influenced our society, commerce, and culture.

This year marks the 30th anniversary of the fall of the Berlin Wall, a triumph of freedom that embodies the dedication of the United States and Germany to the rule of law and human rights. The United States and our allies will continue to safeguard the torch of liberty and promote global stability by defending personal and economic freedom for generations to come.

This month, as we commemorate the contributions German Americans have made to our Nation, we also recognize the more than 43 million Americans who claim German heritage. Our shared values and historic and cultural ties strengthen the enduring bond between the United States and Germany. This partnership is the foundation of a bright and hopeful future for the world.

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 6, 2019, as German-American Day. I call upon all Americans to celebrate the achievements and contributions of German Americans to our Nation with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, 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.



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Presidential Documents

Proclamation 9944 of October 4, 2019

Child Health Day, 2019

By the President of the United States of America

A Proclamation

On Child Health Day, we recognize that America's children are the promise of our Nation, and their health and well-being are among our greatest responsibilities. Today, we recommit to our children growing strong, dreaming big, and reaching their full potential.

In partnership with families and communities, my Administration is implementing new Federal programs and supporting new State-level initiatives that help diagnose, prevent, and combat diseases and maintain health and wellness from childhood through adulthood. The Maternal and Child Health Services Block Grant Program continues to provide funding to all States to improve access to quality healthcare services for low-income women, children, and families by improving the outcomes of high-risk pregnancies, reducing infant deaths, promoting childhood immunizations, and protecting against diseases. Additionally, I have approved funding for the Maternal, Infant, and Early Childhood Home Visiting Program to support Federal, State, and community partners in offering voluntary home visiting services that empower caregivers with the evidence-based skills and resources they need to raise healthy and happy children. I also signed into law the SUPPORT Act, which addresses the most vulnerable victims of the opioid crisis by allowing State Medicaid programs to cover healthcare services for infants suffering from neonatal abstinence syndrome in residential pediatric recovery centers.

My Administration is also working to eradicate the leading cause of post-infancy death among our Nation's young people—childhood cancer. Working with the Congress, the Federal Government will invest $500 million over the next decade in pediatric cancer research. This funding will enable our Nation's best scientists and doctors to learn from those young people living with this disease, creating new opportunities to understand the unique causes of and best cures for childhood cancer. We must continue to employ every resource available to ensure that the more than 15,000 children and adolescents under the age of 19 diagnosed with cancer each year receive the best possible care and treatment so they can triumph in their battle against this horrible disease.

America's young people are facing unprecedented challenges at school, in their homes, and in their communities. From bullying and negative social media interactions to the impacts of the opioid crisis on themselves and their loved ones, we must do more to foster an environment that promotes a culture of respect for every human life. That is why I am proud of the work our First Lady, Melania Trump, has undertaken through her BE BEST initiative to promote childhood health and well-being by encouraging healthy living, kindness, compassion, and respect. This remarkable program is helping children build a solid foundation to navigate life's many challenges and to develop positive social, emotional, and physical habits that will help them become future leaders of our great country.

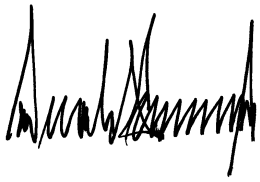
Parents play a critical role in raising healthy and happy children, and their important work is bolstered by the love and support of extended family, community members, caregivers, mentors, educators, faith leaders,

and respectable role models. On Child Health Day, we urge all citizens to reaffirm their commitment to ensuring the physical, spiritual, and emotional health of our Nation's most precious resource.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as Child Health Day and has requested that the President issue a proclamation in observance of this 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 Monday, October 7, 2019, as Child Health Day. I call upon families, child health professionals, faith-based and community organizations, and governments to help ensure that America's children stay safe and healthy.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, 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.



[FR Doc. 2019–22220
Filed 10–8–19; 8:45 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 9945 of October 4, 2019

Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, in Order To Protect the Availability of Healthcare Benefits for Americans

By the President of the United States of America

A Proclamation

Healthcare providers and taxpayers bear substantial costs in paying for medical expenses incurred by people who lack health insurance or the ability to pay for their healthcare. Hospitals and other providers often administer care to the uninsured without any hope of receiving reimbursement from them. The costs associated with this care are passed on to the American people in the form of higher taxes, higher premiums, and higher fees for medical services. In total, uncompensated care costs—the overall measure of unreimbursed services that hospitals give their patients—have exceeded $35 billion in each of the last 10 years. These costs amount to approximately $7 million on average for each hospital in the United States, and can drive hospitals into insolvency. Beyond uncompensated care costs, the uninsured strain Federal and State government budgets through their reliance on publicly funded programs, which ultimately are financed by taxpayers.

Beyond imposing higher costs on hospitals and other healthcare infrastructure, uninsured individuals often use emergency rooms to seek remedies for a variety of non-emergency conditions, causing overcrowding and delays for those who truly need emergency services. This non-emergency usage places a large burden on taxpayers, who reimburse hospitals for a portion of their uncompensated emergency care costs.

While our healthcare system grapples with the challenges caused by uncompensated care, the United States Government is making the problem worse by admitting thousands of aliens who have not demonstrated any ability to pay for their healthcare costs. Notably, data show that lawful immigrants are about three times more likely than United States citizens to lack health insurance. Immigrants who enter this country should not further saddle our healthcare system, and subsequently American taxpayers, with higher costs.

The United States has a long history of welcoming immigrants who come lawfully in search of brighter futures. We must continue that tradition while also addressing the challenges facing our healthcare system, including protecting both it and the American taxpayer from the burdens of uncompensated care. Continuing to allow entry into the United States of certain immigrants who lack health insurance or the demonstrated ability to pay for their healthcare would be detrimental to these interests.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in section 2 of this proclamation, be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Suspension and Limitation on Entry.* (a) The entry into the United States as immigrants of aliens who will financially burden the United States healthcare system is hereby suspended and limited subject to section 2 of this proclamation. An alien will financially burden the United States healthcare system unless the alien will be covered by approved health insurance, as defined in subsection (b) of this section, within 30 days of the alien's entry into the United States, or unless the alien possesses the financial resources to pay for reasonably foreseeable medical costs.

(b) Approved health insurance means coverage under any of the following plans or programs:

(i) an employer-sponsored plan, including a retiree plan, association health plan, and coverage provided by the Consolidated Omnibus Budget Reconciliation Act of 1985;

(ii) an unsubsidized health plan offered in the individual market within a State;

(iii) a short-term limited duration health policy effective for a minimum of 364 days—or until the beginning of planned, extended travel outside the United States;

(iv) a catastrophic plan;

(v) a family member's plan;

(vi) a medical plan under chapter 55 of title 10, United States Code, including coverage under the TRICARE program;

(vii) a visitor health insurance plan that provides adequate coverage for medical care for a minimum of 364 days—or until the beginning of planned, extended travel outside the United States;

(viii) a medical plan under the Medicare program; or

(ix) any other health plan that provides adequate coverage for medical care as determined by the Secretary of Health and Human Services or his designee.

(c) For persons over the age of 18, approved health insurance does not include coverage under the Medicaid program.

Sec. 2. *Scope of Suspension and Limitation on Entry.* (a) Section 1 of this proclamation shall apply only to aliens seeking to enter the United States pursuant to an immigrant visa.

(b) Section 1 of this proclamation shall not apply to:

(i) any alien holding a valid immigrant visa issued before the effective date of this proclamation;

(ii) any alien seeking to enter the United States pursuant to a Special Immigrant Visa, in either the SI or SQ classification, who is also a national of Afghanistan or Iraq, or his or her spouse and children, if any;

(iii) any alien who is the child of a United States citizen or who is seeking to enter the United States pursuant to an IR–2, IR–3, IR–4, IH–3, or IH–4 visa;

(iv) any alien seeking to enter the United States pursuant to an IR–5 visa, provided that the alien or the alien's sponsor demonstrates to the satisfaction of the consular officer that the alien's healthcare will not impose a substantial burden on the United States healthcare system;

(v) any alien seeking to enter the United States pursuant to a SB–1 visa;

(vi) any alien under the age of 18, except for any alien accompanying a parent who is also immigrating to the United States and subject to this proclamation;

(vii) any alien whose entry would further important United States law enforcement objectives, as determined by the Secretary of State or his designee based on a recommendation of the Attorney General or his designee; or

(viii) any alien whose entry would be in the national interest, as determined by the Secretary of State or his designee on a case-by-case basis.

(c) Consistent with subsection (a) of this section, this proclamation does not affect the entry of aliens entering the United States through means other than immigrant visas, including lawful permanent residents. Further, nothing in this proclamation shall be construed to affect any individual's eligibility for asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws and regulations of the United States.

Sec. 3. *Implementation and Enforcement.* (a) An alien subject to this proclamation must establish that he or she meets its requirements, to the satisfaction of a consular officer, before the adjudication and issuance of an immigrant visa. The Secretary of State may establish standards and procedures governing such determinations.

(b) The review required by subsection (a) of this section is separate and independent from the review and determination required by other statutes, regulations, or proclamations in determining the admissibility of an alien.

(c) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

Sec. 4. *Reports on the Financial Burdens Imposed by Immigrants on the Healthcare System.* (a) The Secretary of State, in consultation with the Secretary of Health and Human Services, the Secretary of Homeland Security, and the heads of other appropriate agencies, shall submit to the President a report regarding:

(i) the continued necessity of and any adjustments that may be warranted to the suspension and limitation on entry in section 1 of this proclamation; and

(ii) other measures that may be warranted to protect the integrity of the United States healthcare system.

(b) The report required by subsection (a) of this section shall be submitted within 180 days of the effective date of this proclamation, with subsequent reports submitted annually thereafter throughout the effective duration of the suspension and limitation on entry set forth in section 1 of this proclamation. If the Secretary of State, in consultation with the heads of other appropriate executive departments and agencies, determines that circumstances no longer warrant the continued effectiveness of the suspension or limitation on entry set forth in section 1 of this proclamation or that circumstances warrant additional measures, the Secretary shall immediately so advise the President.

(c) The Secretary of State and Secretary of Health and Human Services shall coordinate any policy recommendations associated with the reports described in subsection (a) of this section.

Sec. 5. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of the proclamation and the application of its other provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the failure to follow certain procedures, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 6. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) United States Government obligations under applicable international agreements;

(ii) the authority granted by law to an executive department or agency, or the head thereof; or

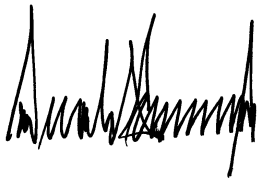
(iii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 7. *Effective Date.* This proclamation is effective at 12:01 a.m. eastern daylight time on November 3, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, 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.



[FR Doc. 2019–22225
Filed 10–8–19; 8:45 am]
Billing code 3295–F0–P

Rules and Regulations

Federal Register

Vol. 84, No. 196

Wednesday, October 9, 2019

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0488; Special Conditions No. 25–756–SC]

Special Conditions: Voyageur Aerotech Inc., Bombardier DHC–8–100, DHC–8–200, DHC–8–300 and DHC–8–400 Series Airplanes; Installed Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Bombardier Model No. DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes. These airplanes, as modified by Voyageur Aerotech Inc. (Voyageur), will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is a rechargeable lithium battery pack inside the Emergency Backup Power Supply. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3160; email *Nazih.Khaouly@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2018, Voyageur applied for a supplemental type certificate for a rechargeable lithium battery pack inside the Emergency Backup Power Supply in the Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes. The Bombardier Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes are twin engine powered airplanes with standard seating provisions for up to 86 passengers, depending on model, and a maximum takeoff weight of between 33,000 lbs. and 65,200 lbs., depending on series model.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Voyageur must show that the Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A13NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Bombardier Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes will incorporate the following novel or unusual design feature:

The installation of a rechargeable lithium battery pack inside the Emergency Backup Power Supply. Known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flightdeck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater-locator-beacons, navigation computers, integrated avionics computers, satellite network/communication systems, communication management units, and remote monitor electronic line replaceable units;
- Cabin safety, entertainment and communications equipment including emergency locator transmitters, life rafts, escape slides, seat belt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, internet/in-flight entertainment systems, satellite televisions, remotes and handsets; and
- Systems in cargo areas including door controls, sensors, video surveillance equipment and security systems.

Discussion

Rechargeable lithium batteries are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in § 25.1353. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

These special conditions are substantively similar to special conditions the FAA has released in the

past. The special conditions have been drafted into a plain English format, reorganized for clarity, and provide more prescriptive instructions than previously released special conditions.

Special Condition 1 requires that each individual cell within a battery be designed to maintain safe temperatures and pressures. Special Condition 2 addresses these same issues but for the entire battery. Special Condition 2 requires that the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special Conditions 1 and 2 are intended to ensure that the cells and battery are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special Conditions 3, 7, and 8 are self-explanatory, and the FAA does not provide further explanation for them at this time.

Special Condition 4 clarifies that the flammable-fluid fire-protection requirements of 14 CFR 25.863 apply to rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Special Condition 5 requires each rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition. Special Condition 6 requires each rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting special conditions 5 and 6 may be the same, but they are independent requirements addressing different hazards. Special Condition 5 addresses corrosive fluids and gases, whereas special condition 6 addresses heat.

Special Condition 9 requires rechargeable lithium batteries to have automatic means, for charge rate and disconnect, due to the fast acting nature of lithium battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

Although these special conditions require specific functionalities and capabilities, and address certain critical failure modes of rechargeable lithium batteries and their installations, the applicant must also meet the requirements of §§ 25.1301, 25.1309, and 25.1709, when applicable, in addition to these special conditions. To date, in-service experience has shown that rechargeable lithium battery thermal/pressure runaway conditions are not extremely improbable. Applicants must assume such failures could occur sometime during the life of the battery installation when demonstrating compliance with § 25.1309.

If an applicant proposes to install a rechargeable lithium battery in a rotor burst zone, the applicant must assess the rotor burst induced damage to the battery to show compliance with § 25.903(d)(1) in conjunction with showing compliance with the rechargeable lithium battery special condition.

These special conditions apply to all rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–19–09–SC for the Bombardier Model No. DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes, which was published in the **Federal Register** on July 22, 2019 (84 FR 35041). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes. Should Voyageur apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A13NM to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the Bombardier Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication.

Conclusion

This action affects only certain novel or unusual design features on Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes, as modified by Voyageur Aerotech Inc.

In lieu of title 14, Code of Federal Regulations (14 CFR) 25.1353(b)(1) through (4) at amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments, each rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure, and automatically control the charge rate of each cell to protect against adverse operating conditions, such as cell imbalance, back charging, overcharging, and overheating.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or

systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.

8. Have a monitoring and warning feature that alerts the flightcrew when its charge state falls below acceptable levels if its function is required for safe operation of the airplane.

9. Have a means to automatically disconnect from its charging source in the event of an over-temperature condition, cell failure or battery failure.

Note: A battery system consists of the battery, battery charger and any protective, monitoring and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of this special condition, a battery and the battery system is referred to as a battery.

Issued in Des Moines, Washington, on September 27, 2019.

James Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–21794 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0495; Product Identifier 2019–NM–029–AD; Amendment 39–19752; AD 2019–19–16]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–05–09, which applied to certain Airbus SAS Model A320–251N and –271N airplanes, and Model A321–253N airplanes. AD 2019–05–09 required repetitive detailed inspections of certain electrical harnesses for discrepancies, and corrective actions if necessary. AD 2019–05–09 also provided an optional terminating modification for the repetitive detailed inspections. This AD retains the actions of AD 2019–05–09, and adds a requirement for a terminating modification for the repetitive detailed inspections, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by reports of low clearance between the electrical harness and nearby hydraulic pipes in the inboard trailing edge of the wing. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 13, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 4, 2019 (84 FR 10259, March 20, 2019).

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0495.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0495; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0035, dated February 15, 2019 (''EASA AD 2019–0035'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–251N and –271N airplanes, and Model A321–253N airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–05–09, Amendment 39–19591 (84 FR 10259, March 20, 2019) (''AD 2019–05–09''). AD 2019–05–09 applied to certain Airbus SAS Model A320–251N and –271N airplanes, and Model A321–253N airplanes. The NPRM published in the **Federal Register** on July 1, 2019 (84 FR 31254). The NPRM proposed to continue to require repetitive detailed inspections of certain electrical harnesses for discrepancies and corrective actions, if necessary. The NPRM also proposed to add a requirement for a terminating modification for the repetitive detailed inspections.

This AD was prompted by reports of low clearance between the electrical harness and nearby hydraulic pipes in the inboard trailing edge of the wing. The FAA is issuing this AD to address this condition, which could lead to chafing of electrical harnesses in the vicinity of hydraulic pipes and could result in a potential source of ignition in the flammable fluid leakage zone, and possibly result in a fire or explosion and loss of the airplane. See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

This AD requires compliance with EASA AD 2019–0035, which the Director of the Federal Register approved for incorporation by reference as of April 4, 2019 (84 FR 10259, March 20, 2019). This material is reasonably available because the interested parties have access to it through their normal

course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 14 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2019–05–09	6 work-hours × $85 per hour = $510	$0	$510	$7,140
New proposed actions	16 work-hours × $85 per hour = $1,360	8,900	10,260	143,640

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 8 work-hours × $85 per hour = $680	(*)	Up to $680 *

* The FAA has received no definitive data that would enable the agency to provide parts cost estimates.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2019–05–09, Amendment 39–19591 (84 FR 10259, March 20, 2019), and adding the following new AD:

2019–19–16 Airbus SAS: Amendment 39–19752; Docket No. FAA–2019–0495; Product Identifier 2019–NM–029–AD.

(a) Effective Date

This AD is effective November 13, 2019.

(b) Affected ADs

This AD replaces AD 2019–05–09, Amendment 39–19591 (84 FR 10259, March 20, 2019) (''AD 2019–05–09'').

(c) Applicability

This AD applies to Airbus SAS Model A320–251N and –271N airplanes, and Model A321–253N airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0035, dated February 15, 2019 (''EASA AD 2019–0035'').

(d) Subject

Air Transport Association (ATA) of America Code 92, Electrical system installation.

(e) Reason

This AD was prompted by reports of low clearance between the electrical harness and nearby hydraulic pipes in the inboard trailing edge of the wing. The FAA is issuing this AD to address this condition, which, if not detected and corrected, could lead to chafing of electrical harnesses in the vicinity of hydraulic pipes and could result in a potential source of ignition in the flammable fluid leakage zone, and possibly result in a fire or explosion and loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0035.

(h) Exceptions to EASA AD 2019–0035

(1) For purposes of determining compliance with the requirements of this AD: Where paragraphs (1) and (3) of EASA AD

2019–0035 refer to its effective date, this AD requires using April 4, 2019 (the effective date of AD 2019–05–09).

(2) For purposes of determining compliance with the requirements of this AD: Where paragraph (4) of EASA AD 2019–0035 refers to its effective date, this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2019–0035 does not apply to this AD.

(i) No Reporting Requirement

Although certain service information referenced in EASA AD 2019–0035 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0035 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on April 4, 2019 (84 FR 10259, March 20, 2019).

(i) European Union Aviation Safety Agency (EASA) AD 2019–0035, dated February 15, 2019.

(ii) [Reserved]

(4) For information about EASA AD 2019–0035, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(5) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0495.

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

Issued in Des Moines, Washington, on September 23, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22032 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0401; Product Identifier 2019–NM–002–AD; Amendment 39–19741; AD 2019–19–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by reports of disconnections of certain hinge arms of the bulk cargo door (BCD) due to disbonding of the hinge arm bushes. This AD requires either modifying and re-identifying affected BCDs or replacing affected BCDs, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 13, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 13, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0401.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0401; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0243, dated November 8, 2018 (''EASA AD 2018–0243'') (also referred to after this as the Mandatory Continuing Airworthiness Information,

or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 and -1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 and -1041 airplanes. The NPRM published in the **Federal Register** on June 5, 2019 (84 FR 26023). The NPRM was prompted by reports of disconnections of certain hinge arms of the bulk cargo door (BCD) due to disbonding of the hinge arm bushes. The NPRM proposed to require either modifying and re-identifying affected BCDs or replacing affected BCDs.

The FAA is issuing this AD to address disconnected hinge arms, which, in a case of ditching, could result in the BCD opening inward and allowing water into the cargo hold, and consequent reduced flotation time. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. Air Line Pilots Association, International (ALPA) indicated its support for the NPRM.

Conclusion

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0243 describes procedures for modifying and replacing any affected BCD. EASA AD 2018–0243 also describes procedures for re-identifying and installing a standard identification plate on any modified BCD. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
9 work-hours × $85 per hour = $765	(*)	* $765	* $8,415

* The FAA has received no definitive data on the parts costs for required actions

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in our cost estimate.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–19–05 Airbus SAS: Amendment 39–19741; Docket No. FAA–2019–0401; Product Identifier 2019–NM–002–AD.

(a) Effective Date

This AD is effective November 13, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and -1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports of disconnections of certain hinge arms of the bulk cargo door (BCD) due to disbonding of the hinge arm bushes. The FAA is issuing this AD to address disconnected hinge arms, which, in a case of ditching, could result in the BCD opening inward and allowing water into the cargo hold, and consequent reduced flotation time.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0243, dated November 8, 2018 (''EASA AD 2018–0243''). All provisions specified in EASA AD 2018–0243 apply in this AD.

Note 1 to paragraph (g): Instructions for re-identification of each affected BCD are provided in paragraph (2) of EASA AD 2018–0243. They can also be found in Airbus Service Bulletin A350–52–P015, Revision 01, dated November 12, 2018.

(h) Exceptions to EASA AD 2018–0243

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2018–0243 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0243 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2018–0243 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(k) Material Incorporated by Reference

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

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

(i) European Aviation Safety Agency (EASA) AD 2018–0243, dated November 8, 2018.

(ii) [Reserved]

(3) For EASA AD 2018–0243, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2018–0243 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0401.

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

Issued in Des Moines, Washington, on September 19, 2019.

Suzanne Masterson,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22034 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0472; Airspace Docket No. 19–ACE–9]

RIN 2120–AA66

Amendment of Class E Airspace; Mount Pleasant, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Mount Pleasant Municipal Airport, Mount Pleasant, IA. This action is due to an airspace review caused by the decommissioning of the Mount Pleasant non-directional beacon (NDB), which provided navigation information to the instrument procedures at this airport. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, January 30, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Mount Pleasant Municipal Airport, Mount Pleasant, IA, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 33193; July 12, 2019) for Docket No. FAA–2019–0472 to amend the Class E airspace extending upward from 700 feet above the surface at Mount Pleasant Municipal Airport, Mount Pleasant, IA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius (increased from a 6-mile radius) of the Mount Pleasant Municipal Airport, Mount Pleasant, IA; and removes the Mount Pleasant NDB and the associated extension from the airspace legal description.

This action is the result of an airspace review caused by the decommissioning of the Mount Pleasant NDB, which provided navigation information for the instrument procedures at this airport.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

ACE IA E5 Mount Pleasant, IA [Amended]

Mount Pleasant Municipal Airport, IA
(Lat. 40°56′48″ N, long. 91°30′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Mount Pleasant Municipal Airport.

Issued in Fort Worth, Texas, on October 2, 2019.

Steve Szukala,

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

[FR Doc. 2019–21958 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 190925–0044]

RIN 0694–AH68

Addition of Certain Entities to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by adding twenty-eight entities to the Entity List. These twenty-eight entities have been determined by the U.S. Government to be acting contrary to the foreign policy interests of the United States and will be listed on the Entity List under the destination of the People's Republic of China (China).

DATES: This rule is effective October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (15 CFR, Subchapter C, part 744, Supplement No. 4) identifies entities reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national

security or foreign policy interests of the United States. The Export Administration Regulations (EAR) (15 CFR parts 730–774) impose additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in country) to listed entities. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add twenty-eight entities to the Entity List. The twenty-eight entities are being added based on § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The twenty-eight entries are located in China.

The ERC reviewed and applied § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these twenty-eight entities to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, along with those acting on behalf of such persons, may be added to the Entity List. Paragraphs (b)(1) through (b)(5) of § 744.11 provide an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. For each of the twenty-eight entities described below, the ERC made the requisite determination under the standard set forth in § 744.11(b).

Pursuant to § 744.11(b) of the EAR, the ERC determined that the Xinjiang Uighur Autonomous Region (XUAR) People's Government Public Security Bureau, eighteen of its subordinate municipal and county public security bureaus and one other subordinate institute are engaging in activities contrary to the foreign policy interests of the United States, and eight additional entities are enabling activities contrary to the foreign policy interests of the United States. Specifically, these entities have been implicated in human rights violations and abuses in the implementation of China's campaign of repression, mass arbitrary detention, and high-technology surveillance against Uighurs, Kazakhs, and other members of Muslim minority groups in the XUAR.

The entities are as follows: Xinjiang Uighur Autonomous Region (XUAR) People's Government Public Security Bureau, eighteen of its subordinate municipal and county public security bureaus, and one other subordinate institute:—Aksu District Public Security Bureau; Altay Municipality Public Security Bureau; Bayingolin Mongolian Autonomous Prefecture Public Security Bureau; Boertala Mongolian Autonomous Prefecture Public Security Bureau; Changji Hui Autonomous Prefecture Public Security Bureau; Hami Municipality Public Security Bureau; Hetian Prefecture Public Security Bureau; Kashgar Prefecture Public Security Bureau; Kelamayi Municipality Public Security Bureau; Kezilesu Kyrgyz Autonomous Prefecture Public Security Bureau; Shihezi Municipality Public Security Bureau; Tacheng Prefecture Public Security Bureau; Tumushuke Municipal Public Security Bureau; Turfan Municipality Public Security Bureau; Urumqi Municipal Public Security Bureau; Wujiaqu Municipality Public Security Bureau; Xinjiang Police College; Xinjiang Production and Construction Corps (XPCC) Public Security Bureau; and Yili Kazakh Autonomous Prefecture Public Security Bureau.

The following eight entities are also added to the Entity List as part of this rule: Dahua Technology; Hikvision; IFLYTEK; Megvii Technology; Sense Time, Xiamen Meiya Pico Information Co. Ltd.; Yitu Technologies; and Yixin Science and Technology Co. Ltd. Pursuant to § 744.11(b) of the EAR, the ERC has determined that the conduct of these twenty-eight entities raises sufficient concern that prior review of exports, reexports or transfers (in-country) of all items subject to the EAR involving these entities, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent items subject to the EAR from being used in activities contrary to the foreign policy of the United States.

For the twenty-eight entities described above that are being added to the Entity List, BIS imposes a license requirement for all items subject to the EAR and a license review policy of case-by-case review for Export Control Classification Numbers (ECCNs) 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983. A policy of case-by-case review also applies to items designated as EAR99 that are described in the Note to ECCN 1A995, specifically, items for protection against chemical or biological agents that are consumer goods, packaged for retail sale or personal use, or medical products. BIS has adopted a license review policy of presumption of denial for all other items subject to the EAR. For all twenty-eight entities, the license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in country) to any of the entities or in which such entities act as purchaser, intermediate consignee, ultimate consignee, or end user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the entities being added to the Entity List in this rule. The acronym ''a.k.a.'' or also known as is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters and transferors in identifying entities on the Entity List.

This final rule adds the following twenty-eight entities to the Entity List and includes, where appropriate, aliases:

People's Republic of China

- Aksu District Public Security Bureau, including one alias (Aqsu District Public Security Bureau);
- Altay Municipality Public Security Bureau;
- Bayingolin Mongolian Autonomous Prefecture Public Security Bureau;
- Boertala Mongolian Autonomous Prefecture Public Security Bureau, including one alias (Bortala Mongolian Autonomous Prefecture Public Security Bureau);
- Changji Hui Autonomous Prefecture Public Security Bureau;
- Dahua Technology;
- Hami Municipality Public Security Bureau, including two aliases (Kumul Municipality Public Security Bureau; *and* Qumul Municipality Public Security Bureau);

- Hetian Prefecture Public Security Bureau;
- Hikvision;
- IFLYTEK;
- Kashgar Prefecture Public Security Bureau;
- Kelamayi Municipality Public Security Bureau;
- Kezilesu Kyrgyz Autonomous Prefecture Public Security Bureau, including one alias (Kizilsu Autonomous Prefecture Public Security Bureau);
- Megvii Technology;
- Sense Time;
- Shihezi Municipality Public Security Bureau;
- Tacheng Prefecture Public Security Bureau;
- Tumushuke Municipal Public Security Bureau, including one alias (Tumxuk Municipal Public Security Bureau);
- Turfan Municipality Public Security Bureau, including one alias (Turpan Municipality Public Security Bureau);
- Urumqi Municipal Public Security Bureau;
- Wujiaqu Municipality Public Security Bureau;
- Xiamen Meiya Pico Information Co. Ltd.;
- Xinjiang Police College;
- Xinjiang Production and Construction Corps (XPCC) Public Security Bureau;
- Xinjiang Uighur Autonomous Region (XUAR) People's Government Public Security Bureau;
- Yili Kazakh Autonomous Prefecture Public Security Bureau, including one alias (Ili Kazakh Autonomous Prefecture Public Security Bureau);
- Yitu Technologies;
- Yixin Science and Technology Co. Ltd., including four aliases (Yixin Technology; Yuxin Technology; Yuxin Science and Technology; *and* Ecguard).

Savings Clause

Shipments of items removed from eligibility for a License Exception or for export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on October 9, 2019, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 14, 2019, 84 FR 41881 (August 15, 2019)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 42.5.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to § 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4552; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2019, 83 FR 47799 (September 20, 2019); Notice of November 8, 2018, 83 FR 56253 (November 9, 2018); Notice of January 16, 2019, 84 FR 127 (January 18, 2019); Notice of August 14, 2019, 84 FR 41881 (August 15, 2019).

■ 2. Supplement No. 4 to part 744 is amended by adding in alphabetical order, under CHINA, PEOPLE'S

REPUBLIC OF, twenty-eight Chinese entities: ''Aksu District Public Security Bureau'', ''Altay Municipality Public Security Bureau'', ''Bayingolin Mongolian Autonomous Prefecture Public Security Bureau'', ''Boertala Mongolian Autonomous Prefecture Public Security Bureau'', ''Changji Hui Autonomous Prefecture Public Security Bureau'', ''Dahua Technology'', ''Hami Municipality Public Security Bureau'', ''Hetian Prefecture Public Security Bureau'', ''Hikvision'', ''IFLYTEK'', ''Kashgar Prefecture Public Security Bureau'', ''Kelamayi Municipality Public Security Bureau'', ''Kezilesu Kyrgyz Autonomous Prefecture Public Security Bureau'', ''Megvii Technology'', ''Sense Time'', ''Shihezi Municipality Public Security Bureau'', ''Tacheng Prefecture Public Security Bureau'', ''Tumushuke Municipal Public Security Bureau'', ''Turfan Municipality Public Security Bureau'', ''Urumqi Municipal Public Security Bureau'', ''Wujiaqu Municipality Public Security Bureau'', ''Xiamen Meiya Pico Information Co. Ltd.'', ''Xinjiang Police College'', ''Xinjiang Production and Construction Corps (XPCC) Public Security Bureau'', ''Xinjiang Uighur Autonomous Region (XUAR) People's Government Public Security Bureau'', ''Yili Kazakh Autonomous Prefecture Public Security Bureau'', ''Yitu Technologies'' and ''Yixin Science and Technology Co. Ltd.''.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
CHINA, PEOPLE'S REPUBLIC OF.	*	*	*	*
	Aksu District Public Security Bureau, a.k.a., the following one alias: —Aqsu District Public Security Bureau. Yingbin Rd., Akesu City XUAR 843000, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	Altay Municipality Public Security Bureau, North West Rd., Alta y City, XUAR, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Bayingolin Mongolian Autonomous Prefecture Public Security Bureau, Yingxia Rd., Korla City, XUAR 841000, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Boertala Mongolian Autonomous Prefecture Public Security Bureau, a.k.a., the following one alias: —Bortala Mongolian Autonomous Prefecture Public Security Bureau. Qingdeli St., Bole City, XUAR, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Changji Hui Autonomous Prefecture Public Security Bureau, 56 Yan'an N. Rd., Changji City, XUAR 831100, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Dahua Technology, 807, Block A, Meike Building No. 506, Beijing South Road, New City, Urumqi, Xinjiang, China; 1199 Bin'an Road, Binjiang High-tech Zone, Hangzhou, China; *and* 6/F, Block A, Dacheng Erya, Huizhan Avenue, Urumqi, China; *and* No. 1187, Bin'an Road, Binjiang District, Hangzhou City, Zhejiang Province, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Hami Municipality Public Security Bureau, a.k.a., the following two aliases: —Kumul Municipality Public Security Bureau, *and* —Qumul Municipality Public Security Bureau. Huancheng Rd., Hami District, Hami City, XUAR, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Hetian Prefecture Public Security Bureau, a.k.a., the following one alias: —Hotan Prefecture Public Security Bureau. 92 Beijing W Rd., Heitan City, Hetian Prefecture, XUAR 848000, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	Hikvision. No. 555 Qianmo Road, Binjiang District, Hangzhou 310052, China; *and* 23rd Floor, Block A, Yingke Plaza, No. 217 Gaoxin Street, Gaoxin District, Urumqi, China; *and* 700 Dongliu Road, Binjiang District, Hanzhou, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	IFLYTEK, National Intelligent Speech High-tech Industrialization Base, No. 666, Wangjiang Road West, Hefei City, Anhui Province, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Kashgar Prefecture Public Security Bureau, a.k.a., the following one alias: —Kashi Prefecture Public Security Bureau. Youmulake Xiehai'er Rd., Kashgar ("Kashi") City, XUAR 844000, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	Kelamayi Municipality Public Security Bureau, a.k.a, the following two aliases: —Karamay Municipality Public Security Bureau; *and* —Qaramay Municipality Public Security Bureau. 52 Yingbin Rd., Kelamayi City, Kelamayi District, XUAR 834000, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.

Country	Entity	License requirement	License review policy	Federal Register citation
	Kezilesu Kyrgyz Autonomous Prefecture Public Security Bureau, a.k.a., the following one alias: —Kezilsu Autonomous Prefecture Public Security Bureau. Guangming Rd., Atushi City, XUAR 845350, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Megvii Technology, 3rd Floor, Block A, Rongke Information Center, No. 2 South Road, Haidian District, Beijing, China; *and* Floor 3rd Unit A Raycom Infotech Park, No 2 Kexueyuan, Beijing, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Sense Time, 5F, Block B, Science and Technology Building,Tsing-hua Science Park, Haidian District, Beijing, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Shihezi Municipality Public Security Bureau, 209 N. Fourth Rd., Shihezi City, XUAR 832000, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Tacheng Prefecture Public Security Bureau, Tuanjie Rd. Tacheng City, XUAR 834700, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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	Tumushuke Municipal Public Security Bureau, a.k.a., the following one alias: —Tumxuk Municipal Public Security Bureau. Qian Hai West Rd., Tumushuke City, XUAR S21866, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	Turfan Municipality Public Security Bureau, a.k.a., the following one alias: —Turpan Municipality Public Security Bureau. 2447 Gaochang N. Rd., Turfan City, Gaocheng District, XUAR 838000, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	*	*	*	*
	Urumqi Municipal Public Security Bureau, 339 Hebei East Rd., Urumqi XUAR, China *and* New China North Road, XUAR, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Wujiaqu Municipality Public Security Bureau, 676 Changan W Rd., Wujiaqu City, XUAR 831300, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	*	*	*	*
	Xiamen Meiya Pico Information Co. Ltd., No. 131, Unit 1, Building 1, Tuman Road Construction Company, Kashi City, Xinjiang; *and* Room 1504, Block B, Sunshine 100 Commercial Complex 333, Qiantangjiang Road, Urumqi, Xinjiang, China; *and* Meiya Pico Building, 12, Guanri Road, 2nd Phase of Xiamen Software Park, Xiamen, Fujian, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	*	*	*	*
	Xinjiang Police College, Xinshi District, Changsha Road, No. 1108, Urumqi, Xinjiang, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	Xinjiang Production and Construction Corps (XPCC) Public Security Bureau, 106 Guangming Rd., Urumqi, Tianshan, XUAR, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	Xinjiang Uighur Autonomous Region (XUAR) People's Government Public Security Bureau, 28 Qiantangjiang Rd., Shayibake District, Urumqi, XUAR, 830006, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	Yili Kazakh Autonomous Prefecture Public Security Bureau, a.k.a., the following one alias: —Ili Kazakh Autonomous Prefecture Public Security Bureau. Sidalin W Rd., Yining City, XUAR 835000, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	*	*	*	*
	Yitu Technologies, 23F, Shanghai Arch Tower I, 523 Loushanguan Rd, Changning District, Shanghai, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Yixin Science and Technology Co. Ltd., a.k.a., the following four aliases: —Yixin Technology; —Yuxin Technology; —Yuxin Science and Technology; *and* —Ecguard. 216 Qiantangjiang Rd., Urumqi, Xinjiang, China; *and* 17th Floor Tong Guang Building, No 12 Beijing Agricultural Exhibition South, Chaoyang District, Beijing, China; *and* 17F Tongguang Mansion # 12 Nongzhannanli, Chaoyang, Beijing, China; *and* 216 Qiantangjiang Road, Urumqi, Xinjiang.	For all items subject to the EAR (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR	84 FR [INSERT FR PAGE NUMBER] 10/9/19.
*	*	*	*	*	*
*	*	*	*	*	*

Dated: October 7, 2019.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2019–22210 Filed 10–7–19; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–6050–N–03]

Relief From HUD Public Housing and Section 8 Requirements Available During CY 2019 to Public Housing Agencies To Assist With Recovery and Relief Efforts on Behalf of Families Affected by Presidentially Declared Major Disasters

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notification.

SUMMARY: This notification advises the public that HUD, in order to more effectively and expeditiously respond to Presidentially declared Major Disaster Declarations (MDD), is establishing for calendar year (CY) 2019 an expedited process for the review of requests for relief from HUD regulatory and/or administrative requirements (''HUD requirements'') for Public Housing Agencies (PHAs) located in counties that are included in MDDs. PHAs located in areas covered by MDDs issued for which a related disaster occurs during CY 2019 may request waivers of certain HUD Public Housing and Section 8 requirements and receive expedited review of such requests utilizing the flexibilities and expedited waiver process set out by this notification.

DATES: The flexibilities set out in this document are effective October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Tesia Irinyenikan, Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 3180, Washington, DC 20410–5000, or email *PIH_Disaster_Relief@hud.gov*. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

On several occasions in recent years, after Presidential disaster declarations, HUD has published documents announcing waivers and flexibilities available to PHAs, Tribes, and Tribally Designated Housing Entities (TDHEs) located in areas covered by MDDs.[1] In the interest of expediting HUD's ability to provide administrative relief to PHAs in MDD declaration areas, based on HUD's past experience, HUD is publishing this notification on waivers and flexibilities that will be made available to PHAs on an expedited basis following MDDs. The notification is organized as follows:

- Section II describes the flexibilities that are currently available to MDD PHAs under statutes and/or regulations. MDD PHAs may avail themselves of these flexibilities, following the process described in Section IV of the notification.
- Section III describes certain HUD requirements that, if waived, may facilitate an MDD PHA's ability to participate in relief and recovery efforts. An MDD PHA may request a waiver of a HUD requirement not listed in Section IV and receive expedited review of the request if the MDD PHA demonstrates

[1] See, Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricane Katrina Disaster Areas, 70 FR 57716 (October 3, 2005); Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricane Rita Disaster Areas; and Additional Administrative Relief for Hurricane Katrina, 70 FR 66222 (November 1, 2005); Extension of Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist With Recovery and Relief in Hurricanes Katrina, Rita, and Wilma Disaster Areas, 71 FR 78022 (December 27, 2006); Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricane Wilma Disaster Areas, 71 FR 12988 (March 13, 2006); Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Superstorm Sandy Disaster Areas, 77 FR 71439 (November 30, 2012); Relief From HUD Requirements Available to PHAs to Assist With Recovery and Relief Efforts on Behalf of Families Affected by Hurricanes Harvey, Irma, Maria and Future Natural Disasters Where Major Disaster Declarations Might be Issued in 2017, 82 FR 46821 (October 6, 2017) and; Relief From HUD Requirements Available During Calendar Year (CY) 2018 to Public Housing Agencies To Assist With Recovery and Relief Efforts on Behalf of Families Affected by Presidentially-Declared Major Disasters, 83 FR 46180 (September 12, 2018).

that the waiver is needed to assist in its relief and recovery efforts. An MDD PHA may not adopt any requested waiver prior to receiving HUD approval.

- Section IV provides the instructions for submitting waiver requests.
- Section V States that a Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Waiver requests approved by HUD pursuant to this notification will be published in the **Federal Register** and will identify the MDD PHAs receiving such approvals. The process that HUD will use in assessing applications for waivers and flexibilities is covered below-

This notification applies only during CY 2019.

II. Flexibilities That Are Available to MDD PHAs During CY 2019

HUD is exercising discretionary authority from section 106 of the Department of Housing and Urban Development Act of 1989 and consistent with 24 CFR 5.110 to provide relief from the requirements described in this section of this notification. Upon application to HUD and appropriate documentation of good cause, HUD may approve, as noted below, regulatory relief for disaster relief and recovery to MDD PHAs. Unless otherwise stated, the deadline for requesting waivers is four months after the initial MDD.

A. 24 CFR 905.306 (Extension of deadline for obligation and expenditure of Capital Funds). Section 9(j)(1) of the United States Housing Act of 1937 (1937 Act) requires PHAs to *obligate* Capital Funds not later than 24 months after the date on which the funds became available, or the date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units, plus the period of any extension approved under section 9(j)(2) of the Act. Section 9(j)(5)(A) of the 1937 Act requires a PHA to *expend* Capital Funds not later than four years after the date on which the funds become available for obligation, plus the period of any extension approved under section 9(j)(2). Section 9(j)(2) of the 1937 Act authorizes the Secretary to extend the time period for the obligation of Capital Funds for such period as the Secretary determines necessary if the Secretary determines that the failure of the PHA to obligate assistance in a timely manner is attributable to an event beyond the control of the PHA. The authority for extension of the section 9(j) obligation and extension deadlines for an event beyond the control of the PHA made in this notification is also found in the implementing regulation at 24 CFR 905.306 (d)(5).

B. 24 CFR 984.105(d) (Family Self-Sufficiency minimum program size). 24 CFR 984.105(d) defines the circumstances under which a PHA may, upon HUD approval, operate a program that is smaller than the required program size. HUD has determined, based on its past experience with MDD's, that a major disaster may hinder a PHA's ability to operate a program that meets minimum program size requirements. As a result, upon the submission to HUD of a certification (as defined in 24 CFR 984.103) that the MDD PHA is unable to operate a program that meets minimum program size requirements due to the major disaster, HUD will grant an exemption from the minimum program size requirement for a period of 24 months from the effective date of this notification.

C. 24 CFR 990.145(b) (Public housing dwelling units with approved vacancies). Section 990.145 lists the categories of vacant public housing units that are eligible to receive operating subsidy and are therefore considered to be ''approved vacancies.'' Under Section 990.145(b)(2), a PHA shall receive operating subsidy for units that are vacant due to a federally declared, state declared or other declared disaster, subject to prior HUD approval, on a project-by-project basis. If an MDD PHA has a unit that has been vacated due to a Presidentially-declared disaster, then the MDD PHA, with HUD approval, may treat the unit as an ''approved vacancy.'' Upon the request of an MDD PHA and HUD approval, on a case-by-case basis, such units may be considered approved vacancies for a period not to exceed 12 months from the date of HUD approval.

III. HUD Requirements That May Be Waived

For an MDD PHA, HUD will review requests for waivers of HUD requirements on an expedited basis. This section lists procedural and substantive requirements for regulatory waivers in event of an MDD. An MDD PHA may also request a waiver of a HUD requirement not listed in this section and receive expedited review of the request if the MDD PHA documents that the waiver is needed for major disaster relief and/or recovery.

PHAs should note that waivers of essential program requirements such as property inspection or income verification will not be granted in their entirety although modifications or requirements may be considered. Also, HUD's ability to grant waivers or approval alternative requirements imposed by statute is limited to express statutory authority. PHAs should go through the hierarchy of verifying income as found in PIH Notice 2018–24 if sources of income are difficult to find. Similarly, while the requirement for HQS inspections cannot be waived, HUD can consider variations to the acceptability criteria to HQS in case of disaster (under the authority of § 982.401(a)(4)).

An MDD PHA seeking a waiver of a HUD requirement listed below or of any other HUD requirement needed to assist the MDD PHA in its relief and recovery efforts must submit a waiver request pursuant to the process that will be provided in a further notification. HUD will not approve an MDD PHA's or other recipient's request to waive a fair housing, civil rights, labor standards, or environmental protection requirement. The request must be submitted to HUD not later than 4 months following the date of the relevant disaster declaration.

A. 24 CFR 5.801(c) and 5.801(d)(1) (Uniform financial reporting standards; Filing of financial reports; Reporting compliance dates). Section 5.801 establishes uniform financial reporting standards (UFRS) for PHAs (and other entities). Section 5.801(c) requires that PHAs submit financial information in accordance with 24 CFR 5.801(b) annually, not later than 60 days after the end of the fiscal year of the reporting period. Section 5.801(d)(1) requires that PHAs submit their unaudited financial statements not later than 60 calendar days after the end of their fiscal year and that PHAs submit their audited financial statements not later than 9 months after the end of their fiscal year. HUD is willing to consider requests to extend these reporting deadlines.

For MDD PHAs with a deadline to submit only audited financial information in accordance with 24 CFR 5.801(b) and (d) within 6 months after the date of the disaster related to the MDD, HUD is willing to consider a request to waive the due date. For MDD PHAs with a deadline to submit unaudited financial information in accordance with 24 CFR 5.801(b) and (d) within 4 months before and up to 6 months after the date of the disaster related to the MDD, HUD is willing to consider a request to waiver the due date. For these PHAs, HUD also is willing to consider a request to waive the due date of the audited financial information. For situations beyond a PHA's control, HUD is willing to

consider requests from the MDD PHAs with financial submission due dates that fall outside these dates.

The deadline for submission of financial information in accordance with 24 CFR 5.801(b) and the deadline for submission of unaudited financial statement may be extended to 180 calendar days, and the deadline for submission of audited financial statements may be extended to 13 months.

B. 24 CFR 902 (Public Housing Assessment System). Part 902 sets out the indicators by which HUD measures the performance of a PHA. The indicators measure a PHA's physical condition, financial condition, management operations, and Capital Fund obligation and occupancy.

For MDD PHAs with FYE dates within 4 months before and up to 10 months after the effective date of the MDD, HUD is willing to consider a request to waive the physical inspection and scoring of public housing projects, as required under 24 CFR part 902. For situations beyond the PHA's control, HUD is willing to consider requests from MDD PHAs with a FYE date that falls outside these dates.

C. 24 CFR 905.322(b) (Fiscal closeout). Section 905.322(b) establishes deadlines for the submission of an Actual Development Cost Certificate (ADCC) and an Actual Modernization Cost Certificate (AMCC). Specifically, the ADCC must be submitted 12 months from the date of completion/termination of a modernization activity, and the AMCC must be submitted not later than 12 months from the activity's expenditure deadline. Upon request from an MDD PHA, HUD may extend these deadlines by 12 months.

D. 24 CFR 905.314(b)–(c) (Cost and other limitations; Maximum project cost; TDC limit). 42 U.S.C. 1437d(b) requires HUD to calculate total development costs, which may not be exceeded ''unless the Secretary provides otherwise, and in any case may not exceed 110 per centum of such amount unless the Secretary for good cause determines otherwise.'' Section 905.314(b)–(c) establishes the calculation of maximum project cost and the calculation of total development cost. To facilitate the use of Capital Funds for repairs and construction for needed housing in the disaster areas, HUD is willing to consider waiving the total development cost (TDC) and housing cost cap limits for all work funded by the Capital Grant (with unexpended Capital Grant funds and HOPE VI funds) until the next issuance of TDC levels. MDD PHAs that request to waive this provision and receive approval to do so must strive to keep housing costs reasonable given local market conditions, based upon the provisions outlined in 2 CFR part 200.

E. 24 CFR 905.314(j) (Cost and other limitations; Types of labor). This section establishes that non–high performer PHAs may use force account labor for modernization activities only when the use of force account labor for such activities has been included in a Board-approved Capital Fund Program 5-Year Action Plan. HUD may waive this requirement to allow for the use of force account labor for modernization activities even if this activity has not been included in the non–high performer MDD PHA's 5-Year Action Plan. Should HUD waive this requirement, the waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

F. 24 CFR 905.400(i)(5) (Capital Fund Formula; Replacement Housing Factor to reflect formula need for projects with demolition or disposition occurring on or after October 1, 1998, and prior to September 30, 2013). Section 905.400 describes the Capital Fund formula. Section 905.400(i)(5) limits the use of replacement housing funds to the development of new public housing. To help address housing needs because of the displacement caused by the MDD, HUD is willing to consider waiving section 905.400(i)(5) to allow all unexpended Capital Fund Replacement Housing Factor Grants to be used for public housing modernization. Should HUD waive this requirement, the waiver will be in effect for funds obligated within 12 months from the date of HUD approval.

G. 24 CFR 960.202(c)(1) (Tenant selection policies) and 982.54(a) (Administrative plan). Section 960.202(c)(1) provides that public housing tenant selection policies must be duly adopted and implemented. Section 982.54(a) provides that a PHA's Section 8 administrative plan must be formally adopted by the PHA Board of Commissioners or other authorized PHA officials. For temporary revisions to an MDD PHA's public housing tenant selection policies or Section 8 administrative plan that an MDD PHA wishes to put into place to address circumstances unique to relief and recovery efforts, HUD is willing to consider requests to waive the requirements under §§ 960.202(c)(1) and 982.54(a) noted above. Any waiver request must include documentation that an MDD PHA's Board of Commissioners or an authorized MDD PHA official supports the waiver request and must identify the temporary revisions, which shall be effective for a period not to exceed 12 months from the date of HUD's approval. Additionally, any waiver request would be limited to revisions that do not constitute a significant amendment or modification to the PHA or MTW plan; pursuant to Section 5A(g) of the 1937 Act, HUD cannot waive the approval by the board or other authorized PHA officials if the proposed revision would constitute a significant amendment or modification to the PHA or MTW plan. Finally, HUD cannot waive any terms within a PHA's own plan or state law requiring the approval of the board or authorized PHA officials.

H. 24 CFR 982.206(a)(2) (Waiting List; Opening and closing; Public notice). This section describes where a PHA must provide public notice when it opens its waiting list for tenant-based assistance. HUD is willing to consider a request from an MDD PHA that wishes, in lieu of the requirement to provide notice in a local newspaper of general circulation, to provide public notice via its website, at any of its offices, and/or in a voice-mail message, for any opening of the waiting list for tenant-based assistance that occurs within a period not to exceed 12 months from the date of HUD approval. MDD PHAs, that request a waiver of this requirement and receive HUD approval, must comply with applicable fair housing and other civil rights requirements when they provide public notice. For example, an MDD PHA that chooses to provide public notice at its offices must consider the impact on persons with disabilities, who may have difficulty visiting the office in-person. Similarly, an MDD PHA that chooses to provide public notice via voice-mail message must consider how it will reach persons with hearing impairments and persons with limited English proficiency. HUD maintains the requirement that an MDD PHA must also provide the public notice in minority media. Any notice must comply with HUD fair housing requirements.

I. 24 CFR 982.503(c) (HUD approval of exception payment standard amount). 24 CFR 982.503(c) authorizes HUD to approve an exception payment standard amount that is higher than 110 percent of the published fair market rent (FMR). Typically, a PHA must provide data about the local market to substantiate the need for an exception payment standard. In a natural disaster situation, however, the typical data sources fail to capture conditions on the ground. In these cases, HUD considers the most recently available data on the rental market, prior to the disaster, then estimates the number of households seeking housing units in the wake of the

disaster to arrive at an emergency exception payment standard amount. In the event of a disaster, HUD will consider, based on this data, whether exception payment standard amounts up to 150 percent of the FMR have a good cause justification even in the absence of supporting data. If so, an MDD PHA may request this payment standard. Upon approval by HUD, an exception payment standard adopted pursuant to this notification may be adopted for any Housing Assistance Payments (HAP) contract entered as of the effective date of this notification. HUD intends for these exception payment standards to remain in effect until HUD implements changes to the FMRs in the affected areas. MDD PHAs are reminded that increased per-family costs resulting from the use of exception payment standards may result in a reduction in the number of families assisted or may require other cost-saving measures for an MDD PHA to stay within its funding limitations.

J. 24 CFR 982.401(d) (Housing quality standards; Space and security). This section establishes a standard for adequate space for an HCV-assisted family. Specifically, it requires that each dwelling unit have at least 1 bedroom or living/sleeping room for each 2 persons. HUD is willing to consider a request from an MDD PHA that wishes to waive this requirement to house families displaced due to natural disasters. Should the waiver be granted, it will be in effect only for HAPs entered into during the 12-month period following the date of HUD approval, and then only with the written consent of the family. For any family occupying a unit pursuant to this waiver, the waiver will be in effect for the initial lease term.

K. 24 CFR 982.633(a) (Occupancy of home). This section establishes the requirement that PHAs may make HAP for homeownership assistance only while a family resides in their home and must stop HAP no later than the month after a family moves out. HUD is willing to consider a request from an MDD PHA wishing to waive this requirement to allow families displaced from their homes located in areas affected by MDD(s) to comply with mortgage terms or make necessary repairs. A PHA requesting a waiver of this type must show good cause by demonstrating that the family is not already receiving assistance from another source. Note: An MDD PHA that wishes in addition to request a waiver of the requirement at § 982.312 that a family be terminated from the program if they have been absent from their home for 180 consecutive calendar days must do so separately.

L. 24 CFR 984.303(d) (Contract of participation; contract extension). Part 984 establishes the requirements for the Section 8 and Public Housing Family Self-Sufficiency (FSS) Program. Section 984.303(d) authorizes a PHA to extend a family's contract of participation for a period not to exceed 2 years, upon a finding of good cause, for any family that requests such an extension in writing. HUD is willing to consider a request from an MDD PHA that wishes to extend family contracts for up to 3 years, if such extensions are merited based on circumstances deriving from MDDs. Any waiver granted pursuant to this request will be in effect for requests made to the MDD PHA during a period not to exceed 12 months from the date of HUD approval.

M. 24 CFR part 985 (Section 8 Management Assessment Program (SEMAP)). Part 985 sets out the requirements by which Section 8 tenant-based assistance programs are assessed. For an MDD PHA that has a SEMAP score due during CY 2019, HUD is willing to consider a request to carry forward the last SEMAP score received by the PHA.

N. Notice PIH 2012–10, Section 8(c) (Verification of the Social Security Number (SSN)). PHAs are required to transmit form HUD–50058 not later than 30 calendar days following receipt of an applicant's or participant's SSN documentation. HUD is willing to consider a request to extend this requirement to 90 calendar days, for a period not to exceed 12 months from the date of HUD approval.

O. 24 CFR 970.15(b)(1)(ii). For Section 18 demolition applications (and disposition applications) justified by location obsolescence, in addition to accepting an environmental review performed by HUD under 24 CFR part 50, for MDD PHAs, HUD is willing to accept an environmental review performed under 24 CFR part 58 if HUD determines the part 58 review indicates the environmental conditions jeopardize the suitability of the site or a portion of the site and its housing structures for residential use.

P. 24 CFR 970.15(b)(2). For Section 18 demolition applications justified by obsolescence, HUD requires that PHAs support cost-estimate by a list of specific and detailed work-items that require rehabilitation or repair, as identified on form HUD–52860–B and other criteria outlined in PIH Notice 2018–04, Section A. HUD is willing to consider requests to waive these requirements if MDD PHAs submit other evidence (*e.g.,* insurance adjuster reports, condemnation orders from local municipalities, and photographs) that support the MDD PHA's certification that a program of modifications is not cost-effective.

IV. Notification and Expedited Waiver Process During CY 2019—Instructions

HUD has developed a checklist (Attachment A to this notification) that an MDD PHA must complete and submit to take advantage of the provisions identified in this notification and the expedited review of waiver requests. Each provision on the checklist indicates the documentation that must accompany the MDD PHA's submission. Each request for a waiver (Section 3 of the checklist) must include a good-cause justification stating why the waiver is needed for the PHA's relief and recovery efforts.

To complete the checklist, take the following steps:

1. Copy the checklist found in Attachment A into a new document on your computer, saving the document with the following filename format: FR–6050–N–03–XX123. The **Federal Register** docket number (FR–6050–N–03), a hyphen, then your Agency's HA Code. For example: FR–6050–N–03–XX123. HUD will consider other methods of submission as needed.
2. Complete the section titled Information about Requesting Agency. This section must be complete. An official of the MDD PHA must sign where indicated. If the information about the requesting agency is incomplete or the checklist has not been signed, then the checklist will be returned without review.
3. Complete Sections 1, 2, and/or 3 of the checklist, as applicable, noting the documentation (if any) that accompanies each provision.
4. Address an email to both *PIH_Disaster_Relief@hud.gov* and your Field Office Public Housing Director. In the subject line, type ''PHA Name—PHA Code—MDD Disaster Relief—Month and Year''
5. Attach the completed checklist, letter of justification, and supporting documentation as applicable to your email.
6. Click ''Send.''

Checklists and any supporting documentation or information must be submitted not later than 4 months following the MDD. Requests submitted AFTER that time period will not be considered except in special cases outside of the agency's control.

V. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24

CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: September 25, 2019.

R. Hunter Kurtz,

Assistant Secretary, Public and Indian Housing.

Attachment A—Checklist

Relief from HUD Requirements Available to Public Housing Agencies During CY 2019 To Assist With Recovery and Relief Efforts on Behalf of Families Affected by Disasters

Information About Requesting Agency

NAME OF PHA:
PHA CODE:
Address:
City or Locality: (must be covered under PDD)
Parish:
Date of Submission:
Signature of PHA Official: _____
Name/Title of PHA Official:
Phone number of PHA Official:

Section 1. List the Presidentially Declared Disaster Your Agency Is Under

_____
____
____
____
____

Section 2. Insert an ''X'' Next to the Applicable Flexibilities

An MDD PHA may adopt the flexibilities listed below.

____ A. 24 CFR 905.306 (Extension of deadline for obligation and expenditure of Capital Funds). (Office of Capital Improvements)

My agency requests that HUD extend the deadline for the obligation of Capital Funds for an additional 12 months which is attributable to an effect of the MDD which was beyond the control of the PHA. We will maintain documentation substantiating the need for this extension.

____ B. 24 CFR 984.105 (Family Self-Sufficiency minimum program size). (Housing Voucher Management and Operations; Public Housing Management and Occupancy)

My agency submits the certification required by 24 CFR 984.105(d) and will operate an FSS program that is smaller than the minimum program size for up to 24 months from October 9, 2019.

____ C. 24 CFR 990.145(b) (Public housing dwelling units with approved vacancies). (REAC—Public Housing Financial Management Division)

My agency requests HUD approval to treat certain vacant public housing units in our inventory as approved vacancies for the continued receipt of Operating Subsidy. I have attached a project-by-project listing of the units for which this approval is requested. I understand that any units that remain vacant shall be considered approved vacancies only for a period not to exceed 12 months from the date of HUD approval.

Section 3. Insert an ''X'' Next to the Applicable Waiver Requests

An MDD PHA may request a waiver of a HUD requirement listed below or of any other HUD requirement and receive expedited review of the request, if the MDD PHA demonstrates that the waiver is needed for relief and recovery purposes. Each request must include a good-cause justification for the waiver, documenting why the waiver is needed for such purposes. No requested waiver may be implemented unless and until written approval from HUD has been obtained.

____ A. 24 CFR 5.801(c) and 5.801(d)(1) (Uniform financial reporting standards; Filing of financial reports; Reporting compliance dates). (REAC)

My agency requests a waiver of 24 CFR 5.801(c) to extend the deadline for reporting unaudited financial information to 180 days and of 24 CFR 5.801(d)(1) to extend the reporting deadline for audited financial information to 13 months.

For requests to waiver the deadlines to report both unaudited financial information and audited financial information.

____ B. 24 CFR part 902 (Public Housing Assessment System). (REAC)

My agency requests a waiver of the property inspection and scoring of public housing projects, as required under 24 CFR part 902.

____ C. 24 CFR 905.322(b) (Fiscal closeout) (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 905.322(b) to extend the deadline for submission of the Actual Development Cost Certificate and the Actual Modernization Cost Certificate by 12 months.

____ D. 24 CFR 905.314(b)–(c) (Cost and other limitations; Maximum project cost; TDC limit). (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 905.314(b)–(c), which establish the calculation of maximum project cost and total development cost limits for the Capital Fund program. My agency will strive to keep housing costs reasonable given local market conditions, based upon the provisions outlined in 2 CFR part 200. I understand that this waiver is in effect only until 2019 TDC limits have been published.

____ E. 24 CFR 905.314(j) (Cost and other limitations; Types of labor) (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 904.314(j) to allow for the use of force account labor for modernization activities even if this activity has not been included in our agency's 5-Year Action Plan. I understand that this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

____ F. 24 CFR 905.400(i)(5) (Capital Fund Formula; Replacement Housing Factor to reflect formula needs for projects with demolition or disposition occurring on or after October 1, 1998, and prior to September 2013). (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 905.400(i)(5) to allow for the use of Capital Fund Replacement Housing Factor grants with undisbursed balances for public housing modernization. I understand that this waiver will be in effect only for funds obligated within 12 months from the date of HUD approval.

____ G. 24 CFR 960.202(c)(1) (Tenant selection policies) and 24 CFR 982.54(a) (Administrative plan). (Housing Voucher Management and Operations; Public Housing Management and Occupancy)

My agency requests a waiver of 24 CFR 960.202(c)(1) and/or 24 CFR 982.54(a) so that our public housing tenant selection policies and section 8 administrative plan may be revised on a temporary basis, without formal approval, to address circumstances unique to relief and recovery efforts. I have attached documentation that our Board of Commissioners or an authorized PHA official supports the waiver request. I have also attached

documentation identifying the temporary revisions. The adoption of these revisions does not constitute a significant amendment to our PHA or MTW plan, nor does state law prevent us from adopting the revisions without formal approval. I understand that these revisions will be in effect for a period not to exceed 12 months from the date of HUD's approval.

____ H. 24 CFR 982.206(a)(2) (Waiting List; Opening and closing; Public notice). (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.206(a)(2) so that we can provide public notice of the opening of our waiting list via our website, at any of our offices, and/or in a voice-mail message in lieu of providing notice in a local newspaper of general circulation. I understand that my agency must comply with the requirements at 24 CFR 982.206(a)(2) to provide public notice in minority media and ensure that the notice complies with HUD fair housing requirements. I understand that this waiver is in effect for a period not to exceed 12 months from the date of HUD approval.

____ I. 24 CFR 982.503(c) (HUD approval of exception payment standard amount). (Housing Voucher Management and Operations)

My agency requests to establish an exception payment standard amount that is higher than 110 percent of the published fair market rent (FMR). I have attached our proposed emergency exception payment standard schedule, which shows both the dollar amounts requested and those amounts as a percentage of the FMRs in effect at the time of the request. I understand that any approved exception payment standard will remain in effect until HUD revises the FMRs for the area. I also understand that increased per-family costs resulting from the use of such exception payment standard may result in a reduction in the number of families assisted or may require my agency to adopt other cost-saving measures.

____ J. 24 CFR 982.401(d) (Housing quality standards; Space and security). (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.401(d) so that we may allow families to occupy units that are smaller than our occupancy standards would otherwise dictate. I understand that this waiver is in effect only for HAPs entered into during the 12-month period following the date of HUD approval, and then only with the written consent of the family.

____ K. 24 CFR 982.633(a) (Occupancy of home). (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.633(a) so that we may continue HAP for homeownership for families displaced from their homes if needed to comply with mortgage terms or make necessary repairs. We have determined that the family is not receiving assistance from another source. I understand that such payments must cease if the family remains absent from their home for more than 180 consecutive calendar days.

____ L. 24 CFR 984.303(d) (Contract of participation; contract extension). (Public Housing Management and Occupancy; Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 984.303(d) so that a family's contract of participation may be extended for up to three years. I understand that such extensions may be made only during the 12-month period following the date of HUD approval.

____ M. 24 CFR 985.101(a) (Section 8 Management Assessment Program (SEMAP)). (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 985.101(a) so that our SEMAP score from the previous year may be carried over. My agency has a fiscal year end of 9/30/17, 12/31/17, or 3/31/18.

____ N. Notice PIH 2012–10, Section 8(c) (Verification of the Social Security Number (SSN)) (REAC)

My agency requests a waiver of section 8(c) of Notice PIH 2012–10 to allow for the submission of Form HUD–50058 90 calendars days from receipt of an applicant's or participant's SSN documentation. I understand that this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

____ O. 24 CFR 970.15(b)(1)(ii) (Section 18 Application—Environmental Review) (REAC)

My agency requests a waiver of 24 CFR 970.15(b)(1)(ii) and seeks to complete a Part 58 review instead of a Part 50 where environmental conditions jeopardize the site and its housing structures for residential use.

____ P. 24 CFR 970.15(b)(2) (Section 18 Application—HUD–52860–B) (REAC)

My agency requests a waiver of 24 CFR 970.15(b)(2) and PIH 2018–04 and seeks to submit other supporting evidence of obsolescence (e.g., insurance adjusters reports, photographs, and condemnation orders from local municipalities) where modifications/rehabilitation are not cost-effective.

____ Q. Waivers not identified in FR–6050–N–03.

My agency seeks waivers of the HUD requirements listed below. I have included documentation justifying the need for the waivers.

Regulation	Description
Example: 24 CFR 982.54.	*Example: A waiver of this regulation will facilitate our agency's capacity to participate in relief and recovery efforts by . . .*

[FR Doc. 2019–21422 Filed 10–8–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9877]

RIN 1545–BM83

Liabilities Recognized as Recourse Partnership Liabilities Under Section 752

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations addressing when certain obligations to restore a deficit balance in a partner's capital account are disregarded under section 704 of the Internal Revenue Code (Code), when partnership liabilities are treated as recourse liabilities under section 752, and how bottom dollar payment obligations are treated under section 752. These final regulations provide guidance necessary for a partnership to allocate its liabilities among its partners. These regulations affect partnerships and their partners.

DATES:

Effective date: These regulations are effective on October 9, 2019.

Applicability dates: For dates of applicability, see §§ 1.704–1(b)(1)(ii)(*a*), 1.752–1(d)(2), and 1.752–2(l).

FOR FURTHER INFORMATION CONTACT: Caroline E. Hay at (202) 317–5279 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

1. Overview

This Treasury decision contains amendments to the Income Tax

Regulations (26 CFR part 1) under sections 704 and 752 of the Code. On January 30, 2014, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking in the **Federal Register** (REG–119305–11, 79 FR 4826) to amend the then existing regulations under section 707 relating to disguised sales of property to or by a partnership and under section 752 concerning the treatment of partnership liabilities (2014 Proposed Regulations). The 2014 Proposed Regulations provided certain technical rules intended to clarify the application of the disguised sale rules under section 707 and also contained rules regarding the sharing of partnership recourse and nonrecourse liabilities under section 752.

A public hearing on the 2014 Proposed Regulations was not requested or held, but the Treasury Department and the IRS received written comments. On October 5, 2016, after consideration of, and in response to, the comments on the 2014 Proposed Regulations, the Treasury Department and the IRS published in the **Federal Register** (81 FR 69291) final regulations under section 707 concerning disguised sales and under section 752 regarding the allocation of excess nonrecourse liabilities of a partnership to a partner for disguised sale purposes (T.D. 9787). Also on October 5, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 69282) final and temporary regulations under sections 707 and 752 (T.D. 9788) implementing a new rule concerning the allocation of liabilities for section 707 purposes (707 Temporary Regulations) and rules concerning the treatment of ''bottom dollar payment obligations'' (752 Temporary Regulations). Finally, in the **Federal Register** (81 FR 69301) on October 5, 2016, the Treasury Department and the IRS withdrew the 2014 Proposed Regulations under § 1.752–2 and published new proposed regulations (REG–122855–15) cross-referencing the 707 Temporary Regulations (707 Proposed Regulations) and the 752 Temporary Regulations and addressing (1) when certain obligations to restore a deficit balance in a partner's capital account are disregarded under section 704, and (2) when partnership liabilities are treated as recourse liabilities under section 752 (752 Proposed Regulations). On November 17, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 80993 and 81 FR 80994) two correcting amendments to T.D. 9788 (the temporary regulations as so corrected, 707 Temporary Regulations).

In the **Federal Register** (83 FR 28397) on June 19, 2018, the Treasury Department and the IRS subsequently withdrew the 707 Proposed Regulations, and published proposed regulations (REG–131186–17) proposing to reinstate the regulations under section 707 concerning how partnership liabilities are allocated for disguised sale purposes that were in effect prior to the 707 Temporary Regulations. In addition to these final regulations under sections 704 and 752, the Treasury Department and the IRS are publishing in this issue of the **Federal Register** final regulations under section 707 (T.D. 9876) that are the same as the regulations that were in effect prior to the 707 Temporary Regulations.

A public hearing on the 752 Proposed Regulations was not requested or held, but the Treasury Department and the IRS received written comments. After consideration of the comments, this Treasury decision adopts the rules in the 752 Temporary Regulations and the 752 Proposed Regulations with some changes. These changes, and comments received on the 752 Temporary Regulations and the 752 Proposed Regulations, are discussed in the Summary of Comments and Explanations of Revisions section of the preamble that follows.

2. Summary of Applicable Law

Section 752 separates partnership liabilities into two categories: Recourse liabilities and nonrecourse liabilities. Section 1.752–1(a)(1) provides that a partnership liability is a recourse liability to the extent that any partner or related person bears the economic risk of loss (EROL) for that liability under § 1.752–2. Section 1.752–1(a)(2) provides that a partnership liability is a nonrecourse liability to the extent that no partner or related person bears the EROL for that liability under § 1.752–2.

A partner generally bears the EROL for a partnership liability if the partner or related person has an obligation to make a payment to any person within the meaning of § 1.752–2(b). For purposes of determining the extent to which a partner or related person has an obligation to make a payment, an obligation to restore a deficit capital account upon liquidation of the partnership under the section 704(b) regulations is taken into account (deficit restoration obligation). Further, for this purpose, § 1.752–2(b)(6) of the existing regulations presumes that partners and related persons who have payment obligations actually perform those obligations, irrespective of their net worth, unless the facts and circumstances indicate a plan to circumvent or avoid the obligation (the satisfaction presumption). However, the satisfaction presumption is subject to an anti-abuse rule in § 1.752–2(j) pursuant to which a payment obligation of a partner or related person may be disregarded or treated as an obligation of another person if facts and circumstances indicate that a principal purpose of the arrangement is to eliminate the partner's EROL with respect to that obligation or create the appearance of the partner or related person bearing the EROL when the substance is otherwise. Under the existing rules, the satisfaction presumption is also subject to a disregarded entity net value requirement under § 1.752–2(k) pursuant to which, for purposes of determining the extent to which a partner bears the EROL for a partnership liability, a payment obligation of a disregarded entity is taken into account only to the extent of the net value of the disregarded entity as of the allocation date that is allocated to the partnership liability.

Summary of Comments and Explanations of Revisions

1. Bottom Dollar Payment Obligations

A. Obligations Treated as Bottom Dollar Payment Obligations

The 752 Temporary Regulations provide that a bottom dollar payment obligation is not recognized as a payment obligation for purposes of § 1.752–2. The 752 Temporary Regulations provide that a bottom dollar payment obligation is the same as or similar to one of the following three types of payment obligations or arrangements: (1) With respect to a guarantee or similar arrangement, any payment obligation other than one in which the partner or related person is or would be liable up to the full amount of such partner's or related person's payment obligation if, and to the extent that, any amount of the partnership liability is not otherwise satisfied; (2) with respect to an indemnity or similar arrangement, any payment obligation other than one in which the partner or related person is or would be liable up to the full amount of such partner's or related person's payment obligation, if, and to the extent that, any amount of the indemnitee's or benefited party's payment obligation is recognized; and (3) an arrangement with respect to a partnership liability that uses tiered partnerships, intermediaries, senior and subordinate liabilities, or similar arrangements to convert what would otherwise be a single liability into multiple liabilities if, based on the facts

and circumstances, the liabilities were incurred pursuant to a common plan, as part of a single transaction or arrangement, or as part of a series of related transactions or arrangements, and with a principal purpose of avoiding having at least one of such liabilities or payment obligations with respect to such liabilities being treated as a bottom dollar payment obligation. A payment obligation is not a bottom dollar payment obligation merely because a maximum amount is placed on the partner's or related person's payment obligation, a partner's or related person's payment obligation is stated as a fixed percentage of every dollar of the partnership liability, or there is a right of proportionate contribution running between partners or related persons who are co-obligors with respect to a payment obligation for which each of them is jointly and severally liable. The 752 Temporary Regulations also provide an exception to the non-recognition rule of bottom dollar payment obligations. That is, a bottom dollar payment obligation is recognized when a partner or related person is liable for at least 90 percent of the partner's or related person's initial payment obligation despite an indemnity, a reimbursement agreement, or a similar arrangement.

One commenter stated that the 752 Temporary Regulations are conceptually flawed, result in inconsistent answers, and are directly contrary to Congressional intent. That commenter explained that the prior regulations appropriately followed Congress's mandate that debt is allocated by a partnership to the partners who bear the EROL with respect to the debt. See Section 79 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) overruling the decision in *Raphan* v. *United States,* 3 Cl. Ct. 457 (1983) (holding that a guarantee on a partnership liability by a general partner did not require that partner to be treated as personally liable for that liability and did not preclude the other partners who did not guarantee the loan from sharing in the step up in basis on account of the debt). The commenter argued that the 752 Temporary Regulations instead treat all guarantees as bottom dollar payment obligations which do not create EROL unless the partner is liable for the full amount of that partner's or related person's payment obligation if, and to the extent that, any amount of the partnership liability is not otherwise satisfied. The commenter asserted that, under the 752 Temporary Regulations, all guarantees below 90 percent of a payment obligation are ignored, even if the partnership and the partners believe that the guaranteeing partner bears the EROL with respect to the payment obligation.

As an example of these concerns, the commenter pointed to the different results in *Examples 10* and *11* in § 1.752–2T(f). In *Examples 10* and *11,* A, B, and C are equal members of a partnership, ABC. ABC borrows $1,000 from Bank. In *Example 10,* A guarantees up to $300 of the liability if any amount of the $1,000 liability is not recovered by Bank, while B guarantees payment of up to $200, but only if Bank otherwise recovers less than $200. In *Example 11,* C additionally agrees to indemnify A for up to $100 that A pays with respect to A's guarantee. The comment explained that, in *Example 10,* $300 of the liability is recognized and allocated (to A), but in *Example 11,* only $100 is recognized and allocated (in the amount indemnified by C). The full $300 payment obligation would have been recognized and allocated if made by one partner, but splitting it across two partners caused $200 of the collective payment obligation to be ignored. This result is notwithstanding that $300 of the same first-dollars of the $1,000 partnership liability in the example was guaranteed by the partners.

Although recommending revocation of the 752 Temporary Regulations, this commenter recognized that prior regulations under section 752 allow partners that have no practical economic risk to be allocated debt. As a compromise, this commenter proposed that if the Treasury Department and the IRS are concerned with bottom dollar payment obligations that lack economic reality, the temporary regulations should be replaced with a rule that does not recognize obligations below a certain threshold. The commenter recommended, as an example, that obligations limited to the bottom one-third of a debt obligation not be recognized, but once the obligation is above that threshold, the entire obligation is recognized. The commenter argued that such a rule would provide greater certainty than the 752 Temporary Regulations and recognize that the guarantor has risk.

The 752 Temporary Regulations and these final regulations implement Congressional intent. Bottom dollar payment obligations do not represent real EROL because those payment obligations are structured to insulate the obligor from having to pay their obligations. Moreover, bottom dollar guarantees are not relevant to loan risk underwriting generally. These obligations generally lack a significant non-tax commercial business purpose. Therefore, bottom dollar payment obligations should not be recognized as payment obligations. Despite the commenter's assertion that there could be some risk to partners with bottom dollar payment obligations, the Treasury Department and the IRS received no comments (including from this commenter) on the 752 Temporary Regulations or the 752 Proposed Regulations demonstrating that bottom dollar payment obligations have a significant non-tax commercial business purpose. Nor did any commenter propose an alternative that resolves the concerns raised in the preamble to the 752 Temporary Regulations that, under the prior section 752 regulations, partners and related persons entered into payment obligations that were not commercial solely to achieve an allocation of a partnership liability. The compromise proposal offered by this commenter would significantly lower the threshold for the amount required to be economically at risk from 90 percent of a partner's or related person's initial payment obligation to 33 percent without explaining why the lower threshold is more appropriate. Indeed, the compromise could still allow a partner with no practical economic risk to be allocated debt. These final regulations comport with Congress' directive in response to *Raphan*. Moreover, *Examples 10* and *11* in § 1.752–2(f) are not inconsistent with one another, but show how an otherwise recognized payment obligation can become a bottom dollar payment obligation when the initial payment obligor no longer bears the real EROL as a result of a subsequent indemnity. For these reasons, the Treasury Department and the IRS do not adopt the commenter's suggestions.

The 752 Temporary Regulations further require taxpayers to disclose bottom dollar payment obligations by filing Form 8275, Disclosure Statement, or any successor form, with the return of the partnership for the taxable year in which a bottom dollar payment obligation is undertaken or modified. These final regulations clarify that identifying the payment obligation with respect to which disclosure is made includes stating whether the obligation is a guarantee, a reimbursement, an indemnity, or deficit restoration obligation.

B. Capital Contribution and Deficit Restoration Obligations

Generally, the regulations under section 752 provide a description of obligations recognized as payment obligations under § 1.752–2(b)(1). The

752 Temporary Regulations further provide that all statutory and contractual obligations relating to the partnership liability are taken into account for purposes of applying § 1.752–2, including obligations to the partnership that are imposed by the partnership agreement, such as the obligation to make a capital contribution and a deficit restoration obligation. See § 1.752–2T(b)(3).

A commenter expressed concerns that, although it is clear that a capital contribution obligation and a deficit restoration obligation are types of payment obligations to which § 1.752–2 applies, the definition of a bottom dollar payment obligation provides no guidance as to how to determine whether a capital contribution obligation or a deficit restoration obligation is a bottom dollar payment obligation. For example, a deficit restoration obligation does not relate to a particular partnership liability and the proceeds of the deficit restoration obligation may be paid to creditors of the partnership or distributed to other partners. See § 1.704–1(b)(2)(ii)(*b*)(*3*). These final regulations thus revise the definition of a bottom dollar payment obligation to specifically address capital contribution obligations and deficit restoration obligations. Section 1.752–2(b)(3)(ii)(C)(*1*)(*iii*) in these final regulations provides that a bottom dollar payment obligation includes, with respect to a capital contribution obligation and a deficit restoration obligation, any payment obligation other than one in which the partner is or would be required to make the full amount of the partner's capital contribution or to restore the full amount of the partner's deficit capital account.

C. Anti-Abuse Rule in § 1.752–2(j)(2)

The 752 Temporary Regulations provide that irrespective of the form of the contractual obligation, the Commissioner may treat a partner as bearing the EROL with respect to a partnership liability, or portion thereof, to the extent that: (1) The partner or related person undertakes one or more contractual obligations so that the partnership may obtain or retain a loan; (2) the contractual obligations of the partner or related person significantly reduce the risk to the lender that the partnership will not satisfy its obligations under the loan, or portion thereof; and (3) with respect to the contractual obligations described in (1) or (2), (i) one of the principal purposes of using the contractual obligation is to attempt to permit partners (other than those who are directly or indirectly liable for the obligation) to include a portion of the loan in the basis of their partnership interests, or (ii) another partner, or person related to another partner, enters into a payment obligation and a principal purpose of the arrangement is to cause the payment obligation to be disregarded. See § 1.752–2T(j)(2).

A commenter argued that because this anti-abuse rule is at the Commissioner's discretion, taxpayers are uncertain how to treat certain liabilities that would otherwise be bottom dollar payment obligations. One of the purposes of the 752 Temporary Regulations is to ensure that only genuine commercial payment obligations, including guarantees and indemnities, affect the allocation of partnership liabilities. Indeed, commenters to the 2014 Proposed Regulations noted that partners can manipulate contractual arrangements to achieve a federal income tax result that is not consistent with the economics of an arrangement. This is true both of a payment obligation that does not represent a real EROL as well as an agreement that purposefully creates the appearance of a bottom dollar payment obligation even if that taxpayer (or a person related to that taxpayer) bears the EROL. The anti-abuse rule, therefore, is appropriate. However, in response to comments regarding uncertainty caused because the anti-abuse rule in the 752 Temporary Regulations applied at the Commissioner's discretion, the final regulations remove the discretionary language consistent with the rule in the regulations under section 752 prior to the 752 Temporary Regulations.

D. Applicability Date and Transitional Rule

The 752 Temporary Regulations for bottom dollar payment obligations generally apply to liabilities incurred or assumed by a partnership and payment obligations imposed or undertaken with respect to a partnership liability on or after October 5, 2016, other than liabilities incurred or assumed by a partnership and payment obligations imposed or undertaken pursuant to a written binding contract in effect prior to that date. Under the 752 Temporary Regulations, a transitional rule applies to any partner whose allocable share of partnership liabilities under § 1.752–2 exceeded its adjusted basis in its partnership interest as determined under § 1.705–1 on October 5, 2016 (Grandfathered Amount). To the extent of that excess, those partners may continue to apply the prior regulations under § 1.752–2 with respect to a partnership liability for a seven-year period. The amount of partnership liabilities subject to transition relief decreases for certain reductions in the amount of liabilities allocated to that partner under the transitional rule and, upon the sale of any partnership property, for any tax gain (including section 704(c) gain) allocated to the partner less that partner's share of amount realized.

A commenter explained that the rule in § 1.704–2(g)(3) regarding conversions of recourse or partner nonrecourse liabilities into nonrecourse liabilities may overlap and potentially conflict with the transitional rule. This commenter noted that the transitional rule may be unnecessary, but, regardless, believes that the transitional rule should be coordinated with § 1.704–2(g)(3).

Section 1.704–2(g)(3) provides that a partner's share of partnership minimum gain is increased to the extent provided in § 1.704–2(g)(3) if a recourse or partner nonrecourse liability becomes partially or wholly nonrecourse. If a recourse liability becomes a nonrecourse liability, a partner has a share of the partnership's minimum gain that results from the conversion equal to the partner's deficit capital account (determined under § 1.704–1(b)(2)(iv)) to the extent the partner no longer bears the economic burden for the entire deficit capital account as a result of the conversion. The determination of the extent to which a partner bears the economic burden for a deficit capital account is made by determining the consequences to the partner in the case of a complete liquidation of the partnership immediately after the conversion applying the rules described in § 1.704–1(b)(2)(iii)(*c*) that deem the value of partnership property to equal its basis, taking into account section 7701(g) in the case of property that secures nonrecourse indebtedness. If a partner nonrecourse debt becomes a nonrecourse liability, the partner's share of partnership minimum gain is increased to the extent the partner is not subject to the minimum gain chargeback requirement under § 1.704–2(i)(4). The commenter asserts that § 1.704–2(g)(3) increases a partner's share of minimum gain which increases the partner's capital account to reflect the same result as if nonrecourse deductions had been taken all along. The gain, if it would have been triggered as a result of a partner's negative section 704(b) account with no deficit reduction obligation, is deferred because under § 1.704–2(g)(3), the partner's share of minimum gain increases. The commenter argues that § 1.752–3(a)(1) or (2) would apply to allocate the

nonrecourse liability to the partner and, therefore, the partner would still be allocated a share of the partnership liability eliminating the need for the transitional rule.

Notwithstanding the rule in § 1.704–2(g)(3), the transitional rule is necessary to address certain situations when § 1.704–2(g)(3) would not apply because, for example, before these regulations were finalized, a bottom dollar deficit restoration obligation is regarded for section 704 purposes, but is disregarded for section 752 purposes. In that case, a partner could recognize gain under section 731 without the transitional rule. Additionally, because § 1.752–3(a)(1) and (2) do not apply in determining a partner's share of a partnership nonrecourse liability for disguised sale purposes, a disguised sale could occur if a partner's share of liabilities under § 1.752–3(a)(3) does not cover the Grandfathered Amount.

To the extent that the transitional rule applies to a partner's share of a recourse partnership liability as a result of the partner bearing the EROL under § 1.752–2(b), the partner's share of the liability can continue to be determined under § 1.752–2 and is not converted into a nonrecourse liability under § 1.752–3. In this situation, because a recourse or partner nonrecourse liability does not become partially or wholly nonrecourse as a result of the transitional rule, the rule in § 1.704–2(g)(3) would not apply until the expiration of the seven-year period. If a partner does not want to apply the transitional rule in determining its share of a partnership liability because it believes that the rule in § 1.704–2(g)(3) effectively defers any negative tax consequences that could occur when a recourse or partner nonrecourse liability becomes partially or wholly nonrecourse, the partner must then apply the rules under § 1.752–2, as amended after October 5, 2016, in determining its share of a partnership liability.

This commenter also noted that the transitional rule should clarify whether it applies to refinanced liabilities. The bottom dollar payment obligation rules do not apply to liabilities incurred or assumed by a partnership and payment obligations imposed or undertaken pursuant to a written binding contract in effect before October 5, 2016. The preamble to the 752 Temporary Regulations explains that commenters on the 2014 Proposed Regulations had recommended that partnership liabilities or payment obligations that are modified or refinanced continue to be subject to the provisions of the previous regulations to the extent of the amount and duration of the pre-modification (or refinancing) liability or payment obligation. The preamble explains that the 752 Temporary Regulations do not adopt this recommendation as the terms of the partnership liabilities and payment obligations could be changed, which would affect the determination of whether or not an obligation is a bottom dollar payment obligation, but instead provided transition relief. Under the transitional rule, if a debt entered into before October 5, 2016, is not refinanced, these final regulations do not apply. If the debt is refinanced, then these regulations apply, but the partner could instead choose to apply the transitional rule to the extent of the Grandfathered Amount. Although the transitional rule in the 752 Temporary Regulations applies to modified or refinanced obligations, these final regulations further clarify that the transitional rule applies to modified and refinanced liabilities.

2. Additional Guidance on Disregarding Purported Payment Obligations

A. Deficit Restoration Obligation Factors

The 752 Proposed Regulations add a list of factors to § 1.704–1(b)(2)(ii)(*c*) that are similar to the factors in the proposed anti-abuse rule under § 1.752–2(j) (discussed in Section 2.B. of the Summary of Comments and Explanations of Revisions in this preamble), but specific to deficit restoration obligations, to indicate when a plan to circumvent or avoid an obligation exists. If a plan to circumvent or avoid an obligation exists, the obligation is disregarded for purposes of sections 704 and 752. Under proposed § 1.704–1(b)(2)(ii)(*c*), the following factors indicate a plan to circumvent or avoid an obligation: (1) The partner is not subject to commercially reasonable provisions for enforcement and collection of the obligation; (2) the partner is not required to provide (either at the time the obligation is made or periodically) commercially reasonable documentation regarding the partner's financial condition to the partnership; (3) the obligation ends or could, by its terms, be terminated before the liquidation of the partner's interest in the partnership or when the partner's capital account as provided in § 1.704–1(b)(2)(iv) is negative; and (4) the terms of the obligation are not provided to all the partners in the partnership in a timely manner.

The Treasury Department and the IRS are aware that a partner's transfer of its deficit restoration obligation to a transferee who agrees to the same deficit restoration obligation could run afoul of the third factor and cause the partner's deficit restoration obligation to be disregarded. However, under these final regulations, the weight to be given to any particular factor depends on the particular facts and the presence or absence of any particular factor is not, in itself, necessarily indicative of whether or not the obligation is respected. The fact that a transferee agrees to the same deficit restoration obligation should be taken into account when determining whether a plan to circumvent or avoid an obligation exists. In addition, these final regulations add an exception to this factor when a transferee partner assumes the obligation.

B. Anti-Abuse Factors Under § 1.752–2(j)(3)

The 2014 Proposed Regulations included a list of factors to determine whether a partner's or related person's obligation to make a payment with respect to a partnership liability (excluding those imposed by state law) would be recognized for purposes of section 752. In response to comments, the 752 Proposed Regulations moved the list of factors to an anti-abuse rule in § 1.752–2(j)(3), other than the recognition factors concerning bottom dollar guarantees and indemnities, which are addressed in the 752 Temporary Regulations. Under the anti-abuse rule in the 752 Proposed Regulations, the following non-exclusive factors are weighed to determine whether a payment obligation should be respected: (1) The partner or related person is not subject to commercially reasonable contractual restrictions that protect the likelihood of payment, (2) the partner or related person is not required to provide commercially reasonable documentation regarding the partner's or related person's financial condition to the benefited party, (3) the term of the payment obligation ends prior to the term of the partnership liability, or the partner or related person has a right to terminate its payment obligation, (4) there exists a plan or arrangement in which the primary obligor or any other obligor with respect to the partnership liability directly or indirectly holds money or other liquid assets in an amount that exceeds the reasonable foreseeable needs of such obligor, (5) the payment obligation does not permit the creditor to promptly pursue payment following a payment default on the partnership liability, or other arrangements with respect to the partnership liability or payment obligation otherwise indicate a plan to

delay collection, (6) in the case of a guarantee or similar arrangement, the terms of the partnership liability would be substantially the same had the partner or related person not agreed to provide the guarantee, and (7) the creditor or other party benefiting from the obligation did not receive executed documentation with respect to the payment obligation from the partner or related person before, or within a commercially reasonable period of time after, the creation of the obligation. The weight to be given to any particular factor depends on the particular case and the presence or absence of any particular factor, in itself, is not necessarily indicative of whether or not a payment obligation is recognized under § 1.752–2(b).

A commenter expressed concerns with the listed factors asserting that they are drafted to make an obligation fail (that the debt will be nonrecourse) because an obligation is unlikely to satisfy all seven factors. The commenter also argued that the factors are subject to manipulation by taxpayers who desire nonrecourse debt treatment. Finally, the commenter was concerned with the subjective and speculative inquiry regarding the fourth and sixth factors.

The seven factors are appropriate considerations in determining whether a plan to circumvent or avoid an obligation exists. The 2014 Proposed Regulations provided that a payment obligation with respect to a partnership liability was not recognized under § 1.752–2(b)(3) unless all of the factors were met. At commenters' requests and due to concerns that the rule was too strict, the 752 Proposed Regulations moved the list of factors from the operative rule to the anti-abuse rule where they are now just factors to examine in determining whether a plan to circumvent or avoid an obligation exists. In response to the comment on the 752 Proposed Regulations, however, these final regulations add clarification to the fourth factor that amounts are not held in excess of the reasonably foreseeable needs of an obligor if the partnership purchases standard commercial insurance, such as casualty insurance. Additionally, these final regulations list certain types of commercially reasonable documentation (balance sheets and financial statements) as examples of documents a lender would typically require.

A commenter also requested that the final regulations clarify how the assumption rule in § 1.752–1(d) relates to the factors in § 1.752–2(j). Under § 1.752–1(b), any increase in a partner's share of partnership liabilities, or any increase in a partner's individual liabilities by reason of the partner's assumption of partnership liabilities, is treated as a contribution of money by that partner to the partnership. Conversely, § 1.752–1(c) provides that any decrease in a partner's share of partnership liabilities, or any decrease in a partner's individual liabilities by reason of the partnership's assumption of the individual liabilities of the partner, is treated as a distribution of money by the partnership to that partner. The assumption rule in § 1.752–1(d) applies to determine whether a partner has assumed a partnership liability (treated as a contribution under section 752(a)), or the partnership has assumed a partner liability (treated as a distribution under section 752(b)). Generally under § 1.752–1(d), a person is considered to assume a liability only to the extent that (1) the assuming person is personally obligated to pay the liability; and (2) if a partner or related person assumes a partnership liability, the person to whom the liability is owed knows of the assumption and can directly enforce the partner's or related person's obligation for the liability, and no other partner or person that is a related person to another partner would bear the EROL for the liability immediately after the assumption. Sections 1.752–2 and 1.752–3 provide the rules for determining a partner's share of partnership recourse and nonrecourse liabilities.

The analysis for determining whether a partner or person that is a related person to a partner bears the EROL for a liability for purposes of the assumption rule in § 1.752–1(d) should be the same analysis for determining whether a partner or related person bears the EROL under § 1.752–2, including the factors in § 1.752–2(j) for payment obligations. Therefore, these final regulations add a cross reference in § 1.752–1(d) to clarify that an assumption will be treated as giving rise to a payment obligation only to the extent no other partner or a person related to another partner bears the EROL for the liability as determined under § 1.752–2.

C. Reasonable Expectation of Ability To Satisfy Obligation

The satisfaction presumption in § 1.752–2(b)(6) of the existing regulations is subject to a disregarded entity net value requirement under existing § 1.752–2(k). The 2014 Proposed Regulations expanded the scope of the net value requirement and provided that, in determining the extent to which a partner or related person other than an individual or a decedent's estate bears the EROL for a partnership liability other than a trade payable, a payment obligation is recognized only to the extent of the net value of the partner or related person that, as of the allocation date, is allocated to the liability, as determined under § 1.752–2(k). The 2014 Proposed Regulations also required a partner to provide a statement concerning the net value of a person with a payment obligation (a payment obligor) to the partnership. The preamble to the 2014 Proposed Regulations requested comments concerning whether the net value rule should also apply to individuals and estates and whether the regulations should consolidate these rules under § 1.752–2(k).

Comments on the 2014 Proposed Regulations suggested that if the net value rule is retained, § 1.752–2(k) should be extended to all partners and related persons other than individuals. A commenter expressed concerns that a partner who may be treated as bearing the EROL with respect to a partnership liability would have to provide information regarding the net value of a payment obligor, which is unnecessarily intrusive. Another commenter believed that if the rules requiring net value were extended to all partners in partnerships, the attempt to achieve more realistic substance would be accompanied by a corresponding increase in the potential for manipulation.

The preamble to the 752 Proposed Regulations explains that the Treasury Department and the IRS remain concerned with ensuring that a partner or related person be presumed to satisfy its payment obligation only to the extent that such partner or related person would be able to pay the obligation. After consideration of the comments to the 2014 Proposed Regulations, however, the Treasury Department and the IRS agreed that expanding the application of the net value rules under § 1.752–2(k) may lead to more litigation and may unduly burden taxpayers. Furthermore, net value as provided in § 1.752–2(k) may not accurately take into account future earnings of a business entity, which normally factor into lending decisions. Therefore, the 752 Proposed Regulations proposed to remove § 1.752–2(k) of the existing regulations and instead create a new presumption under the anti-abuse rule in § 1.752–2(j).

Under the presumption in the 752 Proposed Regulations, evidence of a plan to circumvent or avoid an obligation is deemed to exist if the facts and circumstances indicate that there is not a reasonable expectation that the payment obligor will have the ability to

make the required payments if the payment obligation becomes due and payable (Presumed Anti-abuse Rule). A payment obligor includes disregarded entities (including grantor trusts). If evidence of a plan to circumvent or avoid the obligation exists or is deemed to exist, the obligation is not recognized under § 1.752–2(b) and therefore the partnership liability is treated as a nonrecourse liability under § 1.752–1(a)(2).

Commenters argued that § 1.752–2(k) should be retained, however, because it provides clarity and certainty to taxpayers. One commenter suggested that if the government believes that the Presumed Anti-abuse Rule is necessary, § 1.752–2(k) should still be retained, or, alternatively, expanded to all partners and related persons other than individuals. This commenter noted that the Presumed Anti-abuse Rule creates uncertainty as it is not clear that taxpayers may proactively assert the Presumed Anti-abuse Rule. The commenter suggested that the final regulations clarify that motive and intent are irrelevant in determining whether the Presumed Anti-abuse Rule applies and that no actual plan to circumvent or avoid an obligation needs to exist.

Expanding the application of § 1.752–2(k) in the existing regulations would unduly burden taxpayers and would not accurately reflect economics. A more accurate reflection of economics is to determine whether a debtor will have the ability to make payments when due, not necessarily to whether the debtor has sufficient assets to satisfy an obligation currently. The Treasury Department and the IRS agree with the commenter, however, that the Presumed Anti-abuse Rule could create confusion and uncertainty. These final regulations, therefore, amend § 1.752–2(k) and clarify how the satisfaction presumption in § 1.752–2(b)(6) relates to § 1.752–2(k) in these final regulations. Amended § 1.752–2(k) applies to all partners of a partnership, including partners that are disregarded entities or grantor trusts.

Under these final regulations, it is assumed that all payment obligors actually perform those obligations, irrespective of their actual net worth, unless the facts and circumstances indicate that at the time the partnership determines a partner's share of partnership liabilities under §§ 1.705–1(a) and 1.752–4(d) there is not a commercially reasonable expectation that the payment obligor will have the ability to make the required payments under the terms of the obligation if the obligation becomes due and payable. A partner or related person's ability to pay may be based on documents such as, but not limited to, balance sheets, income statements, cash flow statements, credit reports, and projected future financial results.

D. General Applicability Date

Except as provided in Section 1.D. of the Summary of Comments and Explanations of Revisions in this preamble relating to bottom dollar payments obligations, these final regulations apply to liabilities incurred or assumed by a partnership and to payment obligations imposed or undertaken with respect to a partnership liability on or after October 9, 2019, other than liabilities incurred or assumed by a partnership and payment obligations imposed or undertaken pursuant to a written binding contract in effect prior to that date.

3. Additional Issues Concerning Partnership Liabilities That Are Outside the Scope of These Regulations

A commenter recommended guidance in determining a partner's amount at risk under section 465 for deficit restoration obligations. This commenter noted that under *Hubert Enterprises, Inc.* v. *Commissioner,* T.C. Memo. 2008–46, a deficit restoration obligation was not treated as giving a partner at risk basis because the obligation was contingent (because it was dependent upon the partner liquidating his interest) and the amount was uncertain (the deficit restoration obligation covered only the deficit in the partner's capital account at the time of liquidation and did not cover the entire debt obligation at issue). The commenter also recommended providing guidance under section 465 similar to that provided in these final regulations regarding when guarantees will be recognized. Providing guidance concerning section 465 is beyond the scope of these regulations. The Treasury Department and the IRS request comments, however, concerning whether guidance is needed to address issues under section 465.

The commenter recommended that these regulations incorporate standards to determine when a debt is recourse to a partnership under section 1001. The commenter questioned whether that test under section 1001 is performed at the partnership or partner level. These final regulations provide guidance as to how liabilities are allocated to partners in a partnership and do not concern how liabilities are characterized to the partnership under section 1001. This comment is thus outside the scope of these regulations.

This commenter also suggested that the Treasury Department and the IRS consider whether the rules in section 357(d) should have been adopted for partnerships since section 357(d)(3) states that the Secretary may also prescribe regulations which provide that the manner in which a liability is treated as assumed under section 357(d) is applied, where appropriate, elsewhere in Title 26. Section 357(d)(1)(A) provides that a recourse liability (or portion thereof) shall be treated as having been assumed if, as determined on the basis of all facts and circumstances, the transferee has agreed to, and is expected to, satisfy such liability (or portion), whether or not the transferor has been relieved of such liability. Section 357(d)(1)(B) provides that except as provided in section 357(d)(2), a nonrecourse liability shall be treated as having been assumed by the transferee of any asset subject to such liability. This recommended change is beyond the scope of these regulations, which are concerned with whether a partnership debt is recourse or non-recourse to a partner in the partnership.

The 752 Proposed Regulations requested comments concerning exculpatory liabilities in response to comments received on the 2014 Proposed Regulations requesting guidance with respect to such liabilities. An exculpatory liability is a liability that is recourse to an entity under state law and section 1001, but no partner bears the EROL within the meaning of section 752. Thus, the liability is treated as nonrecourse for section 752 purposes. The Treasury Department and the IRS, after acknowledging that exculpatory liabilities are beyond the scope of the 752 Proposed Regulations, sought additional comments regarding the proper treatment of an exculpatory liability under regulations under section 704(b) and the effect of such a liability's classification under section 1001. Further, the Treasury Department and the IRS requested additional comments addressing the allocation of an exculpatory liability among multiple assets and possible methods for calculating minimum gain with respect to such liability, such as the so-called ''floating lien'' approach (whereby all the assets in the entity, including cash, are considered to be subject to the exculpatory liability) or a specific allocation approach. The Treasury Department and the IRS continue to consider the comments received concerning exculpatory liabilities under sections 704 and 752.

Special Analyses

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the amount of time necessary to report the required information will be minimal in that it requires partnerships (including partnerships that may be small entities) to provide information they already maintain or can easily obtain to the IRS. Moreover, it should take a partnership no more than 2 hours to satisfy the information requirement in these regulations. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Paperwork Reduction Act

The collection of information contained in these final regulations under section 752 is reported on Form 8275, Disclosure Statement, and has been reviewed in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) and approved by the Office of Management and Budget under control number 1545–0889.

The collection of information in these final regulations under section 752 is in § 1.752–2(b)(3)(ii)(D). This information is required by the IRS to ensure that section 752 of the Code and applicable regulations are properly applied for allocations of partnership liabilities. The respondents will be partners and partnerships.

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 control number assigned by the Office of Management and Budget.

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 section 6103.

Drafting Information

The principal author of these regulations is Caroline E. Hay, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.704–1 is amended by:

■ 1. Adding two sentences to the end of paragraph (b)(1)(ii)(*a*).

■ 2. Adding a sentence to the end of paragraph (b)(2)(ii)(*b*)(*3*) introductory text.

■ 3. Removing the undesignated paragraph following paragraph (b)(2)(ii)(*b*)(*3*).

■ 4. Adding paragraphs (b)(2)(ii)(*b*)(*4*) through (*7*).

■ 5. Revising paragraph (b)(2)(ii)(*c*).

The additions and revisions read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(*a*) * * * Furthermore, the last sentence of paragraph (b)(2)(ii)(*b*)(*3*) of this section and paragraphs (b)(2)(ii)(*b*)(*4*) through (*7*) and (b)(2)(ii)(*c*) of this section apply to partnership taxable years ending on or after *October 9, 2019*. However, taxpayers may apply the last sentence of paragraph (b)(2)(ii)(*b*)(*3*) of this section and paragraphs (b)(2)(ii)(*b*)(*4*) through (*7*) and (b)(2)(ii)(*c*) of this section for partnership taxable years ending on or after October 5, 2016. For partnership taxable years ending before October 9, 2019, see § 1.704–1 as contained in 26 CFR part 1 revised as of April 1, 2019.

* * * * *

(2) * * *

(ii) * * *

(*b*) * * *

(*3*) * * * Notwithstanding the partnership agreement, an obligation to restore a deficit balance in a partner's capital account, including an obligation described in paragraph (b)(2)(ii)(*c*)(*1*) of this section, will not be respected for purposes of this section to the extent the obligation is disregarded under paragraph (b)(2)(ii)(*c*)(*4*) of this section.

(*4*) For purposes of paragraphs (b)(2)(ii)(*b*)(*1*) through (*3*) of this section, a partnership taxable year shall be determined without regard to section 706(c)(2)(A).

(*5*) The requirements in paragraphs (b)(2)(ii)(*b*)(*2*) and (*3*) of this section are not violated if all or part of the partnership interest of one or more partners is purchased (other than in connection with the liquidation of the partnership) by the partnership or by one or more partners (or one or more persons related, within the meaning of section 267(b) (without modification by section 267(e)(1)) or section 707(b)(1), to a partner) pursuant to an agreement negotiated at arm's length by persons who at the time such agreement is entered into have materially adverse interests and if a principal purpose of such purchase and sale is not to avoid the principles of the second sentence of paragraph (b)(2)(ii)(*a*) of this section.

(*6*) The requirement in paragraph (b)(2)(ii)(*b*)(*2*) of this section is not violated if, upon the liquidation of the partnership, the capital accounts of the partners are increased or decreased pursuant to paragraph (b)(2)(iv)(*f*) of this section as of the date of such liquidation and the partnership makes liquidating distributions within the time set out in the requirement in paragraph (b)(2)(ii)(*b*)(*2*) of this section in the ratios of the partners' positive capital accounts, except that it does not distribute reserves reasonably required to provide for liabilities (contingent or otherwise) of the partnership and installment obligations owed to the partnership, so long as such withheld amounts are distributed as soon as practicable and in the ratios of the partners' positive capital account balances.

(*7*) See *Examples 1.(i)* and *(ii), 4.(i), 8.(i),* and *16.(i)* of paragraph (b)(5) of this section for issues concerning paragraph (b)(2)(ii)(*b*) of this section.

(*c*) *Obligation to restore deficit*—(*1*) *Other arrangements treated as obligations to restore deficits*. If a partner is not expressly obligated to restore the deficit balance in such partner's capital account, such partner nevertheless will be treated as obligated to restore the deficit balance in his capital account (in accordance with the requirement in paragraph (b)(2)(ii)(*b*)(*3*) of this section and subject to paragraph

(b)(2)(ii)(*c*)(*2*) of this section) to the extent of—

(*A*) The outstanding principal balance of any promissory note (of which such partner is the maker) contributed to the partnership by such partner (other than a promissory note that is readily tradable on an established securities market), and

(*B*) The amount of any unconditional obligation of such partner (whether imposed by the partnership agreement or by state or local law) to make subsequent contributions to the partnership (other than pursuant to a promissory note of which such partner is the maker).

(*2*) *Satisfaction requirement.* For purposes of paragraph (b)(2)(ii)(*c*)(*1*) of this section, a promissory note or unconditional obligation is taken into account only if it is required to be satisfied at a time no later than the end of the partnership taxable year in which such partner's interest is liquidated (or, if later, within 90 days after the date of such liquidation). If a promissory note referred to in paragraph (b)(2)(ii)(*c*)(*1*) of this section is negotiable, a partner will be considered required to satisfy such note within the time period specified in this paragraph (b)(2)(ii)(*c*)(*2*) if the partnership agreement provides that, in lieu of actual satisfaction, the partnership will retain such note and such partner will contribute to the partnership the excess, if any, of the outstanding principal balance of such note over its fair market value at the time of liquidation. See paragraph (b)(2)(iv)(*d*)(*2*) of this section. See *Examples 1.(ix)* and *(x)* of paragraph (b)(5) of this section.

(*3*) *Related party notes.* For purposes of paragraph (b)(2) of this section, if a partner contributes a promissory note to the partnership during a partnership taxable year beginning after December 29, 1988, and the maker of such note is a person related to such partner (within the meaning of § 1.752–4(b)(1)), then such promissory note shall be treated as a promissory note of which such partner is the maker.

(*4*) *Obligations disregarded*—(*A*) *General rule.* A partner in no event will be considered obligated to restore the deficit balance in his capital account to the partnership (in accordance with the requirement in paragraph (b)(2)(ii)(*b*)(*3*) of this section) to the extent such partner's obligation is a bottom dollar payment obligation that is not recognized under § 1.752–2(b)(3) or is not legally enforceable, or the facts and circumstances otherwise indicate a plan to circumvent or avoid such obligation. See paragraphs (b)(2)(ii)(*f*), (b)(2)(ii)(*h*), and (b)(4)(vi) of this section for other rules regarding such obligation. To the extent a partner is not considered obligated to restore the deficit balance in the partner's capital account to the partnership (in accordance with the requirement in paragraph (b)(2)(ii)(*b*)(*3*) of this section), the obligation is disregarded and paragraph (b)(2) of this section and § 1.752–2 are applied as if the obligation did not exist.

(*B*) *Factors indicating plan to circumvent or avoid obligation.* In the case of an obligation to restore a deficit balance in a partner's capital account upon liquidation of a partnership, paragraphs (b)(2)(ii)(*c*)(*4*)(*B*)(*i*) through (*iv*) of this section provide a non-exclusive list of factors that may indicate a plan to circumvent or avoid the obligation. For purposes of making determinations under this paragraph (b)(2)(ii)(*c*)(*4*), the weight to be given to any particular factor depends on the particular case and the presence or absence of any particular factor is not, in itself, necessarily indicative of whether or not the obligation is respected. The following factors are taken into consideration for purposes of this paragraph (b)(2):

(*i*) The partner is not subject to commercially reasonable provisions for enforcement and collection of the obligation.

(*ii*) The partner is not required to provide (either at the time the obligation is made or periodically) commercially reasonable documentation regarding the partner's financial condition to the partnership.

(*iii*) The obligation ends or could, by its terms, be terminated before the liquidation of the partner's interest in the partnership or when the partner's capital account as provided in § 1.704–1(b)(2)(iv) is negative other than when a transferee partner assumes the obligation.

(*iv*) The terms of the obligation are not provided to all the partners in the partnership in a timely manner.

* * * * *

■ **Par. 3.** Section 1.752–0 is amended by:

■ 1. Adding entries for § 1.752–1(d)(1) and (2).

■ 2. Adding entries for § 1.752–2(b)(3)(i) and (ii), (b)(3)(ii)(A) through (C), (b)(3)(ii)(C)(*1*) through (*3*), (b)(3)(ii)(D), and (b)(3)(iii).

■ 3. Adding entries for § 1.752–2(j)(2)(i) and (ii).

■ 4. Adding entries for § 1.752–2(j)(3)(i) through (ii).

■ 5. Revising the entries for § 1.752–2(j)(3) and (4).

■ 6. Adding entries for § 1.752–2(k) and (k)(1) and (2).

■ 7. Adding an entry for § 1.752–2(l).

The additions and revisions read as follows:

§ 1.752–0 Table of contents.

* * * * *

§ 1.752–1 Treatment of partnership liabilities.

* * * * *

(d) * * *

(1) In general.

(2) Applicability date.

* * * * *

§ 1.752–2Partner's share of recourse liabilities.

* * * * *

(b) * * *

(3) * * *

(i) In general.

(ii) Special rules for bottom dollar payment obligations.

(A) In general.

(B) Exception.

(C) Definition of bottom dollar payment obligation.

(*1*) In general.

(*2*) Exceptions.

(*3*) Benefited party defined.

(D) Disclosure of bottom dollar payment obligations.

(iii) Special rule for indemnities and reimbursement agreements.

* * * * *

(j) * * *

(2) * * *

(i) In general.

(ii) Economic risk of loss.

(3) Plan to circumvent or avoid an obligation.

(i) General rule.

(ii) Factors indicating plan to circumvent or avoid an obligation.

(4) Example.

(k) No reasonable expectation of payment.

(1) In general.

(2) Examples.

(l) Applicability dates.

* * * * *

■ **Par. 4.** Section 1.752–1 is amended by:

■ 1. Redesignating paragraphs (d)(1) and (2) as paragraphs (d)(1)(i) and (ii), respectively, and revising newly redesignated paragraph (d)(1)(ii).

■ 2. Redesignating the text of paragraph (d) introductory text following its subject heading as paragraph (d)(1), revising the heading for paragraph (d), and adding a heading to newly redesignated paragraph (d)(1).

■ 3. Adding paragraph (d)(2).

The revisions and additions read as follows:

§ 1.752–1 Treatment of partnership liabilities.

* * * * *

(d) * * *

(1) *In general.* * * *

(ii) If a partner or related person assumes a partnership liability, the person to whom the liability is owed

knows of the assumption and can directly enforce the partner's or related person's obligation for the liability, and no other partner or person that is a related person to another partner would bear the economic risk of loss for the liability under § 1.752–2 immediately after the assumption.

(2) *Applicability date.* Paragraph (d)(1)(ii) of this section applies to liabilities incurred or assumed by a partnership on or after October 9, 2019. The rules applicable to liabilities incurred or assumed prior to October 9, 2019, are contained in § 1.752–1 in effect prior to October 9, 2019, (see 26 CFR part 1 revised as of April 1, 2019).

* * * * *

■ **Par. 5.** Section 1.752–2 is amended by:

■ 1. Revising paragraphs (b)(3) and (6).

■ 2. Adding a sentence to the end of paragraph (f) introductory text.

■ 3. Designating *Example 1* through *11* of paragraph (f) as paragraph (f)(1) through (f)(11), respectively.

■ 4. Removing and reserving newly redesignated paragraph (f)(9).

■ 5. Revising newly redesignated paragraphs (f)(10) and (11).

■ 6. Revising paragraphs (j)(2) and (3).

■ 7. Adding paragraph (j)(4).

■ 8. Revising paragraphs (k) and (l).

The revisions and additions read as follows:

§ 1.752–2 Partner's share of recourse liabilities.

* * * * *

(b) * * *

(3) *Obligations recognized*—(i) *In general.* The determination of the extent to which a partner or related person has an obligation to make a payment under § 1.752–2(b)(1) is based on the facts and circumstances at the time of the determination. To the extent that the obligation of a partner or related person to make a payment with respect to a partnership liability is not recognized under this paragraph (b)(3), § 1.752–2(b) is applied as if the obligation did not exist. All statutory and contractual obligations relating to the partnership liability are taken into account for purposes of applying this section, including—

(A) Contractual obligations outside the partnership agreement such as guarantees, indemnifications, reimbursement agreements, and other obligations running directly to creditors, to other partners, or to the partnership;

(B) Obligations to the partnership that are imposed by the partnership agreement, including the obligation to make a capital contribution and to restore a deficit capital account upon liquidation of the partnership as described in § 1.704–1(b)(2)(ii)(*b*)(*3*) (taking into account § 1.704–1(b)(2)(ii)(*c*)); and

(C) Payment obligations (whether in the form of direct remittances to another partner or a contribution to the partnership) imposed by state or local law, including the governing state or local law partnership statute.

(ii) *Special rules for bottom dollar payment obligations*—(A) *In general.* For purposes of § 1.752–2, a bottom dollar payment obligation (as defined in paragraph (b)(3)(ii)(C) of this section) is not recognized under this paragraph (b)(3).

(B) *Exception.* If a partner or related person has a payment obligation that would be recognized under this paragraph (b)(3) (initial payment obligation) but for the effect of an indemnity, a reimbursement agreement, or a similar arrangement, such bottom dollar payment obligation is recognized under this paragraph (b)(3) if, taking into account the indemnity, reimbursement agreement, or similar arrangement, the partner or related person is liable for at least 90 percent of the partner's or related person's initial payment obligation.

(C) *Definition of bottom dollar payment obligation*—(*1*) *In general.* Except as provided in paragraph (b)(3)(ii)(C)(*2*) of this section, a *bottom dollar payment obligation* is a payment obligation that is the same as or similar to a payment obligation or arrangement described in this paragraph (b)(3)(ii)(C)(*1*).

(*i*) With respect to a guarantee or similar arrangement, any payment obligation other than one in which the partner or related person is or would be liable up to the full amount of such partner's or related person's payment obligation if, and to the extent that, any amount of the partnership liability is not otherwise satisfied.

(*ii*) With respect to an indemnity or similar arrangement, any payment obligation other than one in which the partner or related person is or would be liable up to the full amount of such partner's or related person's payment obligation, if, and to the extent that, any amount of the indemnitee's or benefited party's payment obligation that is recognized under this paragraph (b)(3) is satisfied.

(*iii*) With respect to an obligation to make a capital contribution or to restore a deficit capital account upon liquidation of the partnership as described in § 1.704–1(b)(2)(ii)(*b*)(*3*) (taking into account § 1.704–1(b)(2)(ii)(*c*)), any payment obligation other than one in which the partner is or would be required to make the full amount of the partner's capital contribution or to restore the full amount of the partner's deficit capital account.

(*iv*) An arrangement with respect to a partnership liability that uses tiered partnerships, intermediaries, senior and subordinate liabilities, or similar arrangements to convert what would otherwise be a single liability into multiple liabilities if, based on the facts and circumstances, the liabilities were incurred pursuant to a common plan, as part of a single transaction or arrangement, or as part of a series of related transactions or arrangements, and with a principal purpose of avoiding having at least one of such liabilities or payment obligations with respect to such liabilities being treated as a bottom dollar payment obligation as described in paragraph (b)(3)(ii)(C)(*1*)(*i*), (*ii*), or (*iii*) of this section.

(*2*) *Exceptions.* A payment obligation is not a bottom dollar payment obligation merely because a maximum amount is placed on the partner's or related person's payment obligation, a partner's or related person's payment obligation is stated as a fixed percentage of every dollar of the partnership liability to which such obligation relates, or there is a right of proportionate contribution running between partners or related persons who are co-obligors with respect to a payment obligation for which each of them is jointly and severally liable.

(*3*) *Benefited party defined.* For purposes of § 1.752–2, a *benefited party* is the person to whom a partner or related person has the payment obligation.

(D) *Disclosure of bottom dollar payment obligations.* A partnership must disclose to the Internal Revenue Service a bottom dollar payment obligation (including a bottom dollar payment obligation that is recognized under paragraph (b)(3)(ii)(B) of this section) with respect to a partnership liability on a completed Form 8275, Disclosure Statement, or successor form, attached to the return of the partnership for the taxable year in which the bottom dollar payment obligation is undertaken or modified, that includes all of the following information:

(*1*) A caption identifying the statement as a disclosure of a bottom dollar payment obligation under section 752.

(*2*) An identification of the payment obligation with respect to which disclosure is made (including whether the obligation is a guarantee, a reimbursement, an indemnity, or an obligation to restore a deficit balance in a partner's capital account).

(*3*) The amount of the payment obligation.

(*4*) The parties to the payment obligation.

(*5*) A statement of whether the payment obligation is treated as recognized for purposes of this paragraph (b)(3).

(*6*) If the payment obligation is recognized under paragraph (b)(3)(ii)(B) of this section, the facts and circumstances that clearly establish that a partner or related person is liable for up to 90 percent of the partner's or related person's initial payment obligation and, but for an indemnity, a reimbursement agreement, or a similar arrangement, the partner's or related person's initial payment obligation would have been recognized under this paragraph (b)(3).

(iii) *Special rule for indemnities and reimbursement agreements.* An indemnity, a reimbursement agreement, or a similar arrangement will be recognized under this paragraph (b)(3) only if, before taking into account the indemnity, reimbursement agreement, or similar arrangement, the indemnitee's or other benefited party's payment obligation is recognized under this paragraph (b)(3), or would be recognized under this paragraph (b)(3) if such person were a partner or related person.

* * * * *

(6) *Deemed satisfaction of obligation.* For purposes of determining the extent to which a partner or related person has a payment obligation and the economic risk of loss, it is assumed that all partners and related persons who have obligations to make payments (a payment obligor) actually perform those obligations, irrespective of their actual net worth, unless the facts and circumstances indicate—

(i) A plan to circumvent or avoid the obligation under paragraph (j) of this section, or

(ii) That there is not a commercially reasonable expectation that the payment obligor will have the ability to make the required payments under the terms of the obligation if the obligation becomes due and payable as described in paragraph (k) of this section.

* * * * *

(f) *Examples.* * * * Unless otherwise provided, for purposes of paragraph (f)(1) through (9) of this section (*Examples 1* through *9*), assume that any obligation of a partner or related person to make a payment is recognized under paragraph (b)(3) of this section.

* * * * *

(9) [Reserved].

(10) *Example 10. Guarantee of first and last dollars.* (i) A, B, and C are equal members of a limited liability company, ABC, that is treated as a partnership for federal tax purposes. ABC borrows $1,000 from Bank. A guarantees payment of up to $300 of the ABC liability if any amount of the full $1,000 liability is not recovered by Bank. B guarantees payment of up to $200, but only if the Bank otherwise recovers less than $200. Both A and B waive their rights of contribution against each other.

(ii) Because A is obligated to pay up to $300 if, and to the extent that, any amount of the $1,000 partnership liability is not recovered by Bank, A's guarantee is not a bottom dollar payment obligation under paragraph (b)(3)(ii)(C) of this section. Therefore, A's payment obligation is recognized under paragraph (b)(3) of this section. The amount of A's economic risk of loss under § 1.752–2(b)(1) is $300.

(iii) Because B is obligated to pay up to $200 only if and to the extent that the Bank otherwise recovers less than $200 of the $1,000 partnership liability, B's guarantee is a bottom dollar payment obligation under paragraph (b)(3)(ii)(C) of this section and, therefore, is not recognized under paragraph (b)(3)(ii)(A) of this section. Accordingly, B bears no economic risk of loss under § 1.752–2(b)(1) for ABC's liability.

(iv) In sum, $300 of ABC's liability is allocated to A under § 1.752–2(a), and the remaining $700 liability is allocated to A, B, and C under § 1.752–3.

(11) *Example 11. Indemnification of guarantees.* (i) The facts are the same as in paragraph (f)(10) of this section (*Example 10*), except that, in addition, C agrees to indemnify A up to $100 that A pays with respect to its guarantee and agrees to indemnify B fully with respect to its guarantee.

(ii) The determination of whether C's indemnity is recognized under paragraph (b)(3) of this section is made without regard to whether C's indemnity itself causes A's guarantee not to be recognized. Because A's obligation would be recognized but for the effect of C's indemnity and C is obligated to pay A up to the full amount of C's indemnity if A pays any amount on its guarantee of ABC's liability, C's indemnity of A's guarantee is not a bottom dollar payment obligation under paragraph (b)(3)(ii)(C) of this section and, therefore, is recognized under paragraph (b)(3) of this section. The amount of C's economic risk of loss under § 1.752–2(b)(1) for its indemnity of A's guarantee is $100.

(iii) Because C's indemnity is recognized under paragraph (b)(3) of this section, A is treated as liable for $200 only to the extent any amount beyond $100 of the partnership liability is not satisfied. Thus, A is not liable if, and to the extent, any amount of the partnership liability is not otherwise satisfied, and the exception in paragraph (b)(3)(ii)(B) of this section does not apply. As a result, A's guarantee is a bottom dollar payment obligation under paragraph (b)(3)(ii)(C) of this section and is not recognized under paragraph (b)(3)(ii)(A) of this section. Therefore, A bears no economic risk of loss under § 1.752–2(b)(1) for ABC's liability.

(iv) Because B's obligation is not recognized under paragraph (b)(3)(ii) of this section independent of C's indemnity of B's guarantee, C's indemnity is not recognized under paragraph (b)(3)(iii) of this section. Therefore, C bears no economic risk of loss under § 1.752–2(b)(1) for its indemnity of B's guarantee.

(v) In sum, $100 of ABC's liability is allocated to C under § 1.752–2(a) and the remaining $900 liability is allocated to A, B, and C under § 1.752–3.

* * * * *

(j) * * *

(2) *Arrangements tantamount to a guarantee*—(i) *In general.* Irrespective of the form of a contractual obligation, a partner is considered to bear the economic risk of loss with respect to a partnership liability, or a portion thereof, to the extent that—

(A) The partner or related person undertakes one or more contractual obligations so that the partnership may obtain or retain a loan;

(B) The contractual obligations of the partner or related person significantly reduce the risk to the lender that the partnership will not satisfy its obligations under the loan, or a portion thereof; and

(C) With respect to the contractual obligations described in paragraphs (j)(2)(i)(A) and (B) of this section—

(*1*) One of the principal purposes of using the contractual obligations is to attempt to permit partners (other than those who are directly or indirectly liable for the obligation) to include a portion of the loan in the basis of their partnership interests; or

(*2*) Another partner, or a person related to another partner, enters into a payment obligation and a principal purpose of the arrangement is to cause the payment obligation described in paragraphs (j)(2)(i)(A) and (B) of this section to be disregarded under paragraph (b)(3) of this section.

(ii) *Economic risk of loss.* For purposes of this paragraph (j)(2), partners are considered to bear the economic risk of loss for a liability in accordance with their relative economic burdens for the liability pursuant to the contractual obligations. For example, a lease between a partner and a partnership that is not on commercially reasonable terms may be tantamount to a guarantee by the partner of the partnership liability.

(3) *Plan to circumvent or avoid an obligation*—(i) *General rule.* An obligation of a partner or related person to make a payment is not recognized under paragraph (b) of this section if the facts and circumstances evidence a plan to circumvent or avoid the obligation.

(ii) *Factors indicating plan to circumvent or avoid an obligation.* In the case of a payment obligation, other

than an obligation to restore a deficit capital account upon liquidation of a partnership, paragraphs (j)(3)(ii)(A) through (G) of this section provide a non-exclusive list of factors that may indicate a plan to circumvent or avoid the payment obligation. The presence or absence of a factor is based on all of the facts and circumstances at the time the partner or related person makes the payment obligation or if the obligation is modified, at the time of the modification. For purposes of making determinations under this paragraph (j)(3), the weight to be given to any particular factor depends on the particular case and the presence or absence of a factor is not necessarily indicative of whether a payment obligation is or is not recognized under paragraph (b) of this section.

(A) The partner or related person is not subject to commercially reasonable contractual restrictions that protect the likelihood of payment, including, for example, restrictions on transfers for inadequate consideration or distributions by the partner or related person to equity owners in the partner or related person.

(B) The partner or related person is not required to provide (either at the time the payment obligation is made or periodically) commercially reasonable documentation regarding the partner's or related person's financial condition to the benefited party, including, for example, balance sheets and financial statements.

(C) The term of the payment obligation ends prior to the term of the partnership liability, or the partner or related person has a right to terminate its payment obligation, if the purpose of limiting the duration of the payment obligation is to terminate such payment obligation prior to the occurrence of an event or events that increase the risk of economic loss to the guarantor or benefited party (for example, termination prior to the due date of a balloon payment or a right to terminate that can be exercised because the value of loan collateral decreases). This factor typically will not be present if the termination of the obligation occurs by reason of an event or events that decrease the risk of economic loss to the guarantor or benefited party (for example, the payment obligation terminates upon the completion of a building construction project, upon the leasing of a building, or when certain income and asset coverage ratios are satisfied for a specified number of quarters).

(D) There exists a plan or arrangement in which the primary obligor or any other obligor (or a person related to the obligor) with respect to the partnership liability directly or indirectly holds money or other liquid assets in an amount that exceeds the reasonably foreseeable needs of such obligor (but not taking into account standard commercial insurance, for example, casualty insurance).

(E) The payment obligation does not permit the creditor to promptly pursue payment following a payment default on the partnership liability, or other arrangements with respect to the partnership liability or payment obligation otherwise indicate a plan to delay collection.

(F) In the case of a guarantee or similar arrangement, the terms of the partnership liability would be substantially the same had the partner or related person not agreed to provide the guarantee.

(G) The creditor or other party benefiting from the obligation did not receive executed documents with respect to the payment obligation from the partner or related person before, or within a commercially reasonable period of time after, the creation of the obligation.

(4) *Example.* The following example illustrates the principles of paragraph (j) of this section.

(i) In 2020, A, B, and C form a domestic limited liability company (LLC) that is classified as a partnership for federal tax purposes. Also in 2020, LLC receives a loan from a bank. A, B, and C do not bear the economic risk of loss with respect to that partnership liability, and, as a result, the liability is treated as nonrecourse under § 1.752–1(a)(2) in 2020. In 2022, A guarantees the entire amount of the liability. The bank did not request the guarantee and the terms of the loan did not change as a result of the guarantee. A did not provide any executed documents with respect to A's guarantee to the bank. The bank also did not require any restrictions on asset transfers by A and no such restrictions exist.

(ii) Under paragraph (j)(3) of this section, A's 2022 guarantee (payment obligation) is not recognized under paragraph (b)(3) of this section if the facts and circumstances evidence a plan to circumvent or avoid the payment obligation. In this case, the following factors indicate a plan to circumvent or avoid A's payment obligation: the partner is not subject to commercially reasonable contractual restrictions that protect the likelihood of payment, such as restrictions on transfers for inadequate consideration or equity distributions; the partner is not required to provide (either at the time the payment obligation is made or periodically) commercially reasonable documentation regarding the partner's or related person's financial condition to the benefited party; in the case of a guarantee or similar arrangement, the terms of the liability are the same as they would have been without the guarantee; and the creditor did not receive executed documents with respect to the payment obligation from the partner or related person at the time the obligation was created. Absent the existence of other facts or circumstances that would weigh in favor of respecting A's guarantee, evidence of a plan to circumvent or avoid the obligation exists and, pursuant to paragraph (j)(3)(i) of this section, A's guarantee is not recognized under paragraph (b) of this section. As a result, LLC's liability continues to be treated as nonrecourse.

(k) *No reasonable expectation of payment*—(1) *In general.* An obligation of any partner or related person to make a payment is not recognized under paragraph (b) of this section if the facts and circumstances indicate that at the time the partnership must determine a partner's share of partnership liabilities under §§ 1.705–1(a) and 1.752–4(d) there is not a commercially reasonable expectation that the payment obligor will have the ability to make the required payments under the terms of the obligation if the obligation becomes due and payable. Facts and circumstances to consider in determining a commercially reasonable expectation of payment include factors a third party creditor would take into account when determining whether to grant a loan. For purposes of this section, a payment obligor includes an entity disregarded as an entity separate from its owner under section 856(i), section 1361(b)(3), or §§ 301.7701–1 through 301.7701–3 of this chapter (a disregarded entity), and a trust to which subpart E of part I of subchapter J of chapter 1 of the Code applies.

(2) *Examples.* The following examples illustrate the principles of paragraph (k) of this section.

(i) *Example 1. Undercapitalization.* (A) In 2020, A forms a wholly owned domestic limited liability company, LLC, with a contribution of $100,000. A has no liability for LLC's debts, and LLC has no enforceable right to a contribution from A. Under § 301.7701–3(b)(1)(ii) of this chapter, LLC is treated for federal tax purposes as a disregarded entity. Also in 2020, LLC contributes $100,000 to LP, a limited partnership with a calendar year taxable year, in exchange for a general partnership interest in LP, and B and C each contributes $100,000 to LP in exchange for a limited partnership interest in LP. The partnership agreement provides that only LLC is required to restore any deficit in its capital account. On January 1, 2021, LP borrows $300,000 from a bank and uses $600,000 to purchase nondepreciable property. The $300,000 is secured by the property and is also a general obligation of LP. LP makes payments of only interest on its $300,000 debt during 2021. LP has a net taxable loss in 2021, and, under §§ 1.705–1(a) and 1.752–4(d), LP determines its partners' shares of the $300,000 debt at the end of its taxable year, December 31,

2021. As of that date, LLC holds no assets other than its interest in LP.

(B) Because LLC is a disregarded entity, A is treated as the partner in LP for federal income tax purposes. Only LLC has an obligation to make a payment on account of the $300,000 debt if LP were to constructively liquidate as described in paragraph (b)(1) of this section. Therefore, paragraph (k) of this section is applied to the LLC and not to A. LLC has no assets with which to pay if the payment obligation becomes due and payable. Because there is no commercially reasonable expectation that LLC will be able to satisfy its payment obligation, LLC's obligation to restore its deficit capital account is not recognized under paragraph (b) of this section. As a result, LP's $300,000 debt is characterized as nonrecourse under § 1.752–1(a)(2) and is allocated among A, B, and C under § 1.752–3.

(ii) *Example 2. Disregarded entity with ability to pay.* (A) The facts are the same as in paragraph (k)(2)(i) of this section (*Example 1*), except LLC also holds real property worth $475,000 subject to a $200,000 liability. Additionally, LLC reasonably projects to earn $20,000 of net rental income per year from such real property.

(B) Because LLC is a disregarded entity, A is treated as the partner in LP for federal income tax purposes. Only LLC has an obligation to make a payment on account of the $300,000 debt if LP were to constructively liquidate as described in paragraph (b)(1) of this section. Therefore, paragraph (k) of this section is applied to the LLC and not to A. Because there is a commercially reasonable expectation that LLC will be able to satisfy its payment obligation, LLC's obligation to restore its deficit capital account is recognized under paragraph (b) of this section. As a result, LP's $300,000 debt is characterized as recourse under § 1.752–1(a)(1) and is allocated to A under § 1.752–2.

(l) *Applicability dates.* (1) Paragraphs (a) and (h)(3) of this section apply to liabilities incurred or assumed by a partnership on or after October 11, 2006, other than liabilities incurred or assumed by a partnership pursuant to a written binding contract in effect prior to that date. The rules applicable to liabilities incurred or assumed (or pursuant to a written binding contract in effect) prior to October 11, 2006, are contained in § 1.752–2 in effect prior to October 11, 2006, (see 26 CFR part 1 revised as of April 1, 2006). Paragraphs (b)(6), (j)(3) and (4), and (k) of this section apply to liabilities incurred or assumed by a partnership and to payment obligations imposed or undertaken with respect to a partnership liability on or after October 9, 2019, other than liabilities incurred or assumed by a partnership and payment obligations imposed or undertaken pursuant to a written binding contract in effect prior to that date. However, taxpayers may apply paragraphs (b)(6), (j)(3) and (4), and (k) of this section to all of their liabilities as of the beginning of the first taxable year of the partnership ending on or after October 5, 2016. The rules applicable to liabilities incurred or assumed (or pursuant to a written binding contract in effect) prior to October 9, 2019, are contained in § 1.752–2 in effect prior to October 9, 2019, (see 26 CFR part 1 revised as of April 1, 2019).

(2) Paragraphs (b)(3), (f)(10) and (11), and (j)(2) of this section apply to liabilities incurred or assumed by a partnership and payment obligations imposed or undertaken with respect to a partnership liability on or after October 5, 2016, other than liabilities incurred or assumed by a partnership and payment obligations imposed or undertaken pursuant to a written binding contract in effect prior to that date. Partnerships may apply paragraphs (b)(3), (f)(10) and (11), and (j)(2) of this section to all of their liabilities as of the beginning of the first taxable year of the partnership ending on or after October 5, 2016. The rules applicable to liabilities incurred or assumed (or subject to a written binding contract in effect) prior to October 5, 2016, are contained in § 1.752–2 in effect prior to October 5, 2016, (see 26 CFR part 1 revised as of April 1, 2016).

(3) If a partner has a share of a recourse partnership liability under § 1.752–2(a) as a result of bearing the economic risk of loss under § 1.752–2(b) immediately prior to October 5, 2016 (Transition Partner), and such liability is modified or refinanced, the partnership (Transition Partnership) may choose not to apply paragraphs (b)(3), (f)(10) and (11), and (j)(2)(i)(C)(*2*) of this section to the extent the amount of the Transition Partner's share of liabilities under § 1.752–2(a) as a result of bearing the economic risk of loss under § 1.752–2(b) immediately prior to October 5, 2016, exceeds the amount of the Transition Partner's adjusted basis in its partnership interest as determined under § 1.705–1 at such time (Grandfathered Amount). See also § 1.704–2(g)(3). A liability is modified or refinanced for purposes of this paragraph (l) to the extent that the proceeds of a partnership liability (the refinancing debt) are allocable under the rules of § 1.163–8T to payments discharging all or part of any other liability (pre-modification liability) of that partnership or there is a significant modification of that liability as provided under § 1.1001–3. A Transition Partner that is a partnership, S corporation, or a business entity disregarded as an entity separate from its owner under section 856(i) or 1361(b)(3) or §§ 301.7701–1 through 301.7701–3 of this chapter ceases to qualify as a Transition Partner if the direct or indirect ownership of that Transition Partner changes by 50 percent or more. The Transition Partnership may continue to apply the rules under § 1.752–2 in effect prior to October 5, 2016, with respect to a Transition Partner for payment obligations described in § 1.752–2(b) to the extent of the Transition Partner's adjusted Grandfathered Amount for the seven-year period beginning October 5, 2016. The termination of a Transition Partnership under section 708(b)(1)(B) and applicable regulations prior to January 1, 2018, does not affect the Grandfathered Amount of a Transition Partner that remains a partner in the new partnership (as described in § 1.708–1(b)(4)), and the new partnership is treated as a continuation of the Transition Partnership for purposes of this paragraph (l)(3). However, a Transition Partner's Grandfathered Amount is reduced (not below zero), but never increased by—

(i) Upon the sale of any property by the Transition Partnership, an amount equal to the excess of any gain allocated for federal income tax purposes to the Transition Partner by the Transition Partnership (including amounts allocated under section 704(c) and applicable regulations) over the product of the total amount realized by the Transition Partnership from the property sale multiplied by the Transition Partner's percentage interest in the partnership; and

(ii) An amount equal to any decrease in the Transition Partner's share of liabilities to which the rules of this paragraph (l)(3) apply, other than by operation of paragraph (l)(3)(i) of this section.

§ 1.752–2T [Amended]

■ **Par. 6.** In § 1.752–2T, paragraphs (a) and (b), (c)(1) and (2), (d) through (k), (l)(1) through (3), and (m)(1) are removed and reserved.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: October 1, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9876]

RIN 1545–BO05

Removal of Temporary Regulations on a Partner's Share of a Partnership Liability for Disguised Sale Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations concerning how partnership liabilities are allocated for disguised sale purposes. The regulations replace existing temporary regulations with final regulations that were in effect prior to the temporary regulations. These regulations affect partnerships and their partners.

DATES:

Effective date: These regulations are effective on November 8, 2019.

Applicability date: For date of applicability, see § 1.707–9(a)(4).

FOR FURTHER INFORMATION CONTACT: Caroline E. Hay at (202) 317–5279 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 707 of the Internal Revenue Code (Code) regarding allocations of partnership liabilities for disguised sale purposes. Section 707(a)(2)(B) generally provides that, under regulations prescribed by the Secretary, related transfers of money or other property to and by a partnership that, when viewed together, are more properly characterized as a sale or exchange of property, will be treated either as a transaction between the partnership and one who is not a partner or between two or more partners acting other than in their capacity as partners (generally referred to as ''disguised sales'').

On April 21, 2017, the President issued Executive Order 13789 (E.O. 13789), ''Executive Order on Identifying and Reducing Tax Regulatory Burdens'' (82 FR 19317, April 26, 2017), which directed the Secretary to review all significant tax regulations issued on or after January 1, 2016, and to take concrete action to alleviate certain burdens imposed by the regulations. In response to E.O. 13789, the Secretary issued an interim report which identified the final and temporary regulations (T.D. 9788) (707 Temporary Regulations) concerning the allocation of partnership liabilities for section 707 purposes as meeting some of the regulatory burdens specified in E.O. 13789, and later issued a second report recommending specific actions to mitigate the burdens. See Notice 2017–38 (2017–30 IRB 147 (July 24, 2017)) and Second Report to the President on Identifying and Reducing Tax Regulatory Burdens (82 FR 48013, October 16, 2017).

Following the issuance of the interim and second reports, on June 19, 2018, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–131186–17) in the **Federal Register** (83 FR 28397) (2018 Proposed Regulations) proposing to withdraw the 707 Temporary Regulations. The 2018 Proposed Regulations also proposed reinstating the regulations under § 1.707–5(a)(2) as in effect prior to the 707 Temporary Regulations and as contained in 26 CFR part 1 revised as of April 1, 2016 (Prior 707 Regulations). Finally, the 2018 Proposed Regulations withdrew a notice of proposed rulemaking (REG–122855–15) that incorporated by cross reference the 707 Temporary Regulations. The Treasury Department and the IRS did not receive any written public comments in response to the 2018 Proposed Regulations. A scheduled public hearing on the 2018 Proposed Regulations was cancelled because no one requested to speak.

Therefore, the 2018 Proposed Regulations proposing to withdraw the 707 Temporary Regulations and reinstate the Prior 707 Regulations are adopted by this Treasury decision without change, except the applicability date has been revised. To avoid a lapse in rules for allocating partnership liabilities for disguised sale purposes, these final regulations apply to any transaction with respect to which all transfers occur on or after October 4, 2019, the date that the 707 Temporary Regulations expire. Preventing a lapse in rules benefits the Treasury Department, the IRS, and taxpayers by providing certainty regarding the applicable rules. These final regulations continue to provide that partnerships and their partners may apply these regulations to any transaction with respect to which all transfers occur on or after January 3, 2017, the applicability date of the 707 Temporary Regulations.

Special Analyses

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. Because these final regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Ongoing Study of Liability Rule for Disguised Sales

The 707 Temporary Regulations withdrawn by this Treasury decision adopted an approach requiring a partnership to apply the same percentage used to determine a partner's share of excess nonrecourse liabilities under § 1.752–3(a)(3) (with certain limitations) in determining the partner's share of all partnership liabilities for disguised sale purposes. As was noted in the preamble to the 2018 Proposed Regulations, some commenters supported this approach, but also expressed concern that it was adopted in temporary regulations rather than proposed regulations that would allow for further comment. The Treasury Department and the IRS continue to study the merits of the approach in the 707 Temporary Regulations and other approaches, including these final regulations, to determine which results in the most appropriate treatment of liabilities in the context of disguised sales.

Drafting Information

The principal author of these regulations is Deane M. Burke, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.707–5 is amended by:

■ 1. Revising paragraph (a)(2).

■ 2. Designating *Examples 1* through *13* of paragraph (f) as paragraphs (f)(1) through (f)(13), respectively.

■ 3. Revising newly designated paragraphs (f)(2) and (3).

■ 4. Removing the language ''*Example 5*'' in newly designated paragraph (f)(6)(i) and paragraph (f)(6)(ii) introductory text and adding the language ''paragraph (f)(5) of this section (*Example 5*)'' in its place.

■ 5. Revising newly designated paragraphs (f)(7) and (8).

■ 6. Removing the language ''*Example 10*'' in newly designated paragraph (f)(11)(i) and adding the language ''paragraph (f)(10) of this section (*Example 10*)'' in its place.

The revisions read as follows:

§ 1.707–5 Disguised sales of property to partnership; special rules relating to liabilities.

(a) * * *

(2) *Partner's share of liability.* A partner's share of any liability of the partnership is determined under the following rules:

(i) *Recourse liability.* A partner's share of a recourse liability of the partnership equals the partner's share of the liability under the rules of section 752 and the regulations in this part under section 752. A partnership liability is a recourse liability to the extent that the obligation is a recourse liability under § 1.752–1(a)(1) or would be treated as a recourse liability under that section if it were treated as a partnership liability for purposes of that section.

(ii) *Nonrecourse liability.* A partner's share of a nonrecourse liability of the partnership is determined by applying the same percentage used to determine the partner's share of the excess nonrecourse liability under § 1.752–3(a)(3). A partnership liability is a nonrecourse liability of the partnership to the extent that the obligation is a nonrecourse liability under § 1.752–1(a)(2) or would be a nonrecourse liability of the partnership under § 1.752–1(a)(2) if it were treated as a partnership liability for purposes of that section.

* * * * *

(f) * * *

(2) *Example 2. Partnership's assumption of recourse liability encumbering transferred property.* (i) C transfers property Y to a partnership. At the time of its transfer to the partnership, property Y has a fair market value of $10,000,000 and is subject to an $8,000,000 liability that C incurred, immediately before transferring property Y to the partnership, in order to finance other expenditures. Upon the transfer of property Y to the partnership, the partnership assumed the liability encumbering that property. The partnership assumed this liability solely to acquire property Y. Under section 752 and the regulations in this part under section 752, immediately after the partnership's assumption of the liability encumbering property Y, the liability is a recourse liability of the partnership and C's share of that liability is $7,000,000.

(ii) Under the facts of paragraph (f)(2)(i) of this section (*Example 2*), the liability encumbering property Y is not a qualified liability. Accordingly, the partnership's assumption of the liability results in a transfer of consideration to C in connection with C's transfer of property Y to the partnership in the amount of $1,000,000 (the excess of the liability assumed by the partnership ($8,000,000) over C's share of the liability immediately after the assumption ($7,000,000)). See paragraphs (a)(1) and (2) of this section.

(3) *Example 3. Subsequent reduction of transferring partner's share of liability.* (i) The facts are the same as in paragraph (f)(2) of this section (*Example 2*). In addition, property Y is a fully leased office building, the rental income from property Y is sufficient to meet debt service, and the remaining term of the liability is ten years. It is anticipated that, three years after the partnership's assumption of the liability, C's share of the liability under section 752 will be reduced to zero because of a shift in the allocation of partnership losses pursuant to the terms of the partnership agreement. Under the partnership agreement, this shift in the allocation of partnership losses is dependent solely on the passage of time.

(ii) Under paragraph (a)(3) of this section, if the reduction in C's share of the liability was anticipated at the time of C's transfer, was not subject to the entrepreneurial risks of partnership operations, and was part of a plan that has as one of its principal purposes minimizing the extent of sale treatment under § 1.707–3 (that is, a principal purpose of allocating a large percentage of losses to C in the first three years when losses were not likely to be realized was to minimize the extent to which C's transfer would be treated as part of a sale), C's share of the liability immediately after the assumption is treated as equal to C's reduced share.

* * * * *

(7) *Example 7. Partnership's assumptions of liabilities encumbering properties transferred pursuant to a plan.* (i) Pursuant to a plan, G and H transfer property 1 and property 2, respectively, to an existing partnership in exchange for interests in the partnership. At the time the properties are transferred to the partnership, property 1 has a fair market value of $10,000 and an adjusted tax basis of $6,000, and property 2 has a fair market value of $10,000 and an adjusted tax basis of $4,000. At the time properties 1 and 2 are transferred to the partnership, a $6,000 nonrecourse liability (liability 1) is secured by property 1 and a $7,000 recourse liability of F (liability 2) is secured by property 2. Properties 1 and 2 are transferred to the partnership, and the partnership takes subject to liability 1 and assumes liability 2. G and H incurred liabilities 1 and 2 immediately prior to transferring properties 1 and 2 to the partnership and used the proceeds for personal expenditures. The liabilities are not qualified liabilities. Assume that G and H are each allocated $2,000 of liability 1 in accordance with paragraph (a)(2)(ii) of this section (which determines a partner's share of a nonrecourse liability). Assume further that G's share of liability 2 is $3,500 and H's share is $0 in accordance with paragraph (a)(2)(i) of this section (which determines a partner's share of a recourse liability).

(ii) G and H transferred properties 1 and 2 to the partnership pursuant to a plan. Accordingly, the partnership's taking subject to liability 1 is treated as a transfer of only $500 of consideration to G (the amount by which liability 1 ($6,000) exceeds G's share of liabilities 1 and 2 ($5,500)), and the partnership's assumption of liability 2 is treated as a transfer of only $5,000 of consideration to H (the amount by which liability 2 ($7,000) exceeds H's share of liabilities 1 and 2 ($2,000)). G is treated under the rule in § 1.707–3 as having sold $500 of the fair market value of property 1 in exchange for the partnership's taking subject to liability 1 and H is treated as having sold $5,000 of the fair market value of property 2 in exchange for the assumption of liability 2.

(8) *Example 8. Partnership's assumption of liability pursuant to a plan to avoid sale treatment of partnership assumption of another liability.* (i) The facts are the same as in paragraph (f)(7) of this section (*Example 7*), except that—

(A) H transferred the proceeds of liability 2 to the partnership; and

(B) H incurred liability 2 in an attempt to reduce the extent to which the partnership's taking subject to liability 1 would be treated as a transfer of consideration to G (and thereby reduce the portion of G's transfer of property 1 to the partnership that would be treated as part of a sale).

(ii) Because the partnership assumed liability 2 with a principal purpose of reducing the extent to which the partnership's taking subject to liability 1 would be treated as a transfer of consideration to G, liability 2 is ignored in applying paragraph (a)(3) of this section. Accordingly, the partnership's taking subject to liability 1 is treated as a transfer of $4,000 of consideration to G (the amount by which liability 1 ($6,000) exceeds G's share of liability 1 ($2,000)). On the other hand, the partnership's assumption of liability 2 is not treated as a transfer of any consideration to H because H's share of that liability equals $7,000 as a result of H's transfer of $7,000 in money to the partnership.

* * * * *

§ 1.707–5T [Removed]

■ **Par. 3.** Section 1.707–5T is removed.

■ **Par. 4.** Section 1.707–9 is amended by revising paragraph (a)(4) and removing paragraph (a)(5).

The revision reads as follows:

§ 1.707–9 Effective dates and transitional rules.

(a) * * *

(4) *Applicability date of § 1.707–5(a)(2) and (f)(2), (3), (7), and (8).* (i) Section 1.707–5(a)(2) and (f)(2), (3), (7), and (8) apply to any transaction with respect to which all transfers occur on or after October 4, 2019. However, a partnership and its partners may apply § 1.707–5(a)(2) and (f)(2), (3), (7), and (8) to any transaction with respect to which all transfers occur on or after January 3, 2017.

(ii) For any transaction with respect to which any transfers occur before January 3, 2017, § 1.707–5(a)(2) and (f), as contained in 26 CFR part 1 revised as of April 1, 2016, apply.

(iii) For any transaction with respect to which all transfers occur on or after January 3, 2017, and any of such transfers occurs before October 4, 2019, see § 1.707–9T(a)(5) as contained in 26 CFR part 1 revised as of April 1, 2019.

* * * * *

§ 1.707–9T [Removed]

■ **Par. 5.** Section 1.707–9T is removed.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: October 1, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–22030 Filed 10–4–19; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2019–0763]

Special Local Regulations for Marine Events; San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations in the navigable waters of the San Francisco Bay for the San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration from October 10 through October 13, 2019. This action is necessary to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the regulated area, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 100.1105 will be enforced from 12:30 p.m. until 5 p.m. on October 10, 2019; from 10:30 a.m. until 4 p.m. on October 11, 2019; and from 11:30 p.m. until 4 p.m. on each of two days, October 12 and October 13, 2019, as identified in the **SUPPLEMENTARY INFORMATION** section below.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration in 33 CFR 100.1105.

Regulations for the Navy Parade of Ships will be enforced from 10:30 a.m. until 12 p.m. on October 11, 2019; the U.S. Navy Blue Angels Activities will be enforced from 12:30 p.m. until 5 p.m. on October 10, 2019, from 12 p.m. until 4 p.m. on October 11, 2019, and from 11:30 p.m. until 4 p.m. on each of two days, October 12 and October 13, 2019.

Regulated area ''Alpha'' will be enforced during the Navy Parade of Ships and is bounded by a line connecting the following points:

Latitude	Longitude
37°48′40″ N	122°28′38″ W
37°49′10″ N	122°28′41″ W
37°49′31″ N	122°25′18″ W
37°49′06″ N	122°24′08″ W
37°47′53″ N	122°22′42″ W
37°46′00″ N	122°22′00″ W
37°46′00″ N	122°23′07″ W

And thence along the shore to the point of beginning.

Under the provisions of 33 CFR 100.1105, except for persons or vessels authorized by the PATCOM, in regulated area ''Alpha'' no person or vessel may enter the parade route or remain within 500 yards of any Navy parade vessel. No person or vessel shall anchor, block, loiter in, or impede the through transit of ship parade participants or official patrol vessels in regulated area ''Alpha.''

Regulated area ''Bravo'' will be enforced during the Blue Angels Demonstration and is bounded by a line connecting the following points:

Latitude	Longitude
37°48′27.5″ N	122°24′04″ W
37°49′31″ N	122°24′18″ W
37°49′00″ N	122°27′52″ W
37°48′19″ N	122°27′40″ W

And thence along the pierheads and bulwarks to the point of beginning.

Except for persons or vessels authorized by the PATCOM, no person or vessel may enter or remain within regulated area ''Bravo.''

When hailed or signaled by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, a person or vessel shall come to an immediate stop. Persons or vessels shall comply with all directions given; failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco, California. The PATCOM is empowered to forbid and control the movement of all vessels in the regulated areas.

This document is issued under authority of 33 U.S.C. 1233. In addition to this notification in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the regulated areas and their enforcement periods via Notice to Mariners.

Dated: September 30, 2019.

Howard H. Wright,

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

[FR Doc. 2019–21765 Filed 10–8–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0571]

RIN 1625–AA00

Safety Zone for Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Patapsco River.

This action is necessary to provide for the safety of life on these navigable waters of the Inner Harbor, Baltimore, MD, during a fireworks display on November 10, 2019, (with an alternate date of November 11, 2019). This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 11 p.m. on November 10, 2019, through 1 a.m. on November 12, 2019. This rule will be enforced from 11 p.m. on November 10, 2019, through 1 a.m. on November 11, 2019, or, in the event of inclement weather on November 10th, from 11 p.m. on November 11, 2019, through 1 a.m. on November 12, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0571 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Maryland-National Capital Region
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard was notified of two fireworks events on the navigable waters of the Inner Harbor, Baltimore, MD. Serpico Pyrotechnics, LLC of Toms River, NJ, notified the Coast Guard that it will be conducting a private fireworks display from 9:50 p.m. to 10 p.m. on September 21, 2019, to commemorate a wedding. And, the Baltimore Office of Promotion and The Arts of Baltimore, MD, notified the Coast Guard that it will be conducting a fireworks display from 11:30 p.m. to midnight on November 10, 2019, (rain date of November 11, 2019) to end their ten-day Light and Literature Unite festival.

In response, on July 15, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone for Fireworks Displays; Patapsco River, Inner Harbor, Baltimore, MD'' (84 FR 33713). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these fireworks displays. During the comment period that ended August 14, 2019, we received one comment. Additionally, after publication of the NPRM, the sponsor of the September 21st fireworks display notified the Coast Guard that they would not be conducting the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the fireworks to be used in the display on November 10, 2019, will be a safety concern for anyone in the Inner Harbor near the five firework floating platforms. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event. It is important to note that the Coast Guard's authority is limited to assuring safety of navigation. Coast Guard does not have jurisdiction over the fireworks themselves and cannot enforce the overall activity, through land security, debris clean up etc. unless there is a clear link to safety of navigation.

IV. Discussion of Comments

As noted above, we received one comment on our NPRM published July 15, 2019. The commenter expressed support for the rule, but requested greater detail concerning eight issues.

1. The type of security surrounding the Inner Harbor and the buffer zone on the ground and sea, as well as the number of roving patrols on both the land and sea.

This rule applies the Coast Guard's authority to impose appropriate controls on waters under its jurisdiction where it is necessary to provide for the safety of life during a fireworks display. The type and scope of security provided for the fireworks display is the responsibility of the event sponsor.

2. The scope of responsibility of the event sponsor, the Baltimore Office of Promotion and The Arts of Baltimore, MD.

The Coast Guard does not provide approval for fireworks displays, however, it identifies the event sponsor as responsible for the overall safety of a fireworks display. This includes the protection of participants and spectators from the hazards of the event. National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, contains the industry standards for outdoor aerial fireworks set by the NFPA. NFPA 1123 defines the sponsor as ''the organization (person, group, or government agency) that arranges with a duly authorized firework supplier for its services in presenting a fireworks display or in providing fireworks for use in a display.'' NFPA 1123 further states the sponsor for an outdoor fireworks display is responsible for obtaining a display permit from the Authority Having Jurisdiction (AHJ) prior to performing the fireworks display, if the operator or fireworks supplier does not. This approval includes providing, for review to the extent required by the AHJ, (i) verifiable proof of liability insurance of a type and amount deemed appropriate, (ii) a display site plan in the form of a diagram depicting the location of the display, (iii) written description of the event operating procedures, including emergency procedures, and (iv) provisions for both fire protection and crowd control, of the level required for the display.

3. The policing up of the refuse by-product of fireworks and excess fallout on water surface, if any, or a contingency plan to minimize the fallout.

The Coast Guard does not provide approval for fireworks displays, however, it identifies the event sponsor as responsible for the results of said displays. NFPA 1123 does not specifically address the collection of firework remnants after the display. It states that the firing crew shall conduct an inspection of the fallout area for the purpose of locating any unexploded aerial shells or live components following the fireworks display and before any public access to the site is allowed, and when fireworks are displayed at night, a search of the fallout area shall be made immediately after the display and at first light the following morning.

4. Compensation aspects for security for participating law enforcement and Federal agencies to include special duty pay for off duty law enforcement personnel.

The Coast Guard does not provide security for the fireworks, nor does it compensate those law enforcement agencies providing such service for the sponsor. The employment and compensation of law enforcement personnel providing security for the fireworks is the responsibility of the event sponsor.

5. The possibility of intoxicated members of the public wandering into the safety zone.

The Coast Guard understands that fireworks spectators, whether they are intoxicated or not, may approach the

safety zone. In addition to the constructive notice provided by publication of this rule in the **Federal Register**, to enforce the safety zone established by this rule, the COTP will provide on scene patrol resources.

6. Posted signs of repercussions with proposed rule number to be used as a deterrent to trespassing personnel during proposed times.

This regulation requires that the sponsor post on the port and starboard sides of the barge on-scene within the area of the safety zone, a ''FIREWORKS—DANGER—STAY AWAY'' sign during the period indicating this safety zone will be enforced. The COTP will notify the public that the safety zone in this rule will be enforced by all appropriate means to the affected segments of the public, including publication in the **Federal Register**, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

7. Proximity to and sufficient number of first responders (fire and rescue services) both on land and sea.

The Coast Guard does not arrange for fire and rescue resources for the display. NFPA 1123 states the sponsor consults with the AHJ, the local responding fire department (if different from the AHJ) and the operator to determine the level of fire protection required, that fire protection and other emergency response personnel and their vehicles remain at or beyond the perimeter of the display site during the actual firing of the display, and that watercraft ready and capable of providing rapid emergency response be present during the display.

8. Lighting for posted signs on land and road blocks or caution signs on surface streets surrounding the harbor for increased traffic warn drivers and pedestrians about the scheduled fireworks displays who may become distracted by the night sky being filled with bright lights and sounds.

The Coast Guard's broad legal authority over navigation safety in the navigable waters of the United States does not extend landside to those areas described, which are subject to Federal, State, and local agencies.

V. Changes From the NPRM and Discussion of the Rule

There is one change in the regulatory text of this rule from the proposed rule in the NPRM. As a result of the event sponsor's notification cancelling the fireworks display from a barge in the Inner Harbor, Baltimore, MD, on September 21, 2019, the Coast Guard has removed the enforcement period for this event proposed in the NPRM.

This rule establishes a safety zone to be enforced from 11 p.m. on November 10, 2019, to 1 a.m. on November 11, 2019, (or alternatively, in case of rain, from 11 p.m. on November 11, 2019, to 1 a.m. on November 12, 2019). The safety zone will cover all navigable waters of the Patapsco River, Inner Harbor, from shoreline to shoreline, within an area bounded on the east by longitude 076°36′12″ W, and bounded on the west by the Inner Harbor west bulkhead, located at Baltimore, MD. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 11:30 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, duration, time-of-day and time-of-year of the safety zone. Although this safety zone will restrict the entire width of the waterway, it will impact a small designated area of the Inner Harbor for a total of two hours during the evening when vessel traffic is normally low. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone to be enforced for 2 hours that will prohibit entry within a small designated area of the Inner Harbor at Baltimore, MD. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0571 to read as follows:

§ 165.T05–0571 Safety Zone for Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Patapsco River, Inner Harbor, from shoreline to shoreline, within an area bounded on the east by longitude 076°36′12″ W, and bounded on the west by the Inner Harbor west bulkhead, located at Baltimore, MD. All coordinates refer to datum NAD 1983.

(b) *Definitions.* As used in this section:

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone will be enforced during the period described in paragraph (f) of this section. A ''FIREWORKS—DANGER—STAY AWAY'' sign will be posted on the port and starboard sides of the barge on-scene near the location described in paragraph (a) of this section.

(f) *Enforcement period.* This section will be enforced from 11 p.m. on November 10, 2019, to 1 a.m. on November 11, 2019. If necessary due to inclement weather on November 10, 2019, this section will be enforced from 11 p.m. on November 11, 2019, to 1 a.m. on November 12, 2019.

Dated: October 2, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019–21774 Filed 10–8–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0744]

Safety Zone; 2019 Fleet Week Fireworks Display, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the 2019 Fleet Week Fireworks Display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol

Commander (PATCOM) or other federal, state, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

DATES: The regulation in 33 CFR 165.1191, Table 1, Item number 21, will be enforced from 11 a.m. on October 12, 2019 through 9:40 p.m. on October 12, 2019, or as announced via Broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Jennae Cotton, Waterways Management, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585, email *SFWaterways@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone established in 33 CFR 165.1191 Table 1, Item number 21 for the 2019 Fleet Week Fireworks Display from 11 a.m. on October 12, 2019 until 9:40 p.m. on October 12, 2019, or as announced via Broadcast Notice to Mariners. The 2019 Fleet Week Fireworks Display will commence at approximately 9 p.m. on October 12, 2019. This notice is issued under authority of 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

The safety zone will extend to all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge during the loading, transit, and arrival of the fireworks barge from the loading location to the display location and until the start of the fireworks display. From 11 a.m. on October 12, 2019 until 5 p.m. on October 12, 2019, the fireworks barge will be loading pyrotechnics from Pier 50 in San Francisco, CA. The fireworks barge will remain at the loading location until its transit to the display location. From 7:30 p.m. to 8 p.m. on October 12, 2019 the loaded fireworks barge will transit from Pier 50 to the launch site near Pier 3 in approximate position 37°48′01″ N, 122°23′27″ W (NAD 83) where it will remain until the conclusion of the fireworks display. Upon the commencement of the 10-minute fireworks display, scheduled to begin at approximately 9 p.m. on October 12, 2019, the safety zone will increase in size and encompass all navigable waters of San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 1,000 feet out from the fireworks barge near Pier 3 in approximate position 37°48′01″ N, 122°23′27″ W (NAD 83). This safety zone will terminate at 9:40 p.m. on October 12, 2019, or as announced via Broadcast Notice to Mariners.

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

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

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

Dated: September 30, 2019.

Howard H. Wright,

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

[FR Doc. 2019–21764 Filed 10–8–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AQ26

VA Claims and Appeals Modernization; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: The Department of Veterans Affairs (VA) is correcting a final rule regarding its claims adjudication, appeals and Rules of Practice of the Board of Veterans' Appeals (Board) regulation. This correction addresses a minor technical error in the published final rule.

DATES: Effective on October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Veterans Benefits Administration information, Cleveland Karren, Chief, Appeals Management Office, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 530–9033 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Due to a technical error, VA is correcting its final rule, VA Claims and Appeals Modernization, that was initially published January 18, 2019 in the **Federal Register** at 84 FR 138 and later amended on February 15, 2019 in the **Federal Register** at 84 FR 4336.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans.

Therefore, 38 CFR part 3 is corrected by making the following correcting amendment:

PART 3—ADJUDICATION

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

■ 1. The authority citation for subpart D of part 3 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.2500 [Amended]

■ 2. Amend § 3.2500(c) introductory text by removing ''entry of judgment''.

Dated: October 1, 2019.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–21752 Filed 10–8–19; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2013–0399; FRL–9999–88]

RIN 2070–AB27

Revocation of Significant New Uses of Fatty Acid Amide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking the significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was identified generically as fatty acid amide and was the subject of premanufacture notice (PMN) P–13–267. EPA issued a SNUR based on the PMN designating certain activities as significant new uses. EPA has received

a significant new use notice (SNUN) and test data for the chemical substance and is revoking the SNUR based on the information in the SNUN submission.

DATES: This final rule is effective December 9, 2019.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0399, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. 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 OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–8974; email address: *alwood.jim@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. 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:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a SNUR must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. Importers of the chemical that is the subject of this action would no longer be required to certify compliance with the SNUR requirements if the revocation becomes effective. In addition, persons who export or intend to export the chemical that is the subject of this action would no longer be subject to the TSCA section 12(b) (15 U.S.C. 2611(b) export notification requirements at 40 CFR part 707, that are currently triggered by the SNUR.

B. What action is the Agency taking?

In the **Federal Register** of July 24, 2019 (84 FR 35585) (FRL–9991–17), EPA proposed a revocation of the SNUR at 40 CFR 721.10691 for the chemical substance identified generically as fatty acid amide (PMN P–13–267). The SNUR designated certain activities as significant new uses. Subsequently, EPA received a SNUN that included human health and environmental toxicity testing for the chemical substance and, based on its review of these data, which demonstrated inherently low toxicity of the chemical substance, EPA proposed to revoke the SNUR pursuant to 40 CFR 721.185. EPA received one comment on the proposed revocation that recommended that EPA not revoke the rule for safety reasons, but the commenter did not submit any additional data to support this recommendation. Because the available data continues to demonstrate low toxicity of the chemical substance, EPA is now revoking the SNUR pursuant to 40 CFR 721.185.

C. What is the Agency's authority for taking this action?

EPA is revoking this SNUR under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) and the related implementing regulations in 40 CFR part 721. Upon conclusion of the review for P–13–267, EPA designated certain activities as significant new uses, based on a finding that the chemical substance may cause significant adverse environmental effects and that it met the concern criteria at 40 CFR 721.170(b)(4)(ii). Under 40 CFR 721.185, EPA may at any time revoke a SNUR for a chemical substance which has been added to 40 CFR part 721, subpart E, if EPA makes one of the determinations set forth in 40 CFR 721.185(a)(1) through (6). Revocation may occur on EPA's initiative or in response to a written request. Under 40 CFR 721.185(b)(3), if EPA concludes that a SNUR should be revoked, the Agency will propose the changes in the **Federal Register**, briefly describe the grounds for the action, and provide interested parties with an opportunity to comment.

EPA has determined that the criteria set forth in 40 CFR 721.185(a)(4) have been satisfied for the chemical substance, *i.e.,* the Agency has examined new information and concluded it no longer warrants the SNUR that was previously established. Therefore, EPA is revoking the SNUR for this chemical substance. The significant new use notification and the recordkeeping requirements at 40 CFR 721.10691 will terminate when this revocation becomes effective. In addition, export notification under TSCA section 12(b) and 40 CFR part 707, subpart D, that were triggered by the SNUR will no longer be required.

II. Statutory and Executive Order Reviews

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

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

The Office of Management and Budget (OMB) has exempted these types of regulatory actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This rule does not contain any information collections subject to approval under the PRA (44 U.S.C. 3501 *et seq.*). The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to remove the entry for 40 CFR 721.10691. Given the revocation of the codified information collection requirements and the technical nature of the table, EPA finds that further notice and comment to amend the table to remove the applicable listing is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C.

553(b)(3)(B)) to amend this table without further notice and comment.

C. Regulatory Flexibility Act (RFA)

Since this rule eliminates a reporting requirement, the Agency certifies pursuant to RFA section 605(b) (5 U.S.C.601 *et seq.*), that this SNUR revocation will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

For the same reasons, this action does not require any action under UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action does not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined under Executive Order 12866, and it does not address environmental health or safety risks disproportionately affecting children.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

NTTAA section 12(d) (15 U.S.C. 272 note) does not apply to this action because it does not involve any technical standards.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

Pursuant to the CRA (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

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 26, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

■ 2. In § 9.1, remove the listing for § 721.10691 that appears in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances.''

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.10691 [Removed]

■ 4. Remove § 721.10691.

[FR Doc. 2019–21717 Filed 10–8–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0339; FRL–10000–76–Region 7]

Air Plan Approval; Missouri; Revocation of Kansas City Area Transportation Conformity Requirements Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri. This final action will amend the SIP to remove the transportation conformity rule for the Kansas City Area—Clay, Platte and Jackson Counties.

DATES: This final rule is effective on November 8, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0339. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7588, or by email at *wolkins.jed@epa.gov*.

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

Table of Contents

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. The EPA's response to comments
IV. What action is the EPA taking?
V. Incorporation by reference
VI. Statutory and executive order reviews

I. What is being addressed in this document?

The EPA is approving the removal of 10 CSR 10–2.390 Kansas City Area Transportation Conformity Requirements from the Missouri State Implementation Plan (SIP). Missouri submitted the SIP revision on January 14, 2019. Pursuant to the code of Federal regulations at 40 CFR 93.102 (b) transportation conformity must be conducted in all nonattainment and maintenance areas and States must adopt State Plans to conduct transportation conformity. The Kansas City Area—Clay, Jackson, and Platte Counties—was designated nonattainment for the 1979 one-hour (1-hr) ozone National Ambient Air Quality Standard (NAAQS) (43 FR 8962, March 3, 1978). On July 23, 1992, the Kansas City Area was redesignated as attainment of the 1979 1-hr NAAQS and its first 10-year maintenance plan was approved (57 FR 27939, June 23, 1992). Pursuant to CAA section 175A, the first 10-year maintenance period began on July 23, 1992, the effective date of the redesignation approval. The second maintenance period plan was effective February 12, 2004 (69 FR 1921, January 13, 2004). On April 30, 2004, EPA revoked the 1-hr standard (69 FR 23951, April 30, 2004). Upon the effective date of the revocation, both the second 10-year maintenance period and the requirement for transportation conformity in the Kansas City Area ended. Pursuant to 40 CFR 51.905(e)(3), because the Kansas City Area is in attainment for all NAAQS, the Kansas City Area Transportation Conformity Requirements are no longer required. If in the future, the Kansas City Area was determined to be nonattainment with a standard requiring conformity, the State would have to develop new transportation conformity requirements. Furthermore, the Kansas City Area Transportation Conformity Requirements are not relied on in any other maintenance or attainment plan. The proposed rule did not include this detail of the history of the 1-hr standard however, we have included it here for completeness. This additional history supports EPA's final action.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided public notice from May 15, 2018 to August 2, 2018 and received no comments on this rule. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened July 9, 2019, the date of its publication in the **Federal Register**, and closed on August 8, 2019. During this period, the EPA received two comments. One comment was in support of the action and the other was adverse. The EPA is providing response to the adverse comment. Both comments can be found in the docket to this rulemaking.

Comment 1: One commenter supported the action.

Response 1: Because this comment is in support of the action, no response is necessary.

Comment 2: One commenter suggested EPA review a variety of Missouri State Implementation Plans for reliance on the Kansas City Area Transportation Conformity Requirements.

Response 2: We believe the commenter's reference to ''50 CFR 52.1320'' is a typographical error and should instead reference 40 CFR part 52. EPA has reviewed the Missouri plans listed in the comment. Only two of those plans relied on the Kansas City Area transportation conformity requirements. The plans are listed at 40 CFR 52.1320(e)(46) Maintenance Plan for the 1-hour ozone standard in the Missouri portion of the Kansas City maintenance area for the second ten-year period; and 40 CFR 52.1320(e)(50) Revision to Maintenance Plan for the 1-hour ozone standard in the Missouri portion of the Kansas City maintenance area for the second ten-year period. Both regulatory citations relate to the Maintenance Plan for the 1-hr ozone standard in the Missouri portion of the Kansas City maintenance area for the second ten-year period, and that period has ended. (69 FR 1921, January 13, 2004, and 71 FR 36210, June 26, 2006). The Kansas City Area transportation conformity requirements are not relied on in any other maintenance or attainment plan. As discussed above and in the proposed action for this rulemaking, Kansas City Area transportation conformity requirements are no longer required because the Kansas City Area is in attainment for all NAAQS.

IV. What action is the EPA taking?

The EPA is taking final action to amend the Missouri SIP to remove the transportation conformity rule for the Kansas City Area.

V. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Regulations from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VI. 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

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

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

• Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

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

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

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 9, 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 organic compounds.

Dated: September 30, 2019.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

§ 52.1320 [Amended]

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry for ''10–2.390'' under the heading ''Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area''.

[FR Doc. 2019–21701 Filed 10–8–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 502

[Docket No. 19–07]

RIN 3072–AC78

Delegations to Bureau of Enforcement and Enforcement Procedures

AGENCY: Federal Maritime Commission.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Maritime Commission (Commission) is revising its delegations to the Bureau of Enforcement and its procedures for initiating enforcement action in order to facilitate Commission oversight.

DATES: The rule is effective without further action on December 23, 2019, unless significant adverse comments are filed prior to November 8, 2019. If significant adverse comments are received, the Commission will publish a timely withdrawal of the rule in the **Federal Register** no later than November 25, 2019.

ADDRESSES: You may submit comments, identified by Docket No. 19–07, by the following methods:

• *Email: secretary@fmc.gov.* For comments, include in the subject line: ''Docket No. 19–07, Comments on Delegations to Bureau of Enforcement and Enforcement Procedures.'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

• *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001.

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission's website, unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: *https://www2.fmc.gov/readingroom/proceeding/19–07/,* or to the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission's Bureau of Enforcement (BOE) is responsible for investigating potential violations of the Shipping Act of 1984 and Commission regulations, and initiating enforcement actions. Such actions include formal Commission proceedings and informal compromises of civil penalties. While Commission approval is necessary to initiate formal Commission proceedings, BOE currently has broad delegated authority with respect to informal enforcement action. Specifically, BOE has the authority, with the approval of the Commission's Managing Director, to send out Notice and Demand Letters (NDLs) describing alleged violations and demanding civil penalties, and to enter

into agreements with the respondents compromising the penalties (compromise agreements).

These activities may currently be conducted without input from or approval by the Commission, thereby denying the Commissioners—the policy officers for the Commission—the opportunity to provide ongoing oversight and guidance to BOE enforcement priorities or to approve final settlement agreements. In order to improve such oversight, the Commission is revising the delegations to BOE and the regulations governing formal enforcement action and informal compromise procedures.

These revised procedures include a single pre-enforcement process that will: (1) Provide notice to the subjects of investigations that BOE intends to recommend that the Commission initiate enforcement proceedings and allow them an opportunity to respond before BOE submits those recommendations; (2) require Commission approval before formal or informal enforcement action is undertaken; and (3) require Commission approval of any proposed compromise agreements.

II. Background

The Commission regulations currently provide for two types of enforcement actions seeking civil penalties, formal enforcement action under 46 CFR 502.63 and informal compromise procedures under 46 CFR 502.604. Both types of actions begin with a BOE investigation of potential violations.

BOE does not have delegated authority to initiate formal enforcement action under § 502.63; when BOE determines that such action is warranted, BOE recommends to the Commission that it issue an Order of Investigation and Hearing initiating an adjudicatory investigation before a Commission Administrative Law Judge. The Commission then votes on the recommendation. There is no current requirement, however, that BOE notify the subject of the investigation or allow them to submit their written views on the investigation prior to BOE making a recommendation to the Commission.

BOE does, however, have delegated authority under §§ 501.5(i)(2), 501.28, and 502.604(g) to initiate informal compromise procedures under § 502.604, subject to the prior approval of the Commission's Managing Director. Those procedures begin with the issuance of an NDL to the person believed to have committed one or more violations. *See* § 502.604(b). The NDL describes: (1) The specific violation(s) on which the claim is based, including the particular facts, dates, and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; (2) the amount of the penalty demanded; (3) the availability of alternative dispute resolution; and (4) the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. *Id.* The NDL also states the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise. *Id.*

Any person receiving an NDL may, within the time period specified in the NDL, deny the violation or submit matters explaining, mitigating or showing extenuating circumstances, and may also make voluntary disclosures of information and documents. § 502.604(c). Civil penalties demanded by an NDL may be compromised based on specific criteria, and the person receiving the NDL may enter into a compromise agreement with the Commission that includes certain specified terms. § 502.604(d)–(e). BOE currently has delegated authority to negotiate the terms of compromise agreements, but both the BOE Director and the Managing Director must approve and sign the compromise agreement for it to be effective. § 502.604(g).

III. Regulatory Changes

As described briefly above, the Commission is amending its delegations of authority and enforcement procedures in order to increase Commission oversight over the institution of enforcement proceedings and to allow the subjects of investigations an opportunity to respond to BOE's allegations prior to a recommendation for enforcement action being submitted to the Commission. This process is based on the Wells Process used by the Securities and Exchange Commission's (SEC) Division of Enforcement. *See* SEC, Division of Enforcement, *Enforcement Manual* section 2.4 (Nov. 28, 2017).[1]

A. Delegation of Authority to BOE

Similar to the current process for formal Commission enforcement action, the Commission is revising its delegations of authority in §§ 501.5(i), 501.28, and 502.604 to require Commission approval to initiate informal compromise procedures and Commission approval of any compromise agreement before it becomes effective.

B. Pre-Enforcement Process

The Commission is adding a new paragraph to § 502.63 to reflect a new pre-enforcement process that includes notice to the subject of an investigation that BOE is planning to recommend that the Commission initiate enforcement action, and an opportunity for the subject of the investigation to submit a written statement to BOE that will be included in BOE's recommendation to the Commission. The regulatory changes are intended to provide a basic framework for the new process; the Commission may issue additional guidance or internal enforcement policies to facilitate implementation.

Because the new process includes notice and an opportunity to respond, the Commission is eliminating the NDL and response provisions in § 502.604(b) and (c) as duplicative. The Commission is making other conforming amendments to §§ 502.603 and 502.604 to reflect the changes in § 502.63.

IV. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

You may also submit comments by mail to the address listed above under **ADDRESSES**.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and

[1] Available at *https://www.sec.gov/divisions/enforce/enforcementmanual.pdf.*

demonstrates that the information is a trade secret or other confidential research, development, or commercial information.

• A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.

• A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. Because this is a direct final rule that will go into effect as specified in the **DATES** section in the absence of significant adverse comment received during the comment period, the Commission will not consider any comments filed after the comment closing date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under **ADDRESSES**.

V. Rulemaking Analyses and Notices

Direct Final Rule Justification

Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(A), rules of agency organization, procedure, or practice do not require notice and comment. This direct final rule relates to the Commission's organization, procedures, and practices; it revises internal Commission delegations of authority to BOE and the regulations governing enforcement procedures.

This rule will therefore become effective on the date listed in the **DATES** section, unless the Commission receives significant adverse comments within the specified period. The Commission recognizes that parties may have information that could impact the Commission's views and intentions with respect to the revised regulations, and the Commission intends to consider any comments filed. Filed comments that are not adverse may be considered for modifications to the Commission's regulations at a future date. If no significant adverse comments are received, the rule will become effective without additional action by the Commission. If significant adverse comments are received, the Commission will withdraw the rule by the date specified in the **DATES** section.

Congressional Review Act

The direct final rule is not a ''rule'' as defined by the Congressional Review Act (CRA), codified at 5 U.S.C. 801 *et seq.,* and is not subject to the provisions of the CRA. The CRA adopts the Administrative Procedure Act's definition of a ''rule'' in 5 U.S.C. 551, subject to certain exclusions. *See* 5 U.S.C. 804(3). In particular, the CRA does not apply to rules relating to agency management and personnel and rules of agency organization, procedure, and practice that do not substantially affect the rights or obligations of non-agency parties. *Id.* This direct final rule relates to agency management and personnel as well as agency organization, procedures, and practices. Specifically, the direct final rule revises internal Commission delegations of authority to BOE and the regulations governing enforcement procedures. The only effect the changes have with respect to non-agency parties is to provide parties with notice of alleged violations and an opportunity to respond prior to the initiation of enforcement action by the Commission. The Commission already provides notice and an opportunity to respond in both formal and informal enforcement procedures. For formal enforcement action, the rule merely adds an additional opportunity for parties to respond prior to the Commission decision on whether to initiate enforcement action. For informal compromise actions, the rule merely shifts the timing of the notice and opportunity for response so that these steps occur prior to the Commission's decision to pursue a compromise agreement. Accordingly, although the direct final rule may affect the timing and manner of non-agency parties' interactions with the Commission, it does not affect their underlying rights and obligations under the Shipping Act and the Commission's regulations. Therefore, the direct final rule is not a ''rule'' under the CRA and is not subject to the CRA's requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish an FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. See 5 U.S.C. 553(b).

As discussed above, this direct final rule is a rule of agency organization, procedure, or practice. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare an FRFA.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. The direct final rule revises internal Commission delegations of authority to BOE and the regulations governing enforcement procedures with respect to potential Shipping Act violations. This rulemaking thus falls within the categorical exclusions for procedural rules pursuant to 46 CFR part 502 (§ 504.4(a)(4)), investigatory and adjudicatory proceedings, the purpose of which is to ascertain past violations of the Shipping Act of 1984 (§ 504.4(a)(22)), and matters related to Commission personnel (§ 504.4(a)(28)). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This direct final rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). 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, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects

46 CFR Part 501

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, the Federal Maritime Commission amends 46 CFR parts 501 and 502 as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. 301–307, 40101–41309, 42101–42109, 44101–44106; Pub. L. 89–56, 70 Stat. 195; 5 CFR part 2638; Pub. L. 104–320, 110 Stat. 3870.

■ 2. Amend § 501.5 by:
■ a. Revising paragraph (i)(2);
■ b. Redesignating paragraphs (i)(4) and (5) as paragraphs (i)(3) and (4), respectively; and
■ c. Revising newly redesignated paragraphs (i)(3) and (4).

The revisions read as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(i) * * *

(2) Subject to the prior approval of the Commission, negotiates the informal compromise of civil penalties under § 502.604 of this chapter, prepares and presents compromise agreements for Commission approval, and represents the Commission in proceedings and circumstances as designated;

(3) Subject to consultation with and guidance of the General Counsel, coordinates with other bureaus and offices to provide legal advice, attorney liaison, and prosecution, as warranted, in connection with enforcement matters; and

(4) Conducts investigations and recommends enforcement action.

* * * * *

§ 501.28 [Removed]

■ 3. Remove § 501.28

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 4. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; 5 CFR part 2635.

■ 5. Amend § 502.63 by revising paragraph (c)(4)(ii) and adding paragraph (d) to read as follows:

§ 502.63 Commission enforcement action.

* * * * *

(c) * * *

(4) * * *

(ii) The Bureau of Enforcement may make a motion for decision on default.

(d) *Pre-enforcement process.* (1) Prior to recommending formal enforcement action under this section or informal compromise procedures under § 502.604, the Bureau of Enforcement will advise the person or persons who are the subject of an investigation that:

(i) The Bureau of Enforcement has made a preliminary determination to recommend that the Commission initiate enforcement action against them;

(ii) Identifies the specific violations that the Bureau of Enforcement has preliminarily determined to include in the recommendation; and

(iii) Provides notice that the person may make a written submission to the Bureau of Enforcement concerning the proposed recommendation, including the deadline for the submission and any other relevant information (*e.g.,* how and where to send such statements).

(2) Persons notified of such investigations may submit a written statement to the Bureau of Enforcement setting forth their interests and positions regarding the subject matter of the investigation.

(3) The Bureau of Enforcement will consider any written statements submitted under paragraph (d)(2) of this section when making recommendations to the Commission and will attach such written statements to the Bureau's recommendations. [Rule 63.]

§ 502.603 [Amended]

■ 6. Amend § 502.603(c) by removing the citation ''§ 502.604(e)'' and adding in its place the citation ''§ 502.604''.

■ 7. Amend § 502.604 by:
■ a. Revising paragraph (a);
■ b. Removing paragraphs (b), (c), and (g); and
■ c. Redesignating paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively.

The revision reads as follows:

§ 502.604 Compromise of penalties: Relation to assessment proceedings.

(a) *Scope.* Except in pending civil penalty assessment proceedings provided for in § 502.603, the Commission, when it has reason to believe a violation has occurred, may invoke the informal compromise procedures of this section after observing the procedures in § 502.63(d).

* * * * *

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2019–21640 Filed 10–8–19; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Commission Organization

CFR Correction

■ In Title 47 of the Code of Federal Regulations, parts 0 to 59, revised as of October 1, 2018, on page 7, in part 0, the authority citation is corrected to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

■ And on the same page, in the same part, the authority citation for Subpart A is reinstated to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

[FR Doc. 2019–22249 Filed 10–8–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 191002–0052]

RIN 0648–XH043

Fisheries of the Northeastern United States; Summer Flounder, Scup, Black Sea Bass, and Atlantic Bluefish Fisheries; 2020–2021 Specifications

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

ACTION: Final rule.

SUMMARY: NMFS announces 2020 specifications for the summer flounder, scup, black sea bass, and bluefish fisheries and projects 2021 summer flounder specifications. The implementing regulations for these species' management requires us to publish specifications for the upcoming fishing year for each of these species. This action is intended to inform the public of the specifications for the start of the 2020 fishing year for these four species and announces the projected 2021 summer flounder specifications.

DATES: This rule is effective January 1, 2020.

ADDRESSES: An environmental assessment (EA) for the summer flounder specifications was prepared for this action that describes the measures and other considered alternatives, and provides an analysis of the impacts of the measures and alternatives. A Supplemental Information Report (SIR) was prepared for the scup, black sea bass, and bluefish specifications. Copies of the EA and SIR, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The EA is also accessible via the internet at *http://www.mafmc.org/s/SF_2020-2021_specs_EA.pdf*.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281–9244.

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, black sea bass, and bluefish fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and Atlantic Bluefish FMP outline the Council's process for establishing specifications. The FMPs require the specification of the acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quotas, recreational harvest limit, and other management measures, for up to 3 years at a time. This action establishes summer flounder specifications for the 2020–2021 fishing years and also sets interim scup, black sea bass, and bluefish 2020 specifications that will be replaced early in the fishing year to address results of operational stock assessments for all three species. These specifications are consistent with the recommendations made by the Council and Commission at the March 2019 joint meeting.

Interim 2020 Scup, Black Sea Bass, and Bluefish Specifications

There is no regulatory mechanism to roll over catch and landings limits from one year to the next in these FMPs, so this action is required to set these limits for the start of 2020. This action maintains the same 2019 specifications for the start of the 2020 fishing year (Table 1), consistent with the recommendations from the Council's Scientific and Statistical Committee (SSC) and the Council and the species-specific Commission Boards. These catch limits are expected to be in place for the first few months of 2020 and will be revised as soon as possible to address the results of operational stock assessments for all three species. The results of the assessments recently became available and the Council and Boards plan on recommending revised 2020 and considering 2021 specifications for all three species at a joint October 2019 meeting.

Prior to the start of the 2020 fishing year, we will announce any adjustments necessary to account for any previous overages or, in the case of bluefish, any commercial/recreational sector transfers. The initial commercial scup quota allocations for 2020 by quota period are outlined in Table 2.

TABLE 1—INTERIM 2020 SPECIFICATIONS FOR SCUP, BLACK SEA BASS, AND BLUEFISH

	Scup		Black sea bass		Bluefish	
	million lb	mt	million lb	mt	million lb	mt
Overfishing Limit (OFL)	41.03	18,612	10.29	4,667	29.97	12,688
ABC	36.43	16,525	8.94	4,055	21.81	9,895
ACL	36.43	16,525	8.94	4,055	21.81	9,895
Commercial ACL	28.42	12,890	4.35	1,974	.....	.....
ACT	28.42	12,890	4.35	1,974	3.71	1,682
Commercial Quota	23.98	10,879	3.52	1,596	7.71	3,497
Recreational ACL	8.01	3,636	4.59	2,083	.....	.....
Recreational ACT	8.01	3,636	4.59	2,083	18.11	8,213
Recreational Harvest Limit	7.37	3,342	3.66	1,661	11.62	5,271

TABLE 2—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2020 BY QUOTA PERIOD

Quota period	Percent share	lb	mt
Winter I	45.11	10,820,000	4,908
Summer	38.95	9,340,986	4,237
Winter II	15.94	3,822,816	1,734
Total	100.0	23,983,802	10,879

Note: Metric tons are converted from lb and may not necessarily total due to rounding.

Summer Flounder 2020–2021 Specifications

In February 2019, the final peer review and assessment results from the 66th Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC 66) became available. This assessment incorporated revised Marine Recreational Information Program estimates of recreational catch, which has an important impact on estimated spawning stock biomass for summer flounder. Based on the results of this benchmark assessment, the summer flounder stock is not overfished, and overfishing is not occurring.

The Council's SSC and the Summer Flounder Monitoring Committee met in late February 2019 to recommend revised catch and landings limits for 2019 through 2021 based on the assessment information, which the Council adopted. Due to the need to implement revised 2019 specifications as soon as possible, we published an interim final rule on May 17, 2019 (84 FR 22392), adjusting the catch limits for the remainder of the 2019 fishing year. This rule implements the 2020 specifications and announces the projected 2021 specifications (Table 3). The 2020 and 2021 specifications are identical to what is currently in place for 2019.

Table 4 outlines the initial 2020 state-by-state summer flounder allocations. Prior to the start of each fishing year, we will announce any adjustments necessary to address any overages and to provide the states with their specific quotas. We anticipate announcing any such adjustments in December 2019.

TABLE 3—SUMMARY OF 2020–2021 SUMMER FLOUNDER FISHERY SPECIFICATIONS, IN MILLIONS OF POUNDS

	million lb	mt
OFL	30.94 (2020) 31.67 (2021)	14,034 (2020) 14,365 (2021)
ABC	25.03	11,354
Commercial ACL	13.53	6,136
Commercial ACT	13.53	6,136
Commercial Quota	11.53	5,229
Recreational ACL	11.51	5,218
Recreational ACT	11.51	5,218
Recreational Harvest Limit	7.69	3,486

TABLE 4—INITIAL 2020 SUMMER FLOUNDER STATE-BY-STATE ALLOCATIONS

State	FMP percent share	Initial 2020 quotas *	
		lb	kg
ME	0.0476	5,484	2,487
NH	0.0005	53	24
MA	6.8205	786,399	356,705
RI	15.6830	1,808,248	820,207
CT	2.2571	260,241	118,043
NY	7.6470	881,698	399,931
NJ	16.7250	1,928,391	874,704
DE	0.0178	2,051	930
MD	2.0391	235,108	106,643
VA	21.3168	2,457,822	1,114,850
NC	27.4458	3,164,505	1,435,395
Total	100.00	11,530,000	5,229,920

* Initial quotas do not account for any previous overages.

This action makes no changes to the current commercial management measures, including the minimum fish size (14-inch (36-cm) total length), gear requirements, and possession limits. The 2020 recreational management measures will be considered in the late fall of 2019.

Comments and Responses

NMFS received one comment on the proposed rule from the State of New York and the New York State Department of Environmental Conservation. The letter stated that the 2020 and 2021 specifications will be applied to outdated state quota share percentages, and NMFS should instead implement a coastwide quota. The comment is identical to what was submitted during public comment on the 2019 summer flounder specifications, and our response remains the same. The current regulations governing the FMP require that quota allocations be distributed based on the percentages outlined in Table 4. Adjustments to these quota allocations must be developed through an amendment to the FMP. The Council and Board took final action on an amendment considering such adjustments at their March 2019 meeting and will forward their recommendations to NMFS for Secretarial review and approval later this fall. Adjustments to these state quota allocations are outside the scope of this specifications action and will be addressed in the rulemaking for the amendment.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule is exempt from NOAA's Office of Management and

Budget Review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and the initial certification remains unchanged. A final regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in this action.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2019.

Samuel D. Rauch III,

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

[FR Doc. 2019–21828 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 196

Wednesday, October 9, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

RIN 3064–AF02

Interest Rate Restrictions on Institutions That Are Less Than Well Capitalized

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; supplemental notice.

SUMMARY: On September 4, 2019, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments on proposed revisions to its regulations relating to interest rate restrictions that apply to less than well capitalized insured depository institutions. The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards which were adjusted for inflation as of August 19, 2019.

DATES: Comments on the updated regulatory flexibility analysis must be received on or before November 8, 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–AF02 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.

Public Inspection: 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: Ryan T. Singer, Chief, Regulatory Analysis Section, Division of Insurance and Research, (202) 898–7352, *rsinger@fdic.gov;* Jennifer M. Jones, Counsel, Legal Division, (202) 898–6768, *jennjones@fdic.gov.*

SUPPLEMENTARY INFORMATION: On September 4, 2019, the FDIC issued a notice of proposed rulemaking with request for comments on proposed revisions to its regulations relating to interest rate restrictions that apply to less than well capitalized insured depository institutions. (See 84 FR 41910 (September 4, 2019).) The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards which were adjusted for inflation as of August 19, 2019. (See 84 FR 34261 (July 18, 2019).)

Updated Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that, in connection with a proposed rule, 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.[1] However, a regulatory flexibility analysis is not required if the agency certifies that the proposed 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 proposed rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[2]

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-insured institutions.

The FDIC is proposing revisions to its regulations relating to interest rate restrictions that apply to less than well capitalized insured depository institutions, by amending the methodology for calculating the national rate and national rate cap. The proposal would also modify the current local rate cap calculation and process.

Specifically, the proposal defines the national rate for a deposit product as the average rate for that product, where the average is weighted by domestic deposit share. The proposed national rate cap is the higher of (1) the rate offered at the 95th percentile of rates weighted by domestic deposit share or (2) the proposed national rate plus 75 basis points.

Because the FDIC's experience suggests some institutions compete for particular products within their local market area, the proposal would continue to provide a local rate cap process.

Specifically, the proposal would allow less than well capitalized institutions to provide evidence that any bank or credit union in its local market offers a rate on particular deposit product in excess of the national rate cap. If sufficient evidence is provided, then the less than well capitalized institution would be allowed to offer 90 percent of the competing institution's rate on the particular product. For the

[1] 5 U.S.C. 601 *et seq.*

[2] 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, the ''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 RFA.

reasons discussed below, the FDIC certifies that the proposed rule will not have a significant economic effect on a substantial number of small entities.

Based on March 31, 2019, Call Report data, the FDIC insures 5,371 depository institutions, of which 4,004 are considered small entities for the purposes of RFA.[3] As of March 31, 2019, 20 small, FDIC-insured depository institutions were less than well capitalized.[4] This represents less than two-fifths of one percent of all FDIC-insured institutions as of March 31, 2019, and approximately one-half of one percent of small, FDIC-insured institutions. For 17 small institutions that were less than well capitalized as of March 31, 2019, and that reported rates to a private data aggregator, FDIC analysts compared the national rate caps calculated under the current methodology with the national rate caps which would have been in effect under the proposal during the month of March across 11 deposit products.[5] As described in more detail below, the analysis shows that the proposed national rate caps are less restrictive than the current national rate caps, and would reduce the likelihood that less than well capitalized institutions would need to avail themselves of the local rate cap determination process.

Five of the 17 (just under 30 percent) less than well capitalized institutions for which data were available reported offering rates above the national rate caps calculated under the current methodology for seven out of the 11 products considered.[6] Under the proposed methodology, three institutions reported rates above the national rate caps on two products. Thus, the number of deposit products with rates constrained by the national rate cap is reduced for all five institutions, and two of those institutions would be relieved of the need to avail themselves of the local rate cap determination process.

For the 3-month, 6-month, 36-month, and 48-month CD products, two less than well capitalized small institutions reported offering rates above the national rate caps calculated under the current methodology. On average, the reported offering rates were 6, 13, 29, and 58 basis points above the national rate caps, respectively.

Three institutions reported offering rates above the national rate caps calculated under the current methodology for the 12-month and 24-month CD products, and four reported offering rates above the national rate caps as currently calculated for the 60-month CD product. Rates offered on the 12-month and 24-month CD products were 37 and 45 basis points above the national rate caps, on average. Rates offered on the 60-month CD product averaged 26 basis points above the national rate cap for that product.

Across all deposit products offered at rates above the national rate caps calculated under the current methodology, the rates offered were 30 basis points above the national rate caps on average.

Had the national rate caps in effect at the time been calculated under the proposed methodology, then two less than well capitalized small institutions would have reported offering rates that averaged 11 basis points above the national rate cap for the 3-month CD product, and one institution would have reported offering a rate three basis points above the national rate cap for the 48-month CD product.

Across all deposit products offered at rates above the national rate caps calculated under the proposed methodology, the rates offered were 7 basis points above the national rate caps on average.

No less than well capitalized small institution reported offering a rate above the national rate caps calculated under the current or proposed methodology for savings, interest checking, MMDA, or 1-month CD products during the timeframe considered.

The number of small, less than well capitalized institutions with offered rates above the national rate caps falls from five under the current methodology to three under the proposed methodology. Thus, the number of small less than well capitalized institutions that need to rely on a local rate cap is expected to fall.

The FDIC cannot more precisely quantify the effects of the proposed rule relative to the current methodology because it lacks data on the dollar amounts placed in deposit products broken down by the rates offered. However, few small institutions are less than well capitalized, and most of those small, less than well capitalized institutions for which data were available reported rates across the 11 deposit products considered that were below the national rate caps as calculated under both the current and proposed methodologies. For the few less than well capitalized institutions as of March 31, 2019 whose deposit interest rates are constrained by the current national rate cap but not the proposed rate cap, the effect of the rule would be burden reducing in the sense of reducing the need for local rate cap determinations.

Based on the foregoing information, the FDIC certifies that the proposed rule will not significantly affect a substantial number of small entities. The FDIC welcomes comments on its analysis. Specifically, what data would help the FDIC better quantify the effects of the proposal compared with the current methodology?

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 26, 2019.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–21324 Filed 10–8–19; 8:45 am]

BILLING CODE 6714–01–P

[3] March 31, 2019, FFIEC Call Report.

[4] *Id.* The 20 institutions do not include any quantitatively well capitalized institutions that may have been administratively classified as less than well capitalized.

[5] The 11 products are savings accounts, interest checking accounts, money market deposit accounts, 1-month, 3-month, 6-month, 12-month, 24-month, 36-month, 48-month, and 60-month CDs. Jumbo and non-jumbo rate caps reported for the week of March 4, 2019, were averaged for each of the 11 products to calculate a single rate cap per product under the current methodology. (*https://www.fdic.gov/regulations/resources/rates/historical/2019-03-04.html*).

[6] This is not meant to suggest that these institutions are not in compliance with the national rate caps, but rather that they have sought and received local rate determinations that allow them to offer certain products at rates above the national caps.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AF13

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

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; supplemental notice.

SUMMARY: On October 2, 2019, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments on a proposal that would rescind and remove from the Code of Federal Regulations 12 CFR part 390, subpart R, entitled *Regulatory Reporting Standards* (part 390, subpart R). The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect a few typographical changes.

DATES: Comments on the updated regulatory flexibility analysis must be received on or before November 8, 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.

Public Inspection: 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: Ryan T. Singer, Chief, Regulatory Analysis Section, Division of Insurance and Research, (202) 898–7352, *rsinger@fdic.gov;* Jennifer M. Jones, Counsel, Legal Division, (202) 898–6768, *jennjones@fdic.gov.*

SUPPLEMENTARY INFORMATION: On October 2, 2019, the FDIC issued a notice of proposed rulemaking with request for comments on a proposal that would rescind and remove from the Code of Federal Regulations 12 CFR part 390, subpart R, entitled *Regulatory Reporting Standards* (part 390, subpart R). (See 84 FR 52387 (October 2, 2019).) The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect a few typographical changes.

Updated 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.[1] 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 $600 million.[2] 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 non-interest 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,[3] 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 36 State savings associations considered to be small banking organizations for the purposes of the RFA.[4]

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. 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?

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 3, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–21966 Filed 10–8–19; 8:45 am]

BILLING CODE 6714–01–P

[1] 5 U.S.C. 601, *et seq.*

[2] 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.

[3] March 31, 2019, is the most recent period for which the FDIC's ''small entity'' designations for depository institutions are available.

[4] 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0713; Product Identifier 2019–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–941 airplanes. This proposed AD was prompted by reports indicating premature aging of certain chemical oxygen generators. This proposed AD would require repetitively removing the affected chemical oxygen generators and replacing them with serviceable parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 25, 2019.

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

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

p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0713.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0713; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0713; Product Identifier 2019–NM–116–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0140, dated June 12, 2019 (''EASA AD 2019–0140'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–941 airplanes. The MCAI states:

> Reports have been received indicating premature aging of affected parts.
>
> This condition, if not corrected, could lead to failure of the generator to activate and consequently not deliver oxygen during an emergency, possibly resulting in injury to aeroplane occupants.
>
> To address this unsafe condition, Airbus issued the MRBR [Maintenance Review Board Report] tasks to provide the necessary replacement instructions.
>
> For the reasons described above, this [EASA] AD requires removal from service of each affected part before exceeding 10 years since its date of manufacture.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0140 describes procedures for repetitively removing the affected chemical oxygen generators and replacing them with serviceable parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0140 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019–0140 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0140 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0140 that is required for compliance with EASA AD 2019–0140 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0713 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 2 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$390	$645	$1,290

* Costs given are for replacement of one chemical oxygen generator for each repetitive replacement. The number of affected generators depends on airplane configuration and cannot be estimated properly.

Authority for This Rulemaking

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2019–0713; Product Identifier 2019–NM–116–AD.

(a) Comments Due Date

The FAA must receive comments by November 25, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A330–941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by reports indicating premature aging of certain chemical oxygen generators. The FAA is issuing this AD to address premature aging of chemical oxygen generators. This condition, if not corrected, could lead to the generator failing to deliver oxygen during an emergency, possibly resulting in injury to airplane occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0140, dated June 12, 2019 (''EASA AD 2019–0140'').

(h) Exceptions to EASA AD 2019–0140

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0140 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0140 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0140 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2019–0140, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0140 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0713.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

Issued in Des Moines, Washington, on September 27, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–21878 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0712; Product Identifier 2019–NM–115–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–200 Freighter, A330–200, A330–300, A340–200, and A340–300 series airplanes. This proposed AD was prompted by reports that elevator skin panels were found disbonded as a result of water ingress. This proposed AD would require repetitive detailed inspections of skin panels on both elevators, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 25, 2019.

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

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0712.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0712; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0712; Product Identifier 2019–NM–115–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0138, dated June 12, 2019 (''EASA AD 2019–0138'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Airbus SAS Model A330–200 Freighter, A330–200, A330–300, A340–200, and A340–300 series airplanes. This proposed AD was prompted by reports that elevator skin panels were found disbonded as a result of water ingress. The FAA is issuing this proposed AD to address disbonding of the elevator skin panels. This condition, if not detected and corrected, could affect the structural integrity of the elevators, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

Relationship Between This Proposed AD and AD 2011–03–10

This NPRM would not supersede AD 2011–03–10, Amendment 39–16594 (76 FR 6543, February 7, 2011) (''AD 2011–03–10''). Rather, the FAA has determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require repetitive detailed inspections of skin panels on both elevators, and corrective actions if necessary, and would expand the Applicability to include the Airbus SAS Model A330–200 Freighter series airplanes. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2011–03–10.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0138 describes procedures for a detailed inspection of the affected parts and corrective actions.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0138 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD

process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019–0138 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0138 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0138 that is required for compliance with EASA AD 2019–0138 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0712 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

Although the service information referenced in EASA AD 2019–0138 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Costs of Compliance

The FAA estimates that this proposed AD affects 103 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 14 work-hours × $85 per hour = Up to $1,190	$0	Up to $1,190	Up to $122,570.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 24 work-hours × $85 per hour = Up to $2,040	$0	Up to $2,040.

Authority for This Rulemaking

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2019–0712; Product Identifier 2019–NM–115–AD.

(a) Comments Due Date

The FAA must receive comments by November 25, 2019.

(b) Affected ADs

This AD affects AD 2011–03–10, Amendment 39–16594 (76 FR 6543, February 7, 2011) (''AD 2011–03–10'').

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, and identified in paragraphs (c)(1) through (5) of this AD.

(1) Model A330–223F and –243F airplanes.

(2) Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A340–211, –212, and –213 airplanes.

(5) Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Reason

This AD was prompted by reports that elevator skin panels were found disbonded as a result of water ingress. The FAA is issuing this AD to address disbonding of the elevator skin panels. This condition, if not detected and corrected, could affect the structural integrity of the elevators, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0138, dated June 12, 2019 (''EASA AD 2019–0138'').

(h) Exceptions to EASA AD 2019–0138

(1) For purposes of determining compliance with the requirements of this AD, the exceptions given in paragraphs (h)(1)(i) and (ii) apply.

(i) Where EASA AD 2019–0138 refers to its effective date, this AD requires using the effective date of this AD.

(ii) Where EASA AD 2019–0138 refers to December 15, 2009 (the effective date of EASA AD 2009–0255), this AD requires using March 14, 2011 (the effective date of AD 2011–03–10).

(2) The ''Remarks'' section of EASA AD 2019–0138 does not apply to this AD.

(i) Terminating Action for AD 2011–03–10

Accomplishing the actions required by this AD terminates all requirements of AD 2011–03–10.

(j) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0138 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0138 that contains RC procedures and tests: Except as required by paragraph (k)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) For information about EASA AD 2019–0138, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0138 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0712.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

Issued in Des Moines, Washington, on September 27, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–21877 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0714; Product Identifier 2019–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a report of incorrectly installed flight compartment door edge protection plates on both sides of the upper decompression panel. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a functional check of the flight compartment door decompression latches. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 25, 2019.

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet

http://www.bombardier.com. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0714; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0714; Product Identifier 2019–NM–103–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–20R1, dated May 31, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

This proposed AD was prompted by a report of incorrectly installed flight compartment door edge protection plates on both sides of the upper decompression panel (the flight compartment is also known as the flight deck). The FAA is proposing this AD to address incorrect installation of the flight compartment door edge protection plates on both sides of the flight compartment door upper decompression panel. This condition, if not corrected, could result in the inability of the flight compartment door upper decompression panel to open during a rapid decompression event. This inability to relieve the pressure in the flight compartment may compromise the structural integrity of the bulkhead between the flight compartment and the passenger cabin. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued Task 251700–202, ''Functional Check of the Flight Compartment Door Decompression Latches,'' of Section 1–25 of Section 125, of the Maintenance Review Board Report, Revision 18, dated July 25, 2018, in Part 1 of the Bombardier CRJ700/900/1000 Maintenance Requirements Manual, CSP–B–053. This service information describes a functional check of the flight compartment door decompression latches. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a new functional check.

Costs of Compliance

The FAA estimates that this proposed AD affects 522 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not

have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2019–0714; Product Identifier 2019–NM–103–AD.

(a) Comments Due Date

The FAA must receive comments by November 25, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, all serial numbers.

(1) Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes.

(2) Bombardier, Inc., Model CL–600–2D15 (Regional Jet Series 705) airplanes.

(3) Bombardier, Inc., Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(4) Bombardier, Inc., Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by a report of incorrectly installed flight compartment door edge protection plates on both sides of the upper decompression panel. The FAA is issuing this AD to address incorrect installation of the flight compartment door edge protection plates on both sides of the flight compartment door upper decompression panel. This condition, if not corrected, could result in the inability of the flight compartment door upper decompression panel to open during a rapid decompression event. This inability to relieve the pressure in the flight compartment may compromise the structural integrity of the bulkhead between the flight compartment and the passenger cabin.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Task 251700–202, ''Functional Check of the Flight Compartment Door Decompression Latches,'' of Section 1–25 of Section 125, of the Maintenance Review Board Report, Revision 18, dated July 25, 2018, in Part 1 of the Bombardier CRJ700/900/1000 Maintenance Requirements Manual, CSP–B–053. The initial compliance time for doing the task is within 8,000 flight hours after this task is incorporated into the existing maintenance or inspection program, or within 30 days after the effective date of this AD, whichever occurs later. Repeat the task thereafter at intervals not to exceed 8,000 flight hours.

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–20R1, dated May 31, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0714.

(2) For more information about this AD, contact Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on September 27, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–21876 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0637; Airspace Docket]

[No. 19–ANM–4] RIN 2120–AA66

Proposed Amendment of Class D and E Airspace; Eagle County, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace and Class E surface airspace; establish Class E surface airspace designated as an extension to the Class D and Class E2 surface areas; amend the Class E5

airspace extending from 700 feet above the surface of the earth; and update the geographic coordinates of the airport to match the FAA's database at the Eagle County Regional Airport in Eagle, CO. This action would ensure the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 25, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify Docket No. FAA–2019–0637; Airspace Docket No. 19–ANM–4, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov*.

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

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

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D and Class E airspace at Eagle County Regional Airport, Eagle, Colorado to ensure safety and management of Instrument Flight Rules (IFR) operations within the National Airspace System.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0637; Airspace Docket No. 19–ANM–4''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D airspace at Eagle County Regional Airport extending upward from the surface to and including 9,100 feet MSL within a 4.4-mile radius and extending from the 4.4- mile radius to a 6.5-mile radius along a 199° bearing clockwise to a 277° bearing and extending from the 4.4-mile radius to a 6.5-mile radius along a 45° bearing clockwise to a 103° bearing from the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement. And amending Class E2 airspace extending upward from the within a 4.4-mile radius and extending from the 4.4-mile radius to a 6.5-mile radius along a 199° bearing clockwise to a 277° bearing and extending from the 4.4-mile radius to a 6.5-mile radius along a 45° bearing clockwise to a 103° bearing from the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement. Additionally, this action proposes to amend Class E airspace by adding Class E4 airspace extending upward from the surface within 1.0 mile each side of the 079° bearing extending from the 6.5-mile radius to the 8.7-mile radius east of the Eagle County Regional Airport. Also, this action proposes to amend Class E5 airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the airport and extending within 1.3 miles either side of a 079° bearing from the 8.7-mile radius to 11.6 miles east of the Eagle County Regional Airport. Lastly, this action will update the geographic coordinates at Eagle County Regional

Airport to (lat. 39°38′34″ N, long. 106°54′57″ W).

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.11D. Class E2, E4 and E5 airspace designations are published in paragraphs 6002, 6004 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM CO D Eagle, CO

Eagle County Regional Airport, CO
(Lat. 39°38′34″ N, long. 106°54′57″ W)

That airspace extending upward from the surface to and including 9,100 feet MSL within a 4.4- mile radius and extending from the 4.4-mile radius to a 6.5-mile radius along a 199° bearing clockwise to a 277° bearing and extending from the 4.4-mile radius to a 6.5-mile radius along a 45° bearing clockwise to a 103° bearing from the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM CO E2 Eagle, CO

Eagle County Regional Airport, CO
(Lat. 39°38′34″ N, long. 106°54′57″ W)

That airspace extending upward from the within a 4.4-mile radius and extending from the 4.4- mile radius to a 6.5-mile radius along a 199° bearing clockwise to a 277° bearing and extending from the 4.4-mile radius to a 6.5-mile radius along a 45° bearing clockwise to a 103° bearing from the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM CO E4 Eagle, CO

Eagle County Regional Airport, CO
(Lat. 39°38′34″ N, long. 106°54′57″ W)

That airspace extending upward from the surface within 1.0 mile each side of the 079° bearing extending from the 6.5-mile radius to the 8.7-mile radius east of the Eagle County Regional Airport.

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

* * * * *

ANM CO E5 Eagle, CO

Eagle County Regional Airport, CO
(Lat. 39°38′34″ N, long. 106°54′57″ W)

That airspace extending upward from 700 feet above the surface within a 8.7-mile radius of the airport and extending within 1.3 miles either side of a 079° bearing from the 8.7-mile radius to 11.6 miles east of the Eagle County Regional Airport.

Issued in Seattle, Washington, on October 1, 2019.

Byron Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–21953 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1253

[Docket No. CPSC–2019–0023]

Children's Toys and Child Care Articles: Determinations Regarding ASTM F963 Elements and Phthalates for Unfinished Manufactured Fibers

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (CPSC) is proposing a rule to determine that certain unfinished manufactured fibers would not contain the ASTM F963 elements or specified phthalates that exceed the limits set forth under the CPSC's statutes and regulations for children's toys and child care articles. Based on these proposed determinations, the specified unfinished manufactured fibers would not be required to have third party testing for compliance with the requirements of the ASTM F963 elements or phthalates for children's toys and child care articles.

DATES: Submit comments by December 23, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2019–0023 by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov*. Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov*. The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All

comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number CPSC–2019–0023, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Jacqueline Campbell, Senior Textile Technologist, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850: telephone 301–987–2024; email: *jcampbell@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

1. Third Party Testing and Burden Reduction

Section 14(a) of the Consumer Product Safety Act, (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires that manufacturers of products subject to a consumer product safety rule or similar rule, ban, standard, or regulation enforced by the CPSC, must certify that the product complies with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). For children's products, certification must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* Public Law 112–28 (August 12, 2011) directed the CPSC to seek comment on ''opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation.'' Public Law 112–28 also authorized the Commission to issue new or revised third party testing regulations if the Commission determines ''that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.'' *Id.* 2063(d)(3)(B).

To provide opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulations, the CPSC assessed whether children's toys and child care articles manufactured with seven manufactured fibers: polyester (polyethylene terephthalate, PET), nylon, polyurethane (spandex), viscose rayon, natural rubber latex, acrylic, and modacrylic, would comply with CPSC's requirements for ASTM F963 elements or phthalates. If the Commission determines that such materials will comply with CPSC's requirements with a high degree of assurance, manufacturers do not need to have those materials tested by a third party testing laboratory to issue a Children's Product Certificate (CPC).

2. ASTM F963 Elements

Section 106 of the CPSIA provides that the provisions of ASTM International, *Consumer Safety Specifications for Toy Safety* (ASTM F963), shall be considered to be consumer product safety standards issued by the Commission.[1] 15 U.S.C. 2056b. The Commission has issued a rule that incorporates by reference the relevant provisions of ASTM F963. 16 CFR part 1250.[2] Thus, children's toys subject to ASTM F963 must be tested by a CPSC-accepted third party laboratory and demonstrate compliance with all applicable CPSC requirements for the manufacturer to issue a CPC before the children's toys can be entered into commerce.

Section 4.3.5 of ASTM F963 requires that surface coating materials and accessible substrates of children's toys that can be sucked, mouthed, or ingested[3] must comply with the solubility limits of eight elements given in Table 1 of the toy standard. The materials and their solubility limits are shown in Table 1. We refer to these eight elements as ''ASTM F963 elements.''

TABLE 1—MAXIMUM SOLUBLE MIGRATED ELEMENT IN PPM (MG/KG) FOR SURFACE COATINGS AND SUBSTRATES INCLUDED AS PART OF A TOY

Elements	Solubility limit, (ppm)[4]
Antimony (Sb)	60
Arsenic (As)	25
Barium (Ba)	1000
Cadmium (Cd)	75
Chromium (Cr)	60
Lead (Pb)	90
Mercury (Hg)	60
Selenium (Se)	500

The third party testing burden could be reduced only if all elements listed in section 4.3.5 have concentrations below their solubility limits. Because third party conformity assessment bodies typically run one test for all of the ASTM F963 elements, no testing burden reduction would be achieved if any one of the elements requires testing.

To alleviate some of the third party testing burdens associated with the ASTM F963 elements in the accessible component parts of children's toys, the Commission determined that certain unfinished and untreated trunk wood does not contain ASTM F963 elements that would exceed the limits specified in section 106 of the CPSIA. Based on this determination, unfinished and untreated trunk wood would not require third party testing for the ASTM F963 elements. 16 CFR part 1251. The Commission also has determined that untreated and unfinished engineered wood products would not require third party testing for the ASTM elements or specified phthalates (discussed below) for children's products, children's toys, and child care products. 16 CFR part 1252.

3. Phthalates

Section 108(a) of the CPSIA permanently prohibits the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any ''children's toy or child care article'' that contains concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or butyl benzyl phthalate (BBP). 15 U.S.C. 2057c(a).

The CPSIA required the Commission to appoint a Chronic Hazard Advisory Panel (CHAP) to ''study the effects on

[1] ASTM F963 is a consumer product safety standard, except for section 4.2 and Annex 4, or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute.

[2] The Commission is not proposing to incorporate ASTM F963 by reference into part 1253.

[3] ASTM F963 contains the following note regarding the scope of the solubility requirement: NOTE 4—For the purposes of this requirement, the following criteria are considered reasonably appropriate for the classification of children's toys or parts likely to be sucked, mouthed or ingested: (1) All toy parts intended to be mouthed or contact food or drink, components of children's toys which are cosmetics, and components of writing instruments categorized as children's toys; (2) Children's toys intended for children less than 6 years of age, that is, all accessible parts and components where there is a probability that those parts and components may come into contact with the mouth.

[4] The method to assess the solubility of a listed element is detailed in section 8.3.2, *Method to Dissolve Soluble Matter for Surface Coatings,* of ASTM F963. Modeling clays included as part of a toy have different solubility limits for several of the elements.

children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.'' 15 U.S.C. 2057c(b)(2). The CHAP issued its report in July 2014. On October 27, 2017, the Commission published a final rule in the **Federal Register**, ''Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates,'' 82 FR 49938, prohibiting children's toys and child care articles containing concentrations greater than 0.1 percent of: di-(2-ethylhexyl) phthalate (DEHP); dibutyl phthalate (DBP); benzyl butyl phthalate (BBP); diisononyl phthalate (DINP); diisobutyl phthalate (DIBP); di-n-pentyl phthalate (DPENP); di-n-hexyl phthalate (DHEXP); or dicyclohexyl phthalate (DCHP). These restrictions apply to any plasticized component part of a children's toy or child care article or any other component part of a children's toy or child care article that is made of other materials that may contain phthalates. The phthalates prohibitions are set forth in 16 CFR part 1307.

Tests for phthalate concentration are among the most expensive certification tests to conduct on a product, and each accessible component part subject to section 108 of the CPSIA must be tested. Third party testing burden reductions can occur only if each phthalate's concentration is below 0.1 percent (1000 ppm). Because laboratories typically run one test for all of the specified phthalates, no testing burden reduction likely is achieved if any one of the phthalates requires compliance testing.

B. Contractor's Research

The CPSC contracted with the Toxicology Excellence for Risk Assessment (TERA, or the contractor) to conduct literature reviews on the production of certain undyed manufactured fibers and to evaluate whether the specified manufactured fibers potentially contain (1) any of the specified chemical elements that are included in the toy standard in concentrations [5] exceeding specified limits, or (2) any of 10 specified phthalates in concentrations greater than 0.1 percent (1000 ppm). TERA researched the following manufactured fibers: polyester (polyethylene terephthalate, PET), nylon, polyurethane (spandex), viscose rayon, natural rubber latex, acrylic, and modacrylic. Staff reviewed the information provided in the TERA report, *Exposure Assessment: Potential for the Presence of Phthalates and Other Specified Elements in Undyed Manufactured Fibers and their Colorants* (the report, Task 17).[6] TERA's Task 17 report formed the basis for the proposed unfinished manufactured fiber determinations. For more detailed information on the Task 17 report and staff analysis please see the staff briefing package. *https://www.cpsc.gov/s3fs-public/Draft%20NPR-%20Children%27s%20Toys%20and%20Child%20Care%20Articles-%20Determinations%20Regar....pdf?IB4eKjJ_meZH1vdT5uQeojG8FfYGeqD9.*

All of the fibers covered in the Task 17 report are manufactured and do not naturally occur in a fiber state. Although their raw starting materials may be different, these fibers are generally extruded into a fiber form. In many cases, additional chemicals may be added before the extrusion process so that the chemicals are embedded in the fiber structure. To better understand where the specified phthalates or ASTM elements may be present, TERA documented the fiber chemical characteristics, manufacturing processes, typical colorants, and any other relevant information found through their search strategy.

C. CPSC Staff Analysis of TERA Task 17 Report

CPSC staff reviewed the TERA Task 17 Report. CPSC staff also examined TERA's source references to better understand the report's findings. The Task 17 Report focused on the possibility of the ASTM F963 elements and specified phthalates being present in seven manufactured fiber types.

Unfinished Fibers

The TERA report found one significant use of an ASTM element in unfinished manufactured fibers: antimony in the production of polyester (PET) fibers at concentrations of about 150–300 ppm, amounts that would exceed the solubility limit specified in ASTM F963. Staff does not have information identifying the amount of the antimony that is soluble when tested according to ASTM F963. PET fiber is widely used in consumer textile products, including children's toys. The contractor report did not identify any other instances of the use of ASTM elements or phthalates in the routine manufacturing processes for the specified unfinished fibers.

Compliance to the ASTM F963 standard can be demonstrated by measuring the chemical content of a material—if the total content for a specific element does not exceed the solubility limit, then it must be the case that the solubility requirement is met. Because information about solubility or migration of chemicals from products or materials is rarely available in the scientific literature or other data sources, staff relies on information about chemical content to understand possible uses and presence of chemicals in products. If sufficient solubility testing data were available, especially if data show low levels of migration, such data may help inform decisions about testing requirements under the ASTM F963 standard.

In addition to intentional use of the specified chemicals, staff considered whether contaminants or impurities may be present in unfinished fibers, yarns, or fabrics. In the review of the contractor report, the reports referenced by the contractor, and other reference materials, staff has not found any information or data that suggest contaminants would be present in fibers at significant levels. Reported contaminant levels, such as for arsenic, chromium, mercury, or cadmium, are no higher than a few parts per million. Staff believes that contaminants or impurities are unintentional (*i.e.,* not added by the manufacturer intentionally), and largely represent the ubiquity of some substances in the environment at trace levels or general industrial practices and conditions. Given the available data and staff's understanding of the raw materials and manufacturing practices for the fibers currently under consideration, staff concludes that any impurities will be at levels well below the relevant limits for this proceeding.

Dyed or Finished Fibers (or Fibers With Chemical Additives Pre-Fiber Formation)

Colorants, such as dyes, often contain metals in their structure. The contractor report cited the use of mercury, arsenic, barium, or chromium in dyes or dye auxiliaries. For example, chrome dyes are a type of acid dye that can be used on nylon fibers and contains chromium to form a complex between the dye and the fiber. Because the use of these metals is not necessarily limited to a specific dye class or fiber type, staff cannot rule out the use of these metals at concentrations greater than those

[5] Although the ASTM F963–17 standard for chemical elements is a solubility requirement, TERA researched total content, in part because of the expected availability of content data versus solubility data and because content is a conservative stand-in for chemical solubility (*i.e.,* the content of a chemical is the same value as one hundred percent solubility of the chemical from solubility testing).

[6] Task Order 17, Contract Number CPSC–D–12–0001. Available at: *https://www.cpsc.gov/s3fs-public/TERA%20Task17%20Report%20Phthalates%20and%20ASTM%20Elements%20in%20Manufactured%20Fibers.pdf.*

specified in ASTM F963 without more information. Furthermore, the contractor report cited the potential use of some of the specified phthalates as dye auxiliaries or carriers for pigments. Although some of the findings may have been with products not necessarily within the scope of the subject rules, the mechanism by which colorants are applied to fibers could be extended to those products.

Finishes may also be added at the fiber (yarn or fabric) stage to impart desirable characteristics. The contractor report highlighted the use of antimony compounds as flame retardants. Other chemicals of interest may be used in finished fiber (yarn or fabric); however, those finishes were not within the scope of the contractor report, and more information is necessary to consider whether determinations for finished fiber (yarn or fabric) are appropriate. Staff notes that in the case of the ASTM elements (excluding lead, which has separate specific restrictions under the CPSIA), the restriction in the ASTM F963 standard is based on solubility; *i.e.,* migration of the elements from the product or material.

Recycled Content

TERA did not examine the potential use of recycled materials in the subject manufactured fibers. Staff is aware that recycled content is present in some textile fibers; however, staff does not know the extent to which recycled content can be expected in products within the scope of the ASTM F963 elements or phthalates requirements. Due to findings in the contractor report on colorants and finishes in manufactured fibers, staff does not recommend determinations for fibers with recycled content unless such content was from unfinished recycled materials.

D. Determinations for Unfinished Manufactured Fibers

1. Legal Requirements for a Determination

As discussed in section A.1. of the preamble, section 14(a)(2) of the CPSA requires third party testing for children's products that are subject to a children's product safety rule. 15 U.S.C. 2063(a)(2). Children's toys must comply with the limits on the ASTM F963 elements incorporated in 16 CFR part 1250. Children's toys and child care articles must comply with the phthalates prohibitions in section 108 of the CPSIA and 16 CFR part 1307. 15 U.S.C. 2057c. In response to statutory direction, the Commission has investigated approaches that would reduce the burden of third party testing while also assuring compliance with CPSC requirements. As part of that endeavor, the Commission has considered whether certain materials used in children's toys and child care articles would not require third party testing.

To issue a determination that a manufactured fiber does not require third party testing, the Commission must have sufficient evidence to conclude that the product consistently complies with the CPSC requirements to which the manufactured fiber is subject so that third party testing is unnecessary to provide a high degree of assurance of compliance. Under 16 CFR part 1107 section 1107.2, ''a high degree of assurance'' is defined as ''an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture.''

For accessible component parts of children's toys and child care articles subject to sections 106 and 108 of the CPSIA and 16 CFR part 1307, compliance to the specified content limits is always required, irrespective of any testing exemptions. Thus, a manufacturer or importer who certifies a children's toy or child care article, must assure the product's compliance. The presence of the ASTM F963 elements or the specified phthalates does not have to be intended to require compliance. The presence of these chemicals, whether for any functional purpose, as a trace material, or as a contaminant, must be in concentrations less than the specified content or solubility limits for the material to be compliant. Additionally, the manufacturer or importer must have a high degree of assurance that the product has not been adulterated or contaminated to an extent that would render it noncompliant. For example, if a manufacturer or importer is relying on a determination that a manufactured fiber does not contain the ASTM F963 elements or specified phthalates in concentrations greater than the specified limits in a children's toy or child care article, the manufacturer must ensure that the manufactured fiber is one on which a determination has been made.

Furthermore, under the proposed rule, any determinations that are made on manufactured fibers are limited to unfinished manufactured fibers. Children's toys and child care articles made from these manufactured fibers may have other materials that are applied to or added on to the manufactured fiber after it is manufactured, such as colorants and flame retardants. Such component parts fall outside of the scope of the proposed determinations and would be subject to third party testing requirements, unless the component part has a separate determination that does not require third-party testing for certification purposes. Finally, even if a determination is in effect and third party testing is not required, a certifier must still issue a certificate.

The six unfinished manufactured fibers for which determinations are proposed for the ASTM F963 elements are: Nylon, polyurethane (spandex), viscose rayon, acrylic, and modacrylic, and natural rubber latex. Based on staff's review of the TERA report as discussed in section C. of the preamble, the Commission is proposing determinations that there is a high degree of assurance that these unfinished manufactured fibers will not contain the ASTM F963 elements in concentrations greater than their specified limits. We note that based on staff's review of the Task 17 report we are not proposing a determination that polyester (PET) fiber does not contain any of the ASTM F963 elements in concentrations greater than their specified solubility limits due to findings in the contractor report regarding the use of antimony compounds in polyester manufacturing.

The Commission is also proposing determinations for seven unfinished manufactured fibers for the specified phthalates prohibitions: Polyester (PET), nylon, polyurethane (spandex), viscose rayon, acrylic, and modacrylic, and natural rubber latex. Based on staff's review of the TERA report as discussed in section C. of the preamble, the Commission is proposing determinations that there is a high degree of assurance that these unfinished manufactured fibers will not contain the prohibited phthalates in concentrations greater than their specified limits.

These determinations would mean that, for the specified unfinished manufactured fibers, third party testing is not required to assure compliance with sections 106 and 108 of the CPSIA and 16 CFR part 1307. The Commission proposes to make these determinations to reduce the third party testing burden on children's product certifiers while continuing to assure compliance.

2. Statutory Authority

Section 3 of the CPSIA grants the Commission general rulemaking authority to issue regulations, as necessary, to implement the CPSIA. Public Law 110–314, sec. 3, Aug. 14, 2008. Section 14 of the CPSA, which was amended by the CPSIA, requires

third party testing for children's products subject to a children's product safety rule. 15 U.S.C. 2063(a)(2). Section 14(d)(3)(B) of the CPSA, as amended by Public Law 112–28, gives the Commission the authority to ''prescribe new or revised third party testing regulations if it determines that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.'' *Id.* 2063(d)(3)(B). These statutory provisions authorize the Commission to propose a rule determining that certain unfinished manufactured fibers do not contain the ASTM F963 elements and the specified prohibited phthalates in concentrations greater than their specified limits, and thus, are not required to be third party tested to assure compliance with sections106 and 108 of the CPSIA and 16 CFR part 1307.

The proposed determinations would relieve manufacturers using the specified unfinished manufactured fibers from the third party testing requirements of section 14 of the CPSA for purposes of supporting the required certification. However, the proposed determinations would not be applicable to any other manufactured fibers beyond those listed in the proposed rule. The proposed determinations would only relieve the manufacturers' obligation to have the specified unfinished manufactured fibers tested by a CPSC-accepted third party conformity assessment body. Children's toys and child care articles must still comply with the substantive content limits in sections 106 and 108 of the CPSIA and 16 CFR part 1307 regardless of any relief on third party testing requirements.

3. Description of the Proposed Rule

This proposed rule would create a new Part 1253 for ''Children's toys and Child Care Articles: Determinations Regarding the ASTM F963 Elements and Phthalates for Unfinished Manufactured Fibers.'' The proposed rule would determine that the specified unfinished manufactured fibers do not contain any of the ASTM F963 elements in excess of specified concentrations, and any of the phthalates (DEHP, DBP, BBP, DINP, DIBP, DPENP, DHEXP, and DCHP) prohibited by statute or regulation in concentrations greater than 0.1 percent.

Section 1253.1(a) of the proposed rule explains the statutorily-created requirements for limiting the ASTM F963 elements in children's toys under the CPSIA and the third party testing requirements for children's toys.

Section 1253.1(b) of the proposed rule explains the statutory and regulatory requirements limiting phthalates for children's toys and child care articles under the CPSIA and the third party testing requirements for children's toys and child care articles.

Section 1253.2(a) of the proposed rule would provide a definition of the term unfinished manufactured fiber that would apply to part 1253.

Section 1253.2(b) of the proposed rule would establish the Commission's determinations that specified unfinished manufactured fibers do not exceed the solubility limits for ASTM F963 elements with a high degree of assurance as that term is defined in 16 CFR part 1107.

Section 1253.2(c) of the proposed rule would establish the Commission's determinations that specified unfinished manufactured fibers do not exceed the phthalates content limits with a high degree of assurance as that term is defined in 16 CFR part 1107.

Section 1253.2(d) of the proposed rule states that accessible component parts of children's toys and child care articles made with the specified unfinished manufactured fibers specifically listed in the determinations in proposed § 1253.3(b) and (c) are not required to be third party tested pursuant to section 14(a)(2) of the CPSA and 16 CFR part 1107.

Section 1253.2(e) of the proposed rule states that accessible component parts of children's toys and child care articles that are not specifically listed in the determinations in proposed § 1253.3(b) and (c) are required to be third party tested pursuant to section 14(a)(2) of the CPSA and 16 CFR part 1107.

4. Requested Comments on the Proposed Rule

The Commission seeks comments on all aspects of the proposed rule. In particular, comments on the following topics are welcome.

- Are there any data or examples that indicate that the manufactured fibers identified in the proposed rule can and do contain the ASTM F963 elements (besides the identified use of antimony in PET) or prohibited phthalates at levels that are not compliant in an unfinished state? Please provide data supporting your assertion.
- The TERA Task 17 Report identified the use of antimony, an ASTM F963 element, as a catalyst used to manufacture PET. Although TERA looked for the presence and total concentration of antimony, the ASTM F963–17 requirement is for the concentration that migrates out of the subject material. Please provide any information that supports or refutes the claim that antimony will not be present in concentrations greater than the specified limits in PET fiber in an unfinished state without colorants. Please provide any information that antimony will not migrate out of polyester in concentrations greater than the specified limits in PET fiber in an unfinished state with no colorants.
- Are there any data or examples that the colorants or other finishes used for the manufactured fibers identified in the proposed rule never contain the ASTM F963 elements or prohibited phthalates at levels that are not compliant? Please provide data supporting your assertion. These data may be by type of dye, a specific dye, by fiber type, or some other relevant grouping.
- Are there any data or examples that the use of recycled content in the manufactured fibers identified in the proposed rule never contain the ASTM F963 elements or prohibited phthalates at levels that are not compliant? Please provide data supporting your assertion. These data may be by fiber type, product type, or some other relevant grouping.
- In addition to the manufactured fibers within scope of this study, are there other manufactured fibers widely used in children's toys and childcare articles that have not been identified in the proposed rule that do not, and will not contain the ASTM F963 elements or prohibited phthalates? Please provide supporting data to show that these manufactured fibers do not and will not contain the ASTM F963 elements or prohibited phthalates in concentrations above the mandatory limits?

E. Effective Date

The Administrative Procedure Act (APA) generally requires that a substantive rule must be published not less than 30 days before its effective date. 5 U.S.C. 553(d)(1). Because the proposed rule would provide relief from existing testing requirements under the CPSIA, the Commission proposes a 30 day effective date for the final rule.

F. Regulatory Flexibility Act

1. Introduction

The Regulatory Flexibility Act (RFA) requires that agencies review a proposed rule for the rule's potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies prepare an initial regulatory flexibility analysis (IRFA) and make the analysis available to the public for comment when the agency is required to publish a notice of proposed rulemaking, unless the agency certifies that the proposed rule will not have a significant

economic impact on a substantial number of small entities. The IRFA must describe the impact of the proposed rule on small entities and identify any alternatives which accomplish the statutory objectives and may reduce the significant economic impact of the proposed rule on small entities. We provide a summary of the IRFA.

2. Small Entities to Which the Proposed Rule Would Apply

The proposed rule would apply to small entities that manufacture or import children's toys and child care articles that contain the specified manufactured fibers. The chemical elements in the ASTM F963 toy safety standard and the specified phthalates apply to the particular children's products specified in the respective requirements. The phthalates prohibitions apply to children's toys and child care articles. Regarding the specified manufactured fibers (or yarns or fabrics) in the children's toy category, products potentially affected by a Commission determination about phthalate content may include coverings or fill of stuffed, plush, or other soft toys, doll clothes, puzzle mats or other play mats, and other similar toys. Under the child care article category, products potentially affected by a Commission determination about phthalate content may include sleepwear, bibs, and other products that facilitate sleeping or feeding. The chemical requirements in the ASTM F963 toy safety standard cover accessible substrates of toys that can be sucked, mouthed, or ingested. The specified manufactured fibers (or yarns or fabrics) could be used in coverings or fill of stuffed, plush, or other soft toys, doll clothes, puzzle mats or other play mats, and other similar toys.

The rule would apply to small entities that manufacture or import children's toys or child care articles that contain accessible polyester (PET), nylon, natural latex rubber, polyurethane (spandex), rayon, acrylic, and modacrylic component parts. Toy manufacturers are classified in North American Industry Classification System (NAICS) category 339930 (Doll, Toy, and Game Manufacturing). According to the U.S. Bureau of the Census, in 2015 there were 566 toy manufacturers in the United States, of which 562 had fewer than 500 employees and would be considered small entities according to the SBA criteria.[7] Of the small manufacturers, 347 had fewer than five employees.

Toy importers may be either wholesale merchants or retailers. The proposed rule would not apply to toy wholesalers or retailers if they obtain their merchandise from domestic manufacturers or importers and do not import toys or child care articles themselves. Toy wholesalers are classified in NAICS category 423920 (Toy and Hobby Goods and Supplies Merchant Wholesalers). According to the U.S. Bureau of the Census, there were 2,009 firms in this category in 2015. Of these, 1,937 had fewer than 100 employees and would be considered small businesses, according to SBA criteria. Toy retailers are classified in NAICS category 451120 (Hobby, Toy, and Game Stores). There could be about 4,632 toy retailers that would meet the SBA criteria to be considered a small entity.[8] Although importers are responsible for certifying the children's products that they import, they may rely upon third party testing performed by their foreign suppliers for purposes of certification. We do not know the number of small toy wholesalers or retailers that import toys, as opposed to obtaining their product from domestic sources. We also do not know the number of small importers that must obtain or pay for the third party testing of their products.

The phthalates regulation also applies to manufacturers and importers of child care articles. Child care articles include many types of products for which the CPSC has recently promulgated or proposed new or amended mandatory safety standards. Under the child care article category, products potentially affected by a Commission determination about phthalate content of unfinished manufactured fibers may include bedside sleepers, sleepwear, bibs, and other products that facilitate sleep or feeding. Several types of these child care products likely use the types of manufactured fibers that are addressed by the proposed rule. In its recent market research, CPSC staff identified 364 suppliers of these products that would be considered small according to criteria established by the SBA.[9] Additionally, there could be other child care articles, not listed above, for which CPSC has not yet developed a mandatory or proposed standard, but which nevertheless are covered by the phthalate requirements.

Although the number of small businesses that supply children's toys or child care articles to the U.S. market might be close to 10,000, we do not know the number that actually supply products with the unfinished manufactured fibers in accessible component parts. We also do not know the number of children's toys and child care articles that contain these fibers. Nevertheless, based on the number of domestic toy manufacturers that are classified as small businesses (according to SBA size standards and data provided by the U.S. Bureau of the Census) and evidence that the specified fibers could be used extensively in toys and child care articles, we believe a substantial number of small entities would be positively impacted by the proposed rule.

3. Reporting, Recordkeeping, and Other Compliance Requirements and Impact on Small Businesses

The proposed rule would not impose any reporting, recordkeeping, or other compliance requirements on small entities. In fact, the proposed rule would eliminate a requirement that third party testing be done, resulting in a small reduction in some of the recordkeeping burden under 16 CFR parts 1107 and 1109 because manufacturers would no longer have to maintain records of third party tests for the component parts manufactured from the specified unfinished manufactured fibers.

The impact of the determinations on small businesses would be to reduce the burden of third party testing for the ASTM F963 elements and the specified phthalates, and would be expected to be entirely beneficial. Based on published invoices and price lists, the cost of a third-party test for the ASTM F963 elements ranges from around $60 in China, up to around $190 in the United States using Inductively Coupled

[7] U.S. Bureau of the Census, ''Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, All Industries: 2015,'' County Business Patterns. Available at: *https://www2.census.gov/programs-surveys/susb/tables/2015/us_6digitnaics_2015.xlsx*.

[8] The SBA considers a toy retailer (NAICS 451120) to be a small entity if its annual sales are less than $27.5 million. According to the U.S. Bureau of the Census, in 2012, the average receipts for toy manufacturers with more than 500 employees was almost $900 million. The average receipts for the next largest category for which summary data were published, toy retailers with at least 100 but fewer than 500 employees, was about $10 million. There were 4,647 firms in this NAICS category, of which 4,632 had fewer than 500 employees. (U.S. Census Bureau, Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Employment Size for the United States, All Industries: 2012.)

[9] Krishnan, Charu S., Memorandum: Determinations that Certain Plastics Will Not Contain Specified Phthalates: Regulatory Flexibility Analysis, Directorate for Economic Analysis, CPSC. June 26, 2017.

Plasma (ICP) testing. This cost can be greatly reduced with the use of high definition X-Ray fluorescence spectrometry (HDXRF), which is an acceptable method for certification of third party testing for the presence of the ASTM elements. The cost can be reduced to about $40 per component.

The cost of phthalate testing is relatively high: Between about $125 and $350 per component, depending upon where the testing is conducted and any discounts that are applicable. Because one product might have multiple components that require testing, the cost of testing a single product for phthalates could exceed $1,000.

Moreover, more than one sample might have to be tested to provide a high degree of assurance of compliance with the requirements for testing. To the extent that small businesses have lower production or sales volumes than larger businesses, these determinations would be expected to have a disproportionately beneficial impact on small businesses. This beneficial impact is due to spreading the costs of the testing over fewer units; and the benefit of the Commission making the determinations would be greater on a per unit basis for small businesses. Additionally, some testing laboratories may offer their larger customers discounts that might not be available to small businesses that need fewer third-party tests. Making the determinations for these manufactured fibers could significantly benefit a substantial number of firms.

However, it is possible that the benefit of making the determinations could be less than staff expects. Although the manufactured fibers are widely used, the determinations are limited to unfinished fibers, which might be less widely used. Additionally, some firms might have been able to substantially reduce their third party testing costs by using component part testing as allowed by 16 CFR 1109, so the marginal benefit to manufacturers from making the determinations might be low. Also, some firms have reduced their testing costs by using XRF or HDXRF technology, which is less expensive than ICP, and would reduce the marginal benefit of these determinations. Finally, some firms, particularly importers, might not know the specific fibers used in the products they import or whether fibers are unfinished and might opt to conduct the testing anyway to ensure that the products do not violate the requirements.

In summary, although there are a substantial number of small entities that manufacture or import children's toys and childcare articles in which manufactured fibers could be used, we do not have data on the number or the extent to which unfinished manufactured fibers are used in these products. Therefore, we cannot determine whether the reduced burden would be significant for a substantial number of the small entities. We welcome public comments on the potential impact of the proposed rule on small entities. Comments are especially welcome on the following topics:

- The extent to which the specified unfinished manufactured fibers are used in children's toys, and child care articles, especially those manufactured or imported by small firms;
- The potential reduction in third party testing costs that might be provided by the Commission making the determinations, including the extent to which component part testing is already being used and the current cost of testing components made from these unfinished manufactured fibers for compliance with the ASTM elements and phthalate requirements;
- Any situations or conditions in the proposed rule that would make it difficult to use the determinations to reduce third party testing costs; and
- Although the CPSC staff expects that the impact of the proposed rule will be entirely beneficial, any potential negative impacts of the proposed rule.

4. Alternatives Considered To Reduce the Burden on Small Entities

Under section 603(c) of the RFA, an initial regulatory flexibility analysis should ''contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes and which minimize any significant impact of the proposed rule on small entities.'' Because the proposed rule is intended to reduce the cost of third party testing on small businesses and will not impose any additional burden, the Commission did not consider alternatives to the proposed rule that would reduce the burden of this rule on small businesses.

G. Environmental Considerations

The Commission's regulations provide a categorical exclusion for Commission rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required. The Commission's regulations state that safety standards for products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this rule alters that expectation.

List of Subjects in 16 CFR Part 1253

Business and industry, Consumer protection, Imports, Infants and children, Product testing and certification, Toys.

For the reasons stated in the preamble, the Commission proposes to amend title 16 of the CFR to add part 1253 to read as follows:

PART 1253—CHILDREN'S TOYS AND CHILD CARE ARTICLES: DETERMINATIONS REGARDING THE ASTM F963 ELEMENTS AND PHTHALATES FOR UNFINISHED MANUFACTURED FIBERS

Sec.
1253.1 Children's toys and child care articles containing the ASTM F963 elements and phthalates in manufactured fibers and testing requirements.
1253.2 Determinations for unfinished manufactured fibers.

Authority: Sec. 3, Pub. L. 110–314, 122 Stat. 3016; 15 U.S.C. 2063(d)(3)(B).

§ 1253.1 Children's toys and child care articles containing the ASTM F963 elements and phthalates in manufactured fibers and testing requirements.

(a) Section 106 of the CPSIA made the provisions of ASTM F963, Consumer Product Safety Specifications for Toy Safety, a mandatory consumer product safety standard. 16 CFR part 1250 codified these provisions by incorporating by reference ASTM F963, see 16 CFR1250.1. Among the mandated provisions is section 4.3.5 of ASTM F963, which requires that surface coating materials and accessible substrates of children's toys that can be sucked, mouthed, or ingested, must comply with solubility limits that the toy standard establishes for eight elements. Materials used in children's toys subject to section 4.3.5 of the toy standard must comply with the third party testing requirements of section 14(a)(2) of the CPSA, unless listed in § 1253.2.

(b) Section 108(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) permanently prohibits any children's toy or child care article that contains concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP). In accordance with section 108(b)(3) of the CPSIA, 16 CFR part 1307 prohibits any children's toy or child care article that contains concentrations of more than 0.1 percent of diisononyl phthalate

(DINP), diisobutyl phthalate (DIBP), di-n-pentyl phthalate (DPENP), di-n-hexyl phthalate (DHEXP), or dicyclohexyl phthalate (DCHP). Materials used in children's toys and child care articles subject to section 108(a) of the CPSIA and 16 CFR part 1307 must comply with the third party testing requirements of section 14(a)(2) of the Consumer Product Safety Act (CPSA), unless listed in § 1253.2.

§ 1253.2 Determinations for unfinished manufactured fibers.

(a) The following definition for an unfinished manufactured fiber applies for this part 1253. An unfinished manufactured fiber is one that has no chemical additives beyond those required to manufacture the fiber. For unfinished manufactured fibers as defined in this rule, the unfinished manufactured fiber is free of any chemical additives added to impart color or some desirable performance property, such as flame retardancy.

(b) The following unfinished manufactured fibers do not exceed the ASTM F963 elements solubility limits set forth in 16 CFR part 1250 with a high degree of assurance as that term is defined in 16 CFR part 1107:

(1) Nylon;
(2) Polyurethane (Spandex);
(3) Viscose Rayon;
(4) Acrylic and Modacrylic; and
(5) Natural Rubber Latex.

(c) The following unfinished manufactured fibers do not exceed the phthalates content limits set forth in 16 CFR part 1307 with a high degree of assurance as that term is defined in 16 CFR part 1107:

(1) Polyester (polyethylene terephthalate, PET);
(2) Nylon;
(3) Polyurethane (Spandex);
(4) Viscose Rayon;
(5) Acrylic and Modacrylic; and
(6) Natural Rubber Latex.

(d) Accessible component parts of children's toys and child care articles made with the unfinished manufactured fibers, listed in paragraphs (b) and (c) of this section are not required to be third-party tested pursuant to section 14(a)(2) of the CPSA and 16 CFR part 1107.

(e) Accessible component parts of children's toys and child care articles made with manufactured fibers not listed in paragraphs (b) and (c) of this section are required to be third party tested pursuant to section 14(a)(2) of the CPSA and 16 CFR part 1107.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–21517 Filed 10–8–19; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–87204; File No. S7–16–19]

Proposed Exemptive Order Granting a Conditional Exemption From the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors

AGENCY: Securities and Exchange Commission.

ACTION: Notification of proposed exemptive order; request for comment.

SUMMARY: Pursuant to Section 15(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') and Section 36(a)(1) of the Exchange Act, the Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing to grant exemptive relief, subject to certain conditions, to permit municipal advisors registered with the Commission under Section 15B of the Exchange Act to engage in certain limited activities in connection with the direct placement of municipal securities without registering as a broker under Section 15 of the Exchange Act.

DATES: Comments should be received by December 9, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.*

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–16–19. This file number should be included on the subject line if email is used. To help us 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/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Emily Westerberg Russell, Chief Counsel, Joanne Rutkowski, Assistant Chief Counsel, or Kelly Shoop, Special Counsel, at 202–551–5550, in the Division of Trading and Markets; Rebecca Olsen, Director, or Adam Wendell, Senior Special Counsel, at 202–551–5680, in the Office of Municipal Securities; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

A. Municipal Advisor Registration Framework

Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Exchange Act to create a new class of regulated persons, ''municipal advisors.'' [1] The Commission subsequently adopted registration rules for municipal advisors in 2013.[2] Exchange Act Section 15B(e)(4)(A) defines the term ''municipal advisor'' to include a person that provides advice to or on behalf of a municipal entity [3] or obligated person [4] (together, ''Municipal Issuers'')

[1] *See* 15 U.S.C. 78*o*–4(a)(1)(B).

[2] *See Registration of Municipal Advisors,* Exchange Act Rel. No. 70462 (Sept. 30, 2013), 78 FR 67468, 67483 n.200 (Nov. 12, 2013) (''Municipal Advisor Adopting Release'').

[3] Exchange Act Section 15B(e)(8) defines ''municipal entity'' as ''any State, political subdivision of a State, or municipal corporate instrumentality of a State, including (A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities.'' 15 U.S.C. 78*o*–4(e)(8); *see also* 17 CFR 240.15Ba1–1(g).

[4] Exchange Act Section 15B(e)(10) defines ''obligated person'' as ''any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.'' 15 U.S.C. 78*o*–4(e)(10). Exchange Act Rule 15Ba1–1(k) generally provides that obligated person has the same meaning as in Exchange Act Section 15B(e)(10), ''provided, however, the term obligated person shall not include: (1) A person who provides municipal bond insurance, letters of credit, or other liquidity facilities; (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to

with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues.[5]

In adopting the municipal advisor registration rules, the Commission stated that " 'advice with respect to the issuance of municipal securities' should be construed broadly from a timing perspective to include advice throughout the life of an issuance of municipal securities, from the pre-issuance planning stage . . . to the repayment stage for those municipal securities." [6] The Commission noted that, in connection with the issuance of municipal securities, a municipal advisor "may assist municipal entities in developing a financing plan, assist municipal entities in evaluating different financing options and structures, assist in the selection of other parties to the financing (such as bond counsel and underwriters), coordinate the rating process, ensure adequate disclosure, and/or evaluate and negotiate the financing terms." [7]

Unless otherwise excluded or exempted, a person who engages in municipal advisory activities is required to register with the Commission as a municipal advisor [8] and comply with the rules of the Municipal Securities Rulemaking Board ("MSRB").[9] Exchange Act Section 15B(b)(2) requires the MSRB to develop rules that, among other things, prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors, municipal entities, obligated persons, and the public interest.[10]

Exchange Act Section 15B includes certain statutory exclusions from municipal advisor registration, which the Commission interpreted and provided certain additional regulatory exemptions when it adopted the municipal advisor registration rules.[11] For example, Exchange Act Section 15B(e)(4)(C) provides a statutory exclusion from the requirement to register as a municipal advisor for brokers, dealers, and municipal securities dealers serving as underwriters,[12] which was further interpreted by the Commission in adopting the municipal advisor rules.[13] The statute is otherwise silent with respect to whether, and under what circumstances, municipal advisors would be required to register as brokers.

B. Direct Placements of Municipal Securities

Since 2009, municipal entities have increasingly relied on direct placements, that is, direct purchases of municipal securities and direct loans from banks and other lenders, as an alternative to public offerings of municipal securities.[14] The demand for these direct placements has grown substantially over the past several years, as the involvement of commercial banks in the municipal capital markets has increased in terms of both purchases of municipal securities and extensions of loans to state and local governments and their instrumentalities.[15]

As noted above, the Municipal Advisor Adopting Release identifies a wide range of activities in which a registered municipal advisor may engage on behalf of its Municipal Issuer clients. Since the issuance of the Municipal Advisor Adopting Release, the Commission has received questions and requests that it clarify the application of the broker regulatory framework to registered municipal advisors with respect to their activities in facilitating direct placements of municipal securities.[16]

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any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or (3) the federal government." 17 CFR 240.15Ba1–1(k). Obligated persons can include entities acting as conduit borrowers, such as private universities, non-profit hospitals, and private corporations. *See Municipal Advisor Adopting Release,* 78 FR at 67483 n.200.

[5] Exchange Act Section 15B(e)(4)(A)(i).

[6] *Municipal Advisor Adopting Release,* 78 FR at 67490.

[7] *Id.* at 67472.

[8] Exchange Act Section 15B(a)(2).

[9] Exchange Act Section 15B(c)(1).

[10] *See* Exchange Act Section 15B(b)(2)(C). The MSRB has developed a regulatory framework that imposes requirements regarding, among other things, registration of municipal advisors with the MSRB (MSRB Rule A–12); professional qualification requirements (MSRB Rules G–2 and G–3); fair dealing obligations (MSRB Rule G–17); supervisory and compliance obligations (MSRB Rule G–44); restrictions on gifts, gratuities, and non-cash compensation (MSRB Rule G–20); restrictions on political contributions (MSRB Rule G–37); standards for advertising (MSRB Rule G–40); application for a CUSIP number when advising on a competitive sale of new issue municipal securities (MSRB Rule G–34); and books and records requirements (MSRB Rules G–8 and G–9). In addition, MSRB Rule G–42 establishes certain standards of conduct consistent with the fiduciary duty owed by a municipal advisor to its municipal entity clients, including, without limitation, a duty of care and loyalty as well as standards of conduct and duties owed by a municipal advisor to its obligated person clients.

[11] *See Municipal Advisor Adopting Release,* 78 FR at 67503–37; 17 CFR 240.15Ba1–1(d)(2).

[12] The statutory definition of "municipal advisor" excludes a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in Section 2(a)(11) of the Securities Act of 1933). 15 U.S.C. 78*o*–4(e)(4)(C).

[13] *See Municipal Advisor Adopting Release,* 78 FR at 67511–67517. A broker cannot rely on the exclusion and provide advice to a municipal entity on an issuance of municipal securities until it has been engaged to serve as the underwriter for a particular issuance of municipal securities. *See id.* at 67512–13.

[14] *See Amendments to Municipal Securities Disclosure,* Exchange Act Rel. No. 83885 (Aug. 20, 2018), 83 FR 44700, 44702 (Aug. 31, 2018) ("Amendments to Municipal Securities Disclosure"). *See also* MSRB Notice 2015–03, Bank Loan Disclosure Market Advisory (Jan. 29, 2015) (noting that "[direct placements] as an alternative to a public offering could provide potential advantages for issuers, among other things, lower interest and transaction costs, reduced exposure to bank regulatory capital requirements, simpler execution process, greater structuring flexibility, no requirement for a rating or offering document, and direct interaction with the lender instead of multiple bondholders."), *available at http://msrb.org/~/media/Files/Regulatory-Notices/Announcements/2015-03.ashx?n=1;* and Municipal Market Bank Loan Disclosure Task Force, Considerations Regarding Voluntary Secondary Market Disclosure about Bank Loans (May 1, 2013), *available at http://www.nfma.org/assets/documents/position.stmt/wp.direct.bank.loan.5.13.pdf.* The Task Force comprised representatives of the American Bankers Association, Bond Dealers of America, Government Finance Officers Association, Investment Company Institute, National Association of Bond Lawyers, National Association of Health and Educational Facilities Finance Authorities, National Association of Independent Public Finance Advisors, National Federation of Municipal Analysts, and Securities Industry and Financial Markets Association. *See also* National Association of Bond Lawyers, *Direct Purchases of State or Local Obligations by Commercial Banks and Other Financial Institutions* (July 2017), at 2, *available at http://www.chapman.com/media/publication/783_Chapman_NABL_Direct_Purchases_State_Local-Obligations_Banks_Financial_Institutions_072617.pdf.*

[15] *See Amendments to Municipal Securities Disclosure,* 83 FR at 44731. Direct placements may be structured as either loans or municipal securities. *See id.* at 44702. The relief requested would apply (and would be needed) only with respect to direct placements structured as municipal securities.

[16] The Commission has received a number of letters on this topic over the past few years. *See* Letter to Chair Mary Jo White, Commission from Mike Nicholas, Chief Executive Officer, Bond Dealers of America ("BDA") (Oct. 17, 2014); Letter to Chair Mary Jo White, Commission from Terri Heaton, President, National Association of Municipal Advisors ("NAMA") (Dec. 15, 2014); Letter to Chair Mary Jo White, Commission from Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") (Mar. 12, 2015). More recently, Commission staff has received additional letters on this topic with more specific requests for guidance, including a request from a registered municipal advisor. *See* Letter to Brett Redfearn and Joanne C. Rutkowski, Division of Trading and Markets and Rebecca Olsen, Office of Municipal Securities, from Cheryl Maddox, General Counsel, and Leo Karwejna, Chief Compliance Officer, Public Financial Management, Inc. (Oct. 30, 2018) ("PFM Letter"); Letter to Brett Redfearn and Joanne C. Rutkowski, Division of Trading and Markets and Rebecca Olsen, Office of Municipal Securities, from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA (June 12, 2019); Letter to Brett Redfearn and Joanne C. Rutkowski, Division of Trading and Markets and Rebecca Olsen, Office of Municipal Securities, from Mike Nicholas, Chief Executive Officer, BDA (June 28, 2019); Letter to Brett Redfearn, Division of Trading and Markets and Rebecca Olsen, Office of Municipal Securities, from Susan Gaffney,

Continued

II. Discussion of Proposed Relief

The Commission is proposing to grant exemptive relief pursuant to Sections 15(a)(2) [17] and 36(a)(1) [18] of the Exchange Act to permit a registered municipal advisor,[19] acting on behalf of a Municipal Issuer client, to solicit specified institutional investors in connection with the direct placement of municipal securities without registering as a broker under Section 15 of the Exchange Act, where certain conditions are met.

Congress, in enacting the municipal advisor provisions, established a framework for comprehensive regulation of those entities in connection with their business of providing advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues. Registered municipal advisors are subject to a comprehensive regulatory framework, including rules that, among other things, are designed to prevent fraudulent and manipulative acts and practices as well as protect investors, municipal entities, obligated persons, and the public interest.[20] The Commission, as noted above, has described the role of a municipal advisor as assisting municipal entities in developing a financing plan, assisting in evaluating different financing options and structures, assisting in selecting other parties to the financing (such as bond counsel and underwriters), coordinating the rating process, ensuring adequate disclosure, and/or evaluating and negotiating the financing terms. The Commission has not previously addressed, however, whether and under what circumstances a registered municipal advisor may interact or negotiate with potential investors on behalf of its municipal entity client without being required to register as a broker, with respect to direct placements or other issuances of municipal securities.

Because the definition in the Exchange Act of the term ''broker'' and the registration requirements under Section 15(a) of the Exchange Act were drawn by Congress to encompass a wide range of activities involving investors and securities markets,[21] a municipal advisor that identifies and assesses potential providers for direct placements by a Municipal Issuer client could be viewed as engaging in solicitation, a factor relevant to a determination of broker status.[22] This is particularly true in light of the fact that service providers in municipal securities transactions, including municipal advisors, typically are paid from the proceeds of the securities offering and thus routinely receive transaction-based compensation. The receipt of transaction-based compensation has been considered by courts as a factor indicating that registration as a broker may be required.[23] Absent an exception or exemption, a municipal advisor engaging in this activity could be required to register under Section 15(a) of the Exchange Act.[24] There is currently no exception or exemption promulgated by the Commission applicable to these situations and as noted above, the Commission has not previously addressed this issue.

The Commission is mindful that the municipal advisor regulatory scheme established a framework for comprehensive regulation of those entities in connection with their business of providing advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues. The Commission, as noted above, has described the role of a municipal advisor as assisting municipal entities in developing a financing plan, assisting in evaluating different financing options and structures, assisting in selecting other parties to the financing (such as bond counsel and underwriters), coordinating the rating process, ensuring adequate disclosure, and/or evaluating and negotiating the financing terms. The Commission has not previously addressed, however, whether and under what circumstances a registered municipal advisor may interact or negotiate with potential investors on behalf of its municipal entity client without being required to register as a

Executive Director, NAMA (July 18, 2019); Letter to Brett Redfearn and Joanne C. Rutkowski, Division of Trading and Markets and Rebecca Olsen, Office of Municipal Securities, from Mike Nicholas, Chief Executive Officer, BDA (Sept. 9, 2019); Letter to Commissioner Robert J. Jackson Jr. from Mike Nicholas, Chief Executive Officer, BDA (Sept. 25, 2019); Letter to Brett Redfearn and Joanne C. Rutkowski, Division of Trading and Markets and Rebecca Olsen, Office of Municipal Securities, from Mike Nicholas, Chief Executive Officer, BDA (Sept. 25, 2019). All of the letters are available on the Commission's Office of Municipal Securities homepage.

[17] Section 15(a)(2) of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt from the registration requirements of Section 15(a)(1) any broker or class of brokers, by rule or order, as it deems consistent with the public interest and the protection of investors. *See* 15 U.S.C. 78*o*(a)(2).

[18] Section 36(a)(1) of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. *See* 15 U.S.C. 78mm.

[19] For purposes of the proposed exemption, the term ''registered municipal advisor'' means a municipal advisor that is registered in accordance with Section 15B(a) of the Exchange Act and Rule 15Ba1–2 thereunder. *See* 17 CFR 240.15Ba1–2.

[20] *See* Exchange Act Sections 15B(a)(5) and (c)(1) and *supra* note 10 for a description of the applicable MSRB rules.

[21] *See, e.g., Registration Requirements for Foreign Broker-Dealers,* Exchange Act Release No. 27017 (Jul. 11, 1989), 54 FR 30013, at 30014–15 (Jul. 18, 1989). Section 15(a)(1) of the Exchange Act prohibits any broker or dealer from making ''use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security [] unless such broker or dealer is registered in accordance with'' Section 15(b) of the Exchange Act. 15 U.S.C. 78*o*(a)(1). Section 3(a)(4)(A) of the Exchange Act defines broker generally as ''any person engaged in the business of effecting transactions in securities for the account of others.'' 15 U.S.C. 78c(a)(4)(A).

[22] *See, e.g., SEC* v. *Century Inv. Transfer Corp., et al.,* No. 71–cv–3384, 1971 WL 297, at *5 (S.D.N.Y. Oct. 5, 1971) (Century ''engaged in the brokerage business by soliciting customers through ads in the Wall Street Journal, and engaging in sales activities designed to bring about mergers between private corporations and publically held shells controlled by'' a co-defendant); *SEC* v. *Hansen,* No. 83–cv–3692, 1984 WL 2413, at *4 (Apr. 6, 1984) (defendant engaged in unregistered broker activity when he ''sold or attempted to sell interest in the five [securities] by use of the mails, the telephone, advertisements in publications distributed nationally and by other interstate means of communication''); *SEC* v. *National Executive Planners, Ltd.,* et al., 503 F. Supp. 1066, 1072–73 (M.D.N.C. 1980) (defendant engaged in unregistered broker activity by using the mails and telephone to ''solicit[] clients actively'' in the offer and sale of securities); *SEC* v. *Earthly Mineral Solutions, Inc.,* No. 2:07–cv–1057, 2011 WL 1103349, at *2 (D. Nev. Mar. 23, 2011) (defendant engaged in unregistered broker activity when, among other things, he ''conducted general solicitations through newspaper advertisements''); *SEC* v. *Deyon,* 977 F. Supp. 510, 518 (D. Maine 1997) (defendants engaged in unregistered broker activity when they ''solicited investors by phone and in person,'' ''distributed documents and . . . prepared and distributed sales circulars'').

[23] *See, e.g., SEC* v. *Helms,* No. 13–cv–01036, 2015 WL 5010298, at *17 (W.D. Tex. Aug. 21, 2015) (''In determining whether a person 'effected transactions [for purposes of the Exchange Act registration requirements],' courts consider several factors, such as whether the person: (1) Solicited investors to purchase securities, (2) was involved in negotiations between the issuer and the investor, and (3) received transaction-related compensation.'') (citing cases initiated by the Commission).

[24] Although Section 15(a) applies to both brokers and dealers, the proposed exemption would apply only to activities that historically have been associated with broker activity; that is, effecting securities transactions for the account of others.

broker, with respect to direct placements or other issuances of municipal securities.

The Commission preliminarily believes that there are certain limited circumstances in which a registered municipal advisor should be permitted to solicit investors in connection with the direct placement of municipal securities by its Municipal Issuer client, without registering as a broker under Section 15 of the Exchange Act. Accordingly, the Commission is proposing to grant exemptive relief pursuant to Sections 15(a)(2) and 36(a)(1) of the Exchange Act [25] to permit such activity without registration as a broker, subject to certain conditions described below. For purposes of this exemption, ''Municipal Issuer'' would be defined as either a municipal entity or an obligated person, consistent with Exchange Act Sections 15B(e)(8) and 15B(e)(10), respectively.[26]

The proposed exemption would apply only to a registered municipal advisor's activities in connection with the ''direct placement'' by a Municipal Issuer of an entire issuance of municipal securities with a single ''Qualified Provider,'' which we propose to define as (i) a bank, savings and loan association, insurance company, or registered investment company; or (ii) an investment adviser registered with the Commission or with a state; or (iii) any other institution with total assets of at least $50 million.[27] The proposed exemption thus would not be available in transactions involving retail investors, including public offerings of municipal securities.

The Commission is proposing to limit the universe of Qualified Providers to entities that otherwise would be ''institutional investors'' for purposes of FINRA rules or ''sophisticated municipal market professionals'' (other than natural persons) under MSRB rules, a status that is equated with a certain level of investor sophistication.[28] The Commission recognizes that there may be an inherent conflict between the interests of a municipal advisor on one hand, acting on behalf of its Municipal Issuer client, and those of a potential investor on the other. As discussed below, the proposed exemption is subject to conditions, including the requirement that the investor be a Qualified Provider, that are intended to mitigate investor protection concerns.[29] Further, nothing in the proposed relief would preclude a Qualified Provider (or any other transaction participant) from engaging a registered broker or other intermediary for the transaction. The condition that the entire issuance be placed with a single Qualified Provider also reflects the Commission's understanding of how these transactions are structured currently.[30]

As noted above, the proposed exemption would permit registered municipal advisors to solicit investors so long as (1) those investors meet the definition of Qualified Provider and (2) the solicitation is in connection only with a potential direct placement of an entire issuance of municipal securities with a single Qualified Provider by the registered municipal advisor's Municipal Issuer client. The proposed exemption does not prescribe the means of solicitation. Permitted solicitation could take a variety of forms. For example, Qualified Providers could be identified and assessed in several ways: Based upon the Municipal Issuer's or registered municipal advisor's prior knowledge and experience, the use of publicly-available information sources, or identification of Qualified Providers through broader solicitation activities.[31]

A registered municipal advisor wishing to rely on the proposed exemption would be subject to certain conditions:

First, the registered municipal advisor would be required to make written disclosures to the Qualified Provider stating that the registered municipal advisor represents solely the interests of the Municipal Issuer and not the Qualified Provider. The registered municipal advisor would also be required to obtain from the Qualified Provider written acknowledgment of receipt of those disclosures.

Second, the registered municipal advisor would also need to obtain a written representation from the Qualified Provider that the Qualified Provider is capable of independently evaluating the investment risks of the transaction. This condition is consistent with the established framework for the institutional investor exemption from a broker's customer-specific suitability obligations under FINRA rules as well as the analogous exemption under MSRB rules.[32]

Finally, the proposed exemption would apply only with respect to the limited activities, and subject to the conditions described above, including that the entire issuance of municipal securities be placed with a single Qualified Provider and that the municipal advisor comply with all applicable Commission and MSRB rules. A registered municipal advisor that complies with the conditions of the exemption would be permitted to solicit Qualified Providers on behalf of its Municipal Issuer client and receive transaction-based compensation for

[25] *See* 15 U.S.C. 78*o*(a)(2); 15 U.S.C. 78mm.

[26] *See supra* n. 3 and 4.

[27] The Commission's proposed definition of Qualified Provider tracks the definition of Institutional Accounts under FINRA rules and the definition of Sophisticated Municipal Market Professionals under MSRB rules, with the exception that a Qualified Provider could not be a natural person. This is consistent with the Commission's preliminary view that for purposes of the exemption permitted transaction participants should be limited to an institutional investor purchasing the entire issuance for its own investment purposes. *See* FINRA Rule 4512(c) and MSRB Rule D–15(a).

[28] *See* FINRA Rule 2111(b), which provides an exemption to customer-specific suitability for institutional investors if certain conditions are met. MSRB Rule G–48(c) provides a similar exemption.

[29] *See infra* pp. 14–15 (describing required disclosures to the Qualified Provider) and 16 (describing the municipal advisor's duty of fair dealing and the Commission's antifraud protections). The Commission is seeking comment on questions related to potential investor protection concerns associated with this proposed exemption. Among other things, it is the Commission's understanding that in a direct placement the institutional investor—often a bank—performs its own due diligence on the issuer subject to the institution's own underwriting standards and generally does not rely on a broker to perform that service.

[30] *See* MSRB Regulatory Notice 2016–12, Direct Purchases and Bank Loans as Alternatives to Public Financing in the Municipal Securities Market (April 4, 2016) (''The MSRB and FINRA are aware of the increasing practice of *privately placing municipal securities directly with a single purchaser* (sometimes referred to as ''direct purchases'') and of the use of bank loans as alternatives to traditional public offerings in the municipal securities market.'') (emphasis added).

[31] The solicitation activities would be in addition to the core advisory activities in which a registered municipal advisor might otherwise engage, identified by the Commission in the Municipal Advisor Adopting Release as typical of municipal advisory activities with respect to the issuance of municipal securities, namely assisting municipal entities and/or obligated person clients in: (i) Developing a financing plan; (ii) assisting in evaluating different financing options and structures; (iii) assisting in selecting other parties to the financing, such as bond counsel; (iv) coordinating the rating process, if applicable; (v) ensuring adequate disclosure; and/or (vi) evaluating and negotiating the financing terms with other parties to the financing, including the provider of the direct placement. *See* Municipal Advisor Adopting Release, 78 FR at 67472.

[32] *See* FINRA Rule 2111(b) and Supplementary Material .07 (deeming a broker's customer-specific suitability obligation fulfilled in instances where the member or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the member's or associated person's recommendations). *See also* MSRB Rule G–48(c) (eliminating the broker, dealer, or municipal securities dealer's obligation to perform a customer-specific suitability analysis if it reasonably concludes the customer is a Sophisticated Municipal Market Professional as defined in MSRB Rule D–15).

services provided in connection with a direct placement as described above without being required to register as a broker under Section 15(a) of the Exchange Act.[33] These functions are some of the most relevant to a determination of broker status, which may therefore require registration.[34] Accordingly, if any of the conditions are *not* met—for example, the municipal advisor fails to comply with the disclosure conditions described above—the municipal advisor could not rely on the exemption and would need to consider whether it is required to register with the Commission as a broker under Section 15(a) of the Exchange Act. The exemption would apply only with respect to the defined activities. A registered municipal advisor could not rely on this proposed exemption to engage in broker activity relating to municipal securities offerings beyond the scope of the proposed exemption, such as facilitating a public offering or the sale of securities to a retail investor. Further, a registered municipal advisor seeking to rely on the exemption would need to make and keep the records required by Exchange Act Rule 15Ba1–8(a)(1). Finally, consistent with the narrow scope of activities contemplated by the proposed exemption, a registered municipal advisor seeking to rely on this proposed exemption could not bind the Municipal Issuer client, or handle funds or securities in connection with the direct placement. The Commission preliminarily believes that these types of activities would implicate the policies underlying the broker regulatory framework.

The Commission preliminarily believes that the proposed conditions with respect to transaction participants, disclosure requirements, and transaction type—in combination with applicable regulatory protections—should sufficiently restrict the scope of the proposed exemption such that permitting solicitation activities in this limited context would not implicate the need for additional regulation of these activities under the broker regulatory framework. For example, like brokers, registered municipal advisors have an obligation to deal fairly with all persons—which, as relevant here, includes any potential Qualified Providers.[35] Also, the antifraud provisions of the Exchange Act as well as the Securities Act of 1933 apply equally to any person, including registered municipal advisors and brokers.[36] The Commission preliminarily believes these are important safeguards that operate as a constraint on the conduct of registered municipal advisors, independent of whether they are registered as a broker. Additionally, as stated above, the proposed exemption would be limited to dealings with Qualified Providers, which are entities that meet an established threshold of investor sophistication, and the required disclosures include an affirmative representation by the Qualified Provider that it is capable of independently evaluating the risks, which is consistent with the institutional suitability exemption under existing FINRA rules.[37] Finally, the Commission notes that the proposed conditional exemption would not preclude any transaction participant in a direct placement from engaging a registered broker or other intermediary for the transaction.

Accordingly, for the reasons discussed above, the Commission preliminarily believes that the proposed conditional exemption would be consistent with the public interest and the protection of investors and would be necessary or appropriate in the public interest.

III. Request for Comments

The Commission is seeking comment on all aspects of the proposed exemption. In particular, the Commission requests comment on the following questions. When responding to the request for comment, please explain your reasoning.

1. Has the Commission appropriately identified the activities in which a registered municipal advisor would be able to engage when representing a municipal entity or obligated person in connection with direct placements pursuant to the exemption? Please explain.

2. Should any of the identified activities proposed to be included be eliminated or modified? Please explain.

3. Has the Commission appropriately defined Qualified Provider? If not, what would be a more appropriate definition and why?

4. Should the definition of Qualified Provider be edited to add ''credit unions''? If so, please explain.

5. Does the definition of Qualified Provider, together with the required conditions, provide adequate assurance that the potential investors included in such definition will be sufficiently able to evaluate the creditworthiness of the Municipal Issuer and the relevant terms of the direct placement offering, among other things? If not, please explain.

6. Should the Commission limit the exemption to direct placements of a specific size threshold—*e.g.,* limited by aggregate principal amount or by Municipal Issuers with a limited aggregate amount of municipal securities outstanding? If so, why and how should the Commission define such thresholds?

7. Should the exemption for municipal advisors with respect to direct placements be conditioned on municipal advisors being precluded from engaging in solicitation activities on behalf of their Municipal Issuer clients? If so, which activities and why? Please explain.

8. Has the Commission appropriately defined the conditions that should apply to the proposed exemption? Please explain.

[33] The Commission preliminarily believes that this exemption will also benefit firms that are dually registered as municipal advisors and brokers. A dually-registered firm that is acting in a municipal advisory capacity advising a Municipal Issuer client on a direct placement of municipal securities would be permitted as well to engage in limited solicitation activities in accordance with the terms and conditions of the proposed exemption without being required to comply with broker requirements, such as books and records requirements, with respect to those activities. Instead, so long as the terms and conditions of the exemption are met, the municipal advisor will be acting in the municipal advisory capacity through the completion of the transaction. The Commission believes disclosure clarifying the role of the municipal advisor is particularly critical for dual registrants to avoid confusion on the part of potential Qualified Providers as to the capacity in which the firm is acting with respect to a direct placement.

[34] *See, e.g., Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Section 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934,* Exchange Act Rel. No. 44291, 66 FR 27760, 27772–73 at n.124 (May 18, 2001) (''Solicitation is one of the most relevant factors in determining whether a person is effecting transactions.''), *cited in Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Rel. No. 75611 (Aug. 5, 2015), 80 FR 48964, 48976 (Aug. 14, 2015) (''The Commission has previously interpreted the term 'effecting transactions' in the context of securities transactions to include a number of activities, ranging from identifying potential purchasers to settlement and confirmation of a transaction.''); *Cornhusker Energy Lexington, LLC* v. *Prospect Street Ventures,* No. 8:04CV586, 2006 WL 2620985, at *6 (D. Neb. Sept. 12, 2006) (''Transaction-based compensation, or commissions are one of the hallmarks of being a broker-dealer.'').

[35] *See, e.g.,* MSRB Rule G–17 (requiring municipal advisors to ''deal fairly with all persons and . . . not engage in any deceptive, dishonest, or unfair practice''); FINRA Rule 2010 (prohibiting brokers from effecting transactions in, or inducing the purchase or sale of, securities ''by means of any manipulative, deceptive or other fraudulent device or contrivance''); FINRA Rule 2111 Supplementary Material .01 (''Implicit in all member and associated person relationships with customers and others is the fundamental responsibility for fair dealing.'')

[36] *See* 15 U.S.C. 78j and 17 CFR 240.10b–5; *see also* 15 U.S.C. 77q.

[37] *See* FINRA Rule 2111(b) and Supplementary Material .07.

9. Should any of the proposed conditions be eliminated or modified? Please explain.

10. Are there other or different conditions that should apply to the proposed exemption? Please explain.

11. Are there any specific written disclosures to Qualified Providers that should be required, beyond those that are a condition of the proposed exemption? For example, should the municipal advisor be required to provide a written disclosure to the Qualified Provider that it may elect to engage a registered broker or other intermediary for the transaction? Please explain.

12. Should the exemption be expanded to include transactions in which multiple Qualified Providers purchase portions of the entire municipal securities offering directly from the Municipal Issuer? What are the relevant issues for the Commission to consider in determining whether such an expansion is necessary or appropriate in the public interest, and consistent with the protection of investors? For example, would the participation of multiple purchasers necessitate additional or different conditions or present heightened investor protection concerns? Please explain.

13. Is the type of direct placement contemplated by this proposed exemptive order typically resold into the secondary market? If so, how often and to what type of investor? Does the possibility of such a resale raise any investor protection concerns? If so, please explain. How should the Commission address those concerns?

14. Under the proposed definition of ''Municipal Issuers,'' the exemption would apply to conduit transactions involving obligated persons—*i.e.,* the issuance of municipal securities by a municipal entity to finance a project to be used primarily by a third-party obligated person, such as a non-profit hospital or private university. Are there reasons the exemption should not apply with respect to obligated persons? If so, why not? If the exemption should apply, should the Commission impose additional or different conditions concerning those transactions? Should the exemption be conditioned on additional or different disclosure requirements for transactions involving obligated persons? Please explain.

15. Should the Commission, instead of granting the conditional exemption, require municipal advisors wishing to solicit Qualified Providers for direct placements on behalf of their Municipal Issuer clients to also register as brokers? For example, would a broker registration requirement provide necessary protections for investors, and if so, what specific protections would result from broker registration with respect to direct placement transactions? What would be the impact of such a requirement on municipal advisors operating in this space, in terms of both cost and competitive considerations? Please explain.

16. With respect only to direct placement transactions described above, what are the practical implications of the requirements resulting from broker registration, for example those related to any due diligence or other investor protection obligations, that are not applicable to municipal advisors? What are the practical implications of the differences between broker obligations and municipal advisors' fair dealing obligations? Please be specific and limit the context of the response to direct placements in which a single institutional investor purchases the entire issuance.

17. Would the proposed exemption have a competitive impact—either positive or negative—on municipal advisors and/or brokers? For example, would this proposed exemption facilitate capital formation for smaller Municipal Issuers? Are the costs of engaging a broker for direct placements burdensome for smaller Municipal Issuers? Please explain.

By the Commission.

Dated: October 2, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–21882 Filed 10–8–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106282–18]

RIN 1545–BP35

Limitation on Deduction for Dividends Received From Certain Foreign Corporations and Amounts Eligible for Section 954 Look-Through Exception; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations which cross-references temporary regulations under section 245A of the Internal Revenue Code (the ''Code'') that limit the dividends received deduction available for certain dividends received from current or former controlled foreign corporations.

DATES: The public hearing is being held on Friday, November 22, 2019, at 10:00 a.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Monday, November 11, 2019. If no outlines are received by November 11, 2019, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–106282–18), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–106282–18), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–106282–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Logan M. Kincheloe, (202) 317–6937; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers), *fdms.database@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–106282–18) that was published in the **Federal Register** on Tuesday, June 18, 2019 (84 FR 28426).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by September 16, 2019, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Monday, November 11, 2019.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting

the Publications and Regulations Branch at (202) 317–6901 (not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

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

[FR Doc. 2019–21884 Filed 10–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118784–18]

RIN 1545–BO91

Guidance on the Transition From Interbank Offered Rates to Other Reference Rates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the tax consequences of the transition to the use of reference rates other than interbank offered rates (IBORs) in debt instruments and non-debt contracts. The proposed regulations are necessary to address the possibility that an alteration of the terms of a debt instrument or a modification of the terms of other types of contracts to replace an IBOR to which the terms of the debt instrument or other contract refers with a new reference rate could result in the realization of income, deduction, gain, or loss for Federal income tax purposes or could result in other tax consequences. The proposed regulations will affect parties to debt instruments and other contracts that reference an IBOR.

DATES: Written or electronic comments and requests for a public hearing must be received by November 25, 2019.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–118784–18) 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 (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–118784–18), 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–118784–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Caitlin Holzem at (202) 317–4391; concerning submissions of comments and requesting a hearing, Regina L. Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 860G, 882, 1001, and 1275 of the Internal Revenue Code (Code).

1. Elimination of IBORs

On July 27, 2017, the U.K. Financial Conduct Authority, the U.K. regulator tasked with overseeing the London interbank offered rate (LIBOR), announced that all currency and term variants of LIBOR, including U.S.-dollar LIBOR (USD LIBOR), may be phased out after the end of 2021. The Financial Stability Board (FSB) and the Financial Stability Oversight Council (FSOC) have publicly acknowledged that in light of the prevalence of USD LIBOR as the reference rate in a broad range of financial instruments, the probable elimination of USD LIBOR has created risks that pose a potential threat to the safety and soundness of not only individual financial institutions, but also to financial stability generally. In its 2014 report ''Reforming Major Interest Rate Benchmarks,'' the FSB discussed the problems associated with key IBORs and made recommendations to address these problems, including the development and adoption of nearly risk-free reference rates to replace IBORs. The FSB and FSOC have recognized that a sudden cessation of a widely used reference rate could cause considerable disruptions in the marketplace and might adversely affect the normal functioning of a variety of markets in the United States, including business and consumer lending and the derivatives markets.

The Alternative Reference Rates Committee (ARRC), whose ex-officio members include the Board of Governors of the Federal Reserve System, the Treasury Department, the Commodity Futures Trading Commission, and the Office of Financial Research, was convened by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York to identify alternative reference rates that would be both more robust than USD LIBOR and that would comply with standards such as the International Organization of Securities Commissions' ''Principles for Financial Benchmarks.'' The ARRC was also responsible for developing a plan to facilitate the voluntary acceptance of the alternative reference rate or rates that were chosen. On March 5, 2018, the ARRC published a report that summarizes the work done earlier to select the Secured Overnight Financing Rate (SOFR) as the replacement for USD LIBOR. The Federal Reserve Bank of New York began publishing SOFR daily as of April 3, 2018, in cooperation with the Office of Financial Research. In addition, the Chicago Mercantile Exchange and other entities have launched trading in SOFR futures and have begun clearing for over-the-counter SOFR swaps. Although SOFR is calculated from overnight transactions, it is possible that one or more term rates based on SOFR derivatives may be added in the future.

Other jurisdictions have also been working toward replacing the LIBOR associated with their respective currencies. The Working Group on Sterling Risk-Free Reference Rates in the United Kingdom chose the Sterling Overnight Index Average (SONIA) to replace British pound sterling LIBOR; the Study Group on Risk-Free Reference Rates in Japan chose the Tokyo Overnight Average Rate (TONAR) to replace yen LIBOR and to serve as an alternative to the Tokyo Interbank Offered Rate (TIBOR); and the National Working Group in Switzerland selected the Swiss Average Rate Overnight (SARON) to replace Swiss franc LIBOR. Alternatives for the relevant IBOR rate have also been selected for Australia, Canada, Hong Kong, and the Eurozone. Other countries are at various stages of selecting a reference rate to replace their respective versions of IBOR.

2. Letters on the Tax Implications of the Elimination of IBORs on Debt Instruments and Non-Debt Contracts

On April 8, 2019, and June 5, 2019, the ARRC submitted to the Treasury

Department and the IRS documents that identify various potential tax issues associated with the elimination of IBORs and request tax guidance to address those issues and to facilitate an orderly transition (ARRC letters). The ARRC stated that existing debt instruments and derivatives providing for IBOR-based payments must be amended to address the coming elimination of IBORs. The ARRC indicated that these amendments will likely take one of two forms. First, the parties may alter the instruments to replace the IBOR-referencing rate with another rate, such as one based on SOFR. Second, the parties may alter the instruments to replace an IBOR-referencing fallback rate with another fallback rate upon the discontinuance of the IBOR or at some other appropriate time. The ARRC describes fallback provisions as the provisions specifying what is to occur if an IBOR is permanently discontinued or is judged to have deteriorated to an extent that its relevance as a reliable benchmark has been significantly impaired. The ARRC notes that, regardless of which of these two forms the amendment takes, the rate that replaces the IBOR-referencing rate may include ''(i) appropriate adjustments to the spread above the base reference rate in order to account for the expected differences between the two base reference rates (generally representing term premium and credit risk) and/or (ii) a one time, lump-sum payment in lieu of a spread adjustment.'' The ARRC also stated that newer debt instruments and derivatives may already include fallback provisions that anticipate the elimination of an IBOR and provide a methodology for changing the rate when the relevant IBOR becomes unreliable or ceases to exist.

The ARRC letters urged broad and flexible tax guidance in this area. The ARRC letters requested guidance on specific tax issues that arise as a result of these efforts to transition from IBORs to alternative rates. The ARRC first asked that a debt instrument, derivative, or other contract not be treated as exchanged under section 1001 when the terms of the instrument are amended either to replace an IBOR-referencing rate or to include a fallback rate in anticipation of the elimination of the relevant IBOR. The ARRC noted that these same amendments could cause a taxpayer with a synthetic debt instrument under § 1.1275–6 to be treated as legging out of the integrated transaction, and it also sought clarification on the source and character of a one-time payment in lieu of a spread adjustment on a derivative. The ARRC recommended treating SOFR, similar replacement rates for IBOR-referencing rates in other currencies, and potentially any qualified floating rate under § 1.1275–5 as permitted alternative reference rates to IBOR-referencing rates. The ARRC further requested that alteration of a regular interest in a real estate mortgage investment conduit (REMIC) to replace an IBOR-referencing rate or to change fallback provisions not prevent the regular interest from having fixed terms on the startup day, and that the existence and exercise of a fallback provision not prevent a variable interest rate on a regular interest in a REMIC from being a permitted variable rate under § 1.860G–1. Additionally, the ARRC suggested that, for the purpose of determining the amount and timing of original issue discount (OID) on a debt instrument, an IBOR-referencing qualified floating rate and the fallback rate that replaces the IBOR-referencing rate should be treated as a single qualified floating rate. Finally, the ARRC requested that the reference to 30-day LIBOR in § 1.882–5(d)(5)(ii)(B) be amended so that taxpayers may continue to use the simplified method of computing excess interest permitted under that section. The Treasury Department and the IRS received letters from the Structured Finance Industry Group and the Real Estate Roundtable articulating concerns similar to those set forth in the ARRC letters. The comment letters also raised certain issues that are beyond the scope of this regulation.

3. Tax Implications of the Elimination of IBORs on Debt Instruments and Non-Debt Contracts

The following subsections discuss the primary tax issues raised by changes to the terms of debt instruments and non-debt contracts in anticipation of the elimination of IBORs.

A. Section 1001

Section 1001 provides rules for determining the amount and recognition of gain or loss from the sale or other disposition of property. The regulations under section 1001 generally provide that gain or loss is realized upon the exchange of property for other property differing materially either in kind or in extent. See § 1.1001–1(a). In the case of a debt instrument, § 1.1001–3(b) provides that a significant modification of the debt instrument results in an exchange of the original debt instrument for a modified debt instrument that differs materially either in kind or in extent for purposes of § 1.1001–1(a). Under § 1.1001–3(c), a modification is generally any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or a holder of a debt instrument. However, a modification generally does not include an alteration of a legal right or obligation that occurs by operation of the terms of a debt instrument. Section 1.1001–3(a)(1) provides that the rules of § 1.1001–3 apply to any modification of a debt instrument, regardless of whether the modification takes the form of an amendment to the terms of the debt instrument or an exchange of a new debt instrument for an existing debt instrument. An alteration of a legal right or obligation that is treated as a modification must be tested for significance under § 1.1001–3(e). Consequently, changing the interest rate index referenced in a U.S. dollar-denominated debt instrument from USD LIBOR to SOFR if no provision has been made in the terms of the debt instrument for such a change is an alteration of the terms of the debt instrument that could be treated as a significant modification and result in a tax realization event, even when USD LIBOR no longer exists.

Other than § 1.1001–4, which generally prescribes the tax consequences to the nonassigning counterparty when there is a transfer or assignment of a derivative contract by a dealer or a clearinghouse, and § 1.1001–5, which addresses the conversion of legacy currencies to the euro, there are no regulations that specifically address when a modification of a derivative or other non-debt contract creates a realization event. This absence of regulations has led to concern that modifying a non-debt contract to reflect the elimination of an IBOR, such as changing the floating rate index referenced in an interest rate swap contract from USD LIBOR to SOFR, could cause a deemed termination of the non-debt contract for tax purposes.

Moreover, a modification of the fallback provisions of a debt instrument or non-debt contract to address the possibility of an IBOR being eliminated might require the parties to recognize income, deduction, gain, or loss. For example, if the terms of a derivative provide for payments at an IBOR-referencing rate but contain no fallback provision, a modification to the terms of the derivative to add a fallback to the IBOR-referencing rate could cause a deemed termination of the derivative. Likewise, if the terms of a debt instrument provide for an IBOR-referencing fallback rate, an alteration of the terms of the debt instrument to replace the IBOR-referencing fallback rate with another fallback rate could

cause a deemed exchange of the debt instrument.

B. Integrated Transactions and Hedges

A debt instrument and one or more hedges may be treated in certain circumstances as a single, integrated instrument for certain specified purposes. For example, § 1.1275–6 describes the circumstances under which a debt instrument may be integrated with a hedge for the purpose of determining the amount and timing of the taxpayer's income, deduction, gain, or loss. Sections 1.988–5(a) (regarding foreign currency transactions) and 1.148–4(h) (regarding arbitrage investment restrictions on tax-exempt bonds issued by State and local governments) similarly provide rules by which a debt instrument may be integrated with a hedge for a specific purpose. In each of these cases, amending an IBOR-referencing debt instrument or hedge to address the elimination of the IBOR may cause a deemed termination or legging out of the integrated hedge that in effect dissolves the integrated instrument into its component parts, which may yield undesirable tax consequences or recognition events for the parties to those instruments.

Similarly, § 1.446–4 provides rules by which taxpayers determine the timing of income, deduction, gain, or loss attributable to a hedging transaction. These rules generally state that the method of accounting used by a taxpayer for a hedging transaction must reasonably match the timing of income, deduction, gain, or loss from the hedging transaction with the timing of the income, deduction, gain, or loss from the item or items being hedged. If a taxpayer hedges an item and later terminates the item but keeps the hedge, the taxpayer must match the built-in gain or loss on the hedge to the gain or loss on the terminated item. Accordingly, amending the terms of a debt instrument or hedge to address the elimination of an IBOR could affect the timing of gain or loss under § 1.446–4 if the amendment results in an exchange under section 1001.

C. Source and Character of a One-Time Payment

The ARRC letters pointed out that, when parties alter the terms of a debt instrument or modify the terms of a non-debt contract to replace a rate referencing an IBOR, the alteration or modification may consist not only of the replacement of the IBOR with a new reference rate such as SOFR but also of an adjustment to the existing spread to account for the differences between the IBOR and the new reference rate. Alternatively, in lieu of (or in addition to) an adjustment to the spread, the parties may agree to a one-time payment as compensation for any reduction in payments attributable to the differences between the IBOR and the new reference rate. In the latter case, questions arise about the source and character of this one-time payment for various purposes of the Internal Revenue Code, such as the withholding rules in sections 1441 and 1442.

D. Grandfathered Debt Instruments and Non-Debt Contracts

The requirements of certain statutes and regulations do not apply to debt instruments and non-debt contracts issued before a specific date. For example, an obligation issued on or before March 18, 2012, is not a registration-required obligation under section 163(f) if the obligation was issued under certain arrangements reasonably designed to ensure that the obligation was sold only to non-U.S. persons. If such an obligation is modified after March 18, 2012, in a manner that results in an exchange for purposes of § 1.1001–1(a), the modified obligation is treated as reissued and will be a registration-required obligation unless otherwise excepted under section 163(f)(2)(A). Likewise, payments made on certain debt instruments and non-debt contracts outstanding on July 1, 2014, (grandfathered obligations) are exempt from withholding requirements that may otherwise apply under chapter 4 of the Code, subject to any material modification of a grandfathered obligation that results in the obligation not being treated as outstanding on July 1, 2014. Accordingly, if a debt instrument is altered or a non-debt contract is modified to replace an IBOR-referencing rate in anticipation of the elimination of the IBOR, the debt instrument or non-debt contract may be treated as reissued as a consequence of the alteration or modification and therefore subject to the statute or regulation from which it was previously exempt.

E. OID and Qualified Floating Rate

Section 1.1275–5 defines a variable rate debt instrument (VRDI) and provides rules for determining the amount and accrual of qualified stated interest and OID on a VRDI. Under § 1.1275–5(b), a VRDI may provide for stated interest at one or more qualified floating rates. A variable rate is generally a qualified floating rate if variations in the value of the rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. The rate may measure contemporaneous variations in borrowing costs for the issuer of the debt instrument or for issuers in general. However, a multiple of a qualified floating rate is not a qualified floating rate, except as permitted within limited parameters. If a debt instrument provides for two or more qualified floating rates that can reasonably be expected to have approximately the same values throughout the term of the instrument, the qualified floating rates together constitute a single qualified floating rate. Under § 1.1275–5(e)(2), if a VRDI provides for stated interest at a single qualified floating rate and certain other requirements are satisfied, the amount of any OID that accrues during an accrual period is determined under the rules applicable to fixed rate debt instruments by assuming that the qualified floating rate is a fixed rate equal to the value, as of the issue date, of the qualified floating rate.

Section 1.1275–2(h) describes the treatment under sections 1271 through 1275 and the regulations under those sections of a debt instrument with respect to which one or more payments are subject to a remote contingency. Section 1.1275–2(h)(2) provides that a contingency is remote if there is a remote likelihood that the contingency will occur and that, in such a case, it is assumed that the contingency will not occur. In the event that a remote contingency actually occurs, § 1.1275–2(h)(6) generally provides that the debt instrument, including a VRDI, that undergoes this ''change in circumstances'' is treated as retired and then reissued for purposes of sections 1272 and 1273.

In general, if a debt instrument provides for a floating rate of interest and the debt instrument does not qualify as a VRDI, the debt instrument is a contingent payment debt instrument (CPDI) that is subject to more complex and less favorable rules under § 1.1275–4. For example, under § 1.1275–4, all of the stated interest is OID and the holder and issuer recognize interest income or deductions at times other than when cash payments are made. In addition, if a debt instrument that provides for a floating rate of interest is subject to a contingency that is not a remote contingency, the instrument may be a CPDI. Even if the contingency is remote, if the contingency occurs, the debt instrument is treated as retired and reissued for purposes of the OID rules. In both cases, the treatment of the contingency affects whether the debt instrument has OID and, if so, the amount of the OID and the accruals of

the OID over the term of the debt instrument.

The transition to alternative rates, such as SOFR, in connection with the phase-out of IBORs has raised questions under the OID rules. For example, it is not clear whether certain debt instruments that reference IBOR qualify as VRDIs or whether they are subject to non-remote contingencies that must be taken into account.

F. REMICs

Section 860G(a)(1) provides in part that a regular interest in a REMIC must be issued on the startup day with fixed terms. Section 1.860G–1(a)(4) clarifies that a regular interest has fixed terms on the startup day if, on the startup day, the REMIC's organizational documents irrevocably specify, among other things, the interest rate or rates used to compute any interest payments on the regular interest. Accordingly, an alteration of the terms of the regular interest to change the rate or fallback provisions in anticipation of the cessation of an IBOR could preclude the interest from being a regular interest.

Section 860G(a)(1) also provides in part that interest payments on a regular interest in a REMIC may be payable at a variable rate only to the extent provided in regulations and that a regular interest must unconditionally entitle the holder to receive a specified principal amount. Section 1.860G–1(a)(3) describes the variable rates permitted for this purpose, and § 1.860G–1(a)(5) confirms that the principal amount of a regular interest generally may not be contingent. Notwithstanding these limitations on the payment of principal and interest on a regular interest in a REMIC, § 1.860G–1(b)(3) lists certain contingencies affecting the payment of principal and interest that do not prevent an interest in a REMIC from being a regular interest. The list of excepted contingencies does not, however, include a fallback rate that is triggered by an event, such as the elimination of IBOR, that is likely to occur. Nor does the list expressly include the contingent reduction of principal or interest payments to offset costs incurred by amending a regular interest to replace a rate that refers to an IBOR or by adding a fallback rate in anticipation of the elimination of the relevant IBOR.

Subject to certain exceptions, section 860G(d) imposes a tax equal to 100 percent of amounts contributed to a REMIC after the startup day. If a party other than the REMIC pays costs incurred by the REMIC after the startup day, that payment could be treated as a contribution to the REMIC subject to the tax under section 860G(d).

G. Interest Expense of a Foreign Corporation

A foreign corporation applies § 1.882–5 to determine its interest expense allocable under section 882(c) to income that is effectively connected with the conduct of a trade or business within the United States. If a foreign corporation uses the method described in § 1.882–5(b) through (d), that foreign corporation could have U.S.-connected liabilities that exceed U.S.-booked liabilities (excess U.S.-connected liabilities). When a foreign corporation has excess U.S.-connected liabilities, § 1.882–5(d)(5)(ii)(A) generally provides that the interest rate that applies to the excess U.S.-connected liabilities is the foreign corporation's average U.S.-dollar borrowing cost on all U.S.-dollar liabilities other than its U.S.-booked liabilities. Alternatively, § 1.882–5(d)(5)(ii)(B) provides that a foreign corporation that is a bank, may elect to use a published average 30-day LIBOR for the year instead of determining its average U.S.-dollar borrowing cost. Because the election provided in § 1.882–5(d)(5)(ii)(B) only permits a foreign corporation that is a bank to elect a rate that references 30-day LIBOR, the current election will not be available when LIBOR is phased out.

Explanation of Provisions

1. Proposed Substantive Amendments to the Regulations

The Treasury Department and the IRS have determined that it is appropriate to provide guidance on the tax issues discussed earlier in this preamble in order to minimize potential market disruption and to facilitate an orderly transition in connection with the phase-out of IBORs and the attendant need for changes in debt instruments and other non-debt contracts to implement this transition. The Treasury Department and the IRS expect that this guidance will reduce Federal income tax uncertainties and minimize taxpayer burden associated with this transition.

A. Section 1001

The proposed regulations under § 1.1001–6(a) generally provide that, if the terms of a debt instrument are altered or the terms of a non-debt contract, such as a derivative, are modified to replace, or to provide a fallback to, an IBOR-referencing rate and the alteration or modification does not change the fair market value of the debt instrument or non-debt contract or the currency of the reference rate, the alteration or modification does not result in the realization of income, deduction, gain, or loss for purposes of section 1001. The Treasury Department and the IRS intend that the proposed rules in § 1.1001–6(a), as with other regulations under section 1001, apply to both the issuer and holder of a debt instrument and to each party to a non-debt contract. The proposed rules in § 1.1001–6(a) also apply regardless of whether the alteration or modification occurs by an amendment to the terms of the debt instrument or non-debt contract or by an exchange of a new debt instrument or non-debt contract for the existing one.

Section 1.1001–6(a)(1) of the proposed regulations provides that altering the terms of a debt instrument to replace a rate referencing an IBOR with a qualified rate (qualified rates are discussed in detail later in this preamble) is not treated as a modification and therefore does not result in a deemed exchange of the debt instrument for purposes of § 1.1001–3. This same rule applies to ''associated alterations,'' which are alterations that are both associated with the replacement of the IBOR-referencing rate and reasonably necessary to adopt or implement that replacement. One example of an associated alteration is the addition of an obligation for one party to make a one-time payment in connection with the replacement of the IBOR-referencing rate with a qualified rate to offset the change in value of the debt instrument that results from that replacement.

Section 1.1001–6(a)(2) of the proposed regulations provides that modifying a non-debt contract to replace a rate referencing an IBOR with a qualified rate is not treated as a deemed exchange of property for other property differing materially in kind or extent for purposes of § 1.1001–1(a). The rule also applies to ''associated modifications,'' which differ from associated alterations only in that they relate to non-debt contracts. The principal example of a non-debt contract for purposes of the proposed regulations is a derivative contract, but the category is also intended to include any other type of contract (such as a lease) that may refer to an IBOR and that is not debt. Thus, for example, if an interest rate swap is modified to change the floating rate leg of the swap from Overnight USD LIBOR plus 25 basis points to an alternative rate referencing SOFR that meets the requirements for a qualified rate under the proposed regulations (including the requirement that the fair market value of the swap contract after the modification is substantially equivalent to the fair

market value of the swap contract before the modification), that modification would not be treated as an exchange of property for other property differing materially in kind or extent and would therefore not be an event that results in the realization of income, deduction, gain or loss under § 1.1001–1(a).

Section 1.1001–6(a)(3) of the proposed regulations provides that an alteration to the terms of a debt instrument to include a qualified rate as a fallback to an IBOR-referencing rate and any associated alteration are not treated as modifications and therefore do not result in an exchange of the debt instrument for purposes of § 1.1001–3. In addition, an alteration to the terms of a debt instrument by which an IBOR-based fallback rate is replaced with a different fallback rate that is a qualified rate and any associated alteration are also not treated as modifications. Similar rules provide that these same changes to a non-debt contract do not result in the exchange of property for other property differing materially in kind or extent for purposes of § 1.1001–1(a).

A coordination rule in § 1.1001–6(a)(4) of the proposed regulations makes clear that any alteration to the terms of a debt instrument that is not given special treatment under either § 1.1001–6(a)(1) or (3) is subject to the ordinary operation of § 1.1001–3. The proposed regulations provide a similar rule for non-debt contracts. These proposed rules contemplate that when an alteration or modification not described in § 1.1001–6(a)(1), (2), or (3) occurs at the same time as the alteration or modification described in those paragraphs, the alteration or modification described in § 1.1001–6(a)(1), (2), or (3) is treated as part of the existing terms of the debt instrument or non-debt contract and, consequently, becomes part of the baseline against which the alteration or modification not described in § 1.1001–6(a)(1), (2), or (3) is tested.

Section 1.1001–6(b) of the proposed regulations sets forth the rules for determining whether a rate is a qualified rate. Section 1.1001–6(b)(1) lists the rates that may be qualified rates for purposes of § 1.1001–6, provided that they satisfy the requirements set forth in § 1.1001–6(b)(2) and (3). The list of potential qualified rates in § 1.1001–6(b)(1) includes a qualified floating rate as defined in § 1.1275–5(b), except that for this purpose a multiple of a qualified floating rate is considered a qualified floating rate. This list also includes any rate selected, endorsed or recommended by the central bank, reserve bank, monetary authority or similar institution (including a committee or working group thereof) as a replacement for an IBOR or its local currency equivalent in that jurisdiction. To avoid any uncertainty on the question of whether the rates identified in § 1.1001–6(b)(1)(i) through (viii) may be qualified rates, those rates are individually enumerated even though each is a qualified floating rate, as defined in § 1.1275–5(b), and each has been selected by a central bank, reserve bank, monetary authority or similar institution as a replacement for an IBOR or its local currency equivalent in that jurisdiction. The proposed regulations further provide that a rate that is determined by reference to one of the rates listed in § 1.1001–6(b)(1) may also be a qualified rate. For example, a rate equal to the compound average of SOFR over the past 30 days may be a qualified rate because that rate is determined by reference to SOFR, which is listed in § 1.1001–6(b)(1). To retain the flexibility to respond to future developments, proposed § 1.1001–6(b)(1)(xii) provides authority to add a rate to this list by identifying the new rate in guidance published in the Internal Revenue Bulletin.

A rate described in § 1.1001–6(b)(1) of the proposed regulations is not a qualified rate if it fails to satisfy the requirement of § 1.1001–6(b)(2)(i). Section 1.1001–6(b)(2)(i) of the proposed regulations generally requires that the fair market value of the debt instrument or non-debt contract after the relevant alteration or modification must be substantially equivalent to the fair market value before that alteration or modification. The purpose of this requirement is to ensure that the alterations or modifications described in § 1.1001–6(a)(1) through (3) are generally no broader than is necessary to replace the IBOR in the terms of the debt instrument or non-debt contract with a new reference rate. However, the Treasury Department and the IRS recognize that the fair market value of a debt instrument or non-debt contract may be difficult to determine precisely and intend that the proposed regulations broadly facilitate the transition away from IBORs. Accordingly, the proposed regulations provide that the fair market value of a debt instrument or derivative may be determined by any reasonable valuation method, as long as that reasonable valuation method is applied consistently and takes into account any one-time payment made in lieu of a spread adjustment.

To further ease compliance with the value equivalence requirement in § 1.1001–6(b)(2)(i), the proposed regulations provide two safe harbors and reserve the authority to provide additional safe harbors in guidance published in the Internal Revenue Bulletin. Under the first safe harbor, the value equivalence requirement is satisfied if at the time of the alteration the historic average of the IBOR-referencing rate is within 25 basis points of the historic average of the rate that replaces it. The parties may use any reasonable method to compute an historic average, subject to two limitations. First, the lookback period from which the historic data are drawn must begin no earlier than 10 years before the alteration or modification and end no earlier than three months before the alteration or modification. Second, once a lookback period is established, the historic average must take into account every instance of the relevant rate published during that period. For example, if the lookback period is comprised of the calendar years 2016 through 2020 and the relevant rate is 30-day USD LIBOR, the historic average of that rate must take into account each of the 60 published instances of 30-day USD LIBOR over the five-year lookback period. Alternatively, the parties may compute the historic average of a rate in accordance with an industry-wide standard, such as a standard for determining an historic average set forth by the International Swaps and Derivatives Association or the ARRC for this or a similar purpose. In any application of this safe harbor, the parties must use the same methodology and lookback period to compute the historic average for each of the rates to be compared.

Under the second safe harbor, the value equivalence requirement of § 1.1001–6(b)(2)(i) is satisfied if the parties to the debt instrument or non-debt contract are not related and, through bona fide, arm's length negotiations over the alteration or modification, determine that the fair market value of the altered debt instrument or modified non-debt contract is substantially equivalent to the fair market value of the debt instrument or non-debt contract before the alteration or modification. In determining the fair market value of an altered debt instrument or modified non-debt contract, the parties must take into account the value of any one-time payment made in lieu of a spread adjustment.

A rate described in § 1.1001–6(b)(1) of the proposed regulations is also not a qualified rate if it fails to satisfy the requirement in § 1.1001–6(b)(3). This paragraph generally requires that any interest rate benchmark included in the

replacement rate and the IBOR referenced in the replaced rate are based on transactions conducted in the same currency or are otherwise reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds in the same currency. As is the case with the value equivalence requirement under § 1.1001–6(b)(2)(i), this requirement is intended to ensure that the alterations or modifications described in § 1.1001–6(a)(1) through (3) are no broader than necessary to address the elimination of the relevant IBOR.

B. Integrated Transactions and Hedges

Section 1.1001–6(c) of the proposed regulations confirms that a taxpayer is permitted to alter the terms of a debt instrument or modify one or more of the other components of an integrated or hedged transaction to replace a rate referencing an IBOR with a qualified rate without affecting the tax treatment of either the underlying transaction or the hedge, provided that the integrated or hedged transaction as modified continues to qualify for integration. For example, a taxpayer that has issued a floating rate debt instrument that pays interest at a rate referencing USD LIBOR and has entered into an interest rate swap contract that permits that taxpayer to create a synthetic fixed rate debt instrument under the integration rules of § 1.1275–6 is not treated as legging out of the integrated transaction if the terms of the debt instrument are altered and the swap is modified to replace the USD LIBOR-referencing interest rate with a SOFR-referencing interest rate, provided that in the transaction as modified the § 1.1275–6 hedge continues to meet the requirements for a § 1.1275–6 hedge. The proposed regulations provide similar rules for a foreign currency hedge integrated with a debt instrument under § 1.988–5(a) and for an interest rate hedge integrated with an issue of tax-exempt bonds under § 1.148–4(h). The proposed regulations also provide that, in the case of a transaction subject to the hedge accounting rules under § 1.446–4, altering the terms of a debt instrument or modifying the terms of a derivative to replace an IBOR-referencing rate with a qualified rate on one or more legs of the transaction is not a disposition or termination of either leg under § 1.446–4(e)(6).

C. Source and Character of a One-Time Payment

Section 1.1001–6(d) of the proposed regulations provides that, for all purposes of the Internal Revenue Code, the source and character of a one-time payment that is made by a payor in connection with an alteration or modification described in proposed § 1.1001–6(a)(1), (2), or (3) will be the same as the source and character that would otherwise apply to a payment made by the payor with respect to the debt instrument or non-debt contract that is altered or modified. For example, a one-time payment made by a counterparty to an interest rate swap is treated as a payment with respect to the leg of the swap on which the counterparty making the one-time payment is obligated to perform. Accordingly, under § 1.863–7(b), the source of that one-time payment would likely be determined by reference to the residence of the recipient of the payment. With respect to a lease of real property, a one-time payment made by the lessee to the lessor is treated as a payment of rent and, under sections 861(a)(4) and 862(a)(4), the source of that one-time payment would be the location of the leased real property.

The Treasury Department and the IRS expect that parties to debt instruments and non-debt contracts will generally replace the IBOR with an overnight, nearly risk-free rate, such as SOFR. Because of differences in term and credit risk, an overnight, nearly risk-free rate will generally be lower than the IBOR it replaces. Accordingly, the Treasury Department and the IRS expect that, for example, one-time payments with respect to a debt instrument will generally not be paid by the lender to the borrower. However, in the event that it is determined that guidance in respect of such payments is needed, the Treasury Department and the IRS request comments on the source and character of a one-time payment on a debt instrument or non-debt contract received by a party (such as the borrower on a debt instrument or the lessee on a lease) that does not ordinarily receive payments during the term of the debt instrument or non-debt contract.

D. Grandfathered Debt Instruments and Non-Debt Contracts

The rules in § 1.1001–6(a) of the proposed regulations generally prevent debt instruments and non-debt contracts from being treated as reissued following a deemed exchange under section 1001. Thus, for example, a debt instrument grandfathered under section 163(f), 871(m), or 1471 or a regulation under one of those sections would not lose its grandfathered status as a result of any alterations made in connection with the elimination of an IBOR and described in § 1.1001–6(a)(1) or (3) of the proposed regulations. To provide certainty in treating a non-debt contract as a grandfathered obligation for chapter 4 purposes in the case of the modification of the contract to replace an IBOR-referencing rate, § 1.1001–6(e) of the proposed regulations provides that any modification of a non-debt contract to which § 1.1001–6(a)(2) or (3) applies is not a material modification for purposes of § 1.1471–2(b)(2)(iv).

E. OID and Qualified Floating Rate

Section 1.1275–2(m) of the proposed regulations sets forth three special rules for determining the amount and accrual of OID in the case of a VRDI that provides both for interest at an IBOR-referencing qualified floating rate and for a fallback rate that is triggered when the IBOR becomes unavailable or unreliable. Under § 1.1275–2(m)(2), the IBOR-referencing qualified floating rate and the fallback rate are treated as a single qualified floating rate for purposes of § 1.1275–5. Under § 1.1275–2(m)(3), the possibility that the relevant IBOR will become unavailable or unreliable is treated as a remote contingency for purposes of § 1.1275–2(h). Under § 1.1275–2(m)(4), the occurrence of the event that triggers activation of the fallback rate is not treated as a change in circumstances. Thus, for example, the VRDI is not treated as retired and reissued under § 1.1275–2(h)(6) when the relevant IBOR becomes unavailable or unreliable and the rate changes to the fallback rate, even if the IBOR becoming unavailable or unreliable was a remote contingency at the time the VRDI was issued. With the exception of these three rules in § 1.1275–2(m) of the proposed regulations, the OID regulations apply to an IBOR-referencing VRDI as they would to any other debt instrument.

F. REMICs

Section 1.860G–1(e) of the proposed regulations permits an interest in a REMIC to retain its status as a regular interest despite certain alterations and contingencies. Specifically, if the parties to a regular interest alter the terms after the startup day to replace an IBOR-referencing rate with a qualified rate, to include a qualified rate as a fallback to an IBOR-referencing rate, or to make any other alteration described in § 1.1001–6(a)(1) or (3) of the proposed regulations, § 1.860G–1(e)(2) provides that those alterations are disregarded for the purpose of determining whether the regular interest has fixed terms on the startup day.

Supplementing the list of disregarded contingencies in § 1.860G–1(b)(3), § 1.860G–1(e)(3) and (4) of the proposed regulations describe certain contingencies affecting the payment of

principal and interest that do not prevent an interest in a REMIC from being a regular interest. Under § 1.860G–1(e)(3), an interest in a REMIC does not fail to be a regular interest solely because the terms of the interest permit the rate to change from an IBOR-referencing rate to a fallback rate in anticipation of the relevant IBOR becoming unavailable or unreliable. Although this proposed rule permits taxpayers to disregard the contingency in determining whether the rate is a variable rate permitted under § 1.860G–1(a)(3), both the IBOR-referencing rate and the fallback rate considered individually must be rates permitted under section 860G. Under § 1.860G–1(e)(4) of the proposed regulations, an interest in a REMIC does not fail to be a regular interest solely because the amount of payments of principal or interest may be reduced by reasonable costs of replacing an IBOR-referencing rate with a qualified rate, of amending fallback provisions to address the elimination of an IBOR, or of modifying a non-debt contract that is associated with the interest in the REMIC, such as a credit enhancement. Section 1.860G–1(e)(4) further provides that, if a party other than the REMIC pays those reasonable costs after the startup day, that payment is not subject to the tax imposed under section 860G(d).

G. Interest Expense of a Foreign Corporation

Because the election provided in § 1.882–5(d)(5)(ii)(B) only permits a foreign corporation that is a bank to elect a rate that references 30-day LIBOR, the current election will not be available when LIBOR is phased out. To address this change in facts, the proposed regulations amend the election in § 1.882–5(d)(5)(ii)(B) to allow a foreign corporation that is a bank to compute interest expense attributable to excess U.S.-connected liabilities using a yearly average SOFR. The Treasury Department and the IRS have determined that SOFR is an appropriate rate to use in § 1.882–5(d)(5)(ii)(B) to replace LIBOR. Since SOFR is an overnight rate that does not reflect credit risk, the use of SOFR is likely to result in a lower rate than the 30-day LIBOR calculation previously allowed under § 1.882–5(d)(5)(ii)(B). Because of these differences between SOFR and 30-day LIBOR, the Treasury Department and the IRS request comments on whether another nearly risk-free rate might be more appropriate in computing interest expense on excess U.S.-connected liabilities for purposes of § 1.882–5(d)(5)(ii)(B).

2. Proposed Applicability Dates and Reliance on the Proposed Regulations

A. Proposed Applicability Dates of the Final Regulations

This part 2(A) of the Explanation of Provisions section describes the various applicability dates proposed to apply to the final regulations. Under the proposed applicability date in § 1.1001–6(g), § 1.1001–6 of the final regulations would apply to an alteration of the terms of a debt instrument or a modification to the terms of a non-debt contract that occurs on or after the date of publication of a Treasury decision adopting those rules as final regulations in the **Federal Register**. However, under proposed § 1.1001–6(g), a taxpayer may choose to apply § 1.1001–6 of the final regulations to alterations and modifications that occur before that date, provided that the taxpayer and its related parties consistently apply the rules before that date. See section 7805(b)(7).

Under the proposed applicability date in § 1.1275–2(m)(5), the OID rules in § 1.1275–2(m) of the final regulations would apply to debt instruments issued on or after the date of publication of a Treasury decision adopting those rules as final regulations in the **Federal Register**. However, under proposed § 1.1275–2(m)(5), a taxpayer may choose to apply § 1.1275–2(m) of the final regulations to debt instruments issued before that date. See section 7805(b)(7).

Under the proposed applicability date in § 1.860G–1(e)(5)(i), the REMIC rules in § 1.860G–1(e)(2) and (4) of the final regulations would apply with respect to an alteration or modification that occurs on or after the date of publication of a Treasury decision adopting those rules as final regulations in the **Federal Register**. However, a taxpayer may choose to apply § 1.860G–1(e)(2) and (4) of the final regulations with respect to an alteration or modification that occurs before that date. See section 7805(b)(7). Under the proposed applicability date in § 1.860G–1(e)(5)(ii), § 1.860G–1(e)(3) of the final regulations would apply to a regular interest in a REMIC issued on or after the date of publication of a Treasury decision adopting that rule as a final regulation in the **Federal Register**. However, a taxpayer may choose to apply § 1.860G–1(e)(3) of the final regulations to a regular interest in a REMIC issued before that date. See section 7805(b)(7).

Under the proposed applicability date in § 1.882–5(f)(3), § 1.882–5(d)(5)(ii)(B) of the final regulations would apply to taxable years ending after the date of publication of a Treasury decision adopting that rule as a final regulation is published in the **Federal Register**.

B. Reliance on the Proposed Regulations

A taxpayer may rely on the proposed regulations to the extent provided in this part 2(B) of the Explanation of Provisions section. A taxpayer may rely on § 1.1001–6 of the proposed regulations for any alteration of the terms of a debt instrument or modification of the terms of a non-debt contract that occurs before the date of publication of a Treasury decision adopting those rules as final regulations in the **Federal Register**, provided that the taxpayer and its related parties consistently apply the rules of § 1.1001–6 of the proposed regulations before that date. A taxpayer may rely on § 1.1275–2(m) or § 1.860G–1(e)(3) of the proposed regulations for any debt instrument or regular interest in a REMIC issued before the date of publication of a Treasury decision adopting those rules as final regulations in the **Federal Register**. A taxpayer may rely on § 1.860G–1(e)(2) and (4) of the proposed regulations with respect to any alteration or modification that occurs before the date of publication of a Treasury decision adopting that rule as a final regulation in the **Federal Register**. A taxpayer may rely on § 1.882–5(d)(5)(ii)(B) of the proposed regulations for any taxable year ending after October 9, 2019 but before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including (i) potential economic, environmental, and public health and safety effects, (ii) potential distributive impacts, and (iii) equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the 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 Office of Information and Regulatory Affairs has designated these proposed

regulations as economically significant under section 1(c) of the MOA.

A. Background, Need for the Proposed Regulations, and Economic Analysis of Proposed Regulations

A very large volume of U.S. financial products and contracts include terms or conditions that reference LIBOR or, more generally, IBORs. Concern about manipulation and a decline in the volume of the funding from which the LIBOR is calculated led to recommendations for the development of alternatives to the LIBOR, ones that would be based on transactions in a more robust underlying market. In addition, on July 27, 2017, the U.K. Financial Conduct Authority, the U.K. regulator tasked with overseeing LIBOR, announced that all currency and term variants of LIBOR, including USD LIBOR, may be phased out after 2021 and not be published after that timeframe. The ARRC, a group of stakeholders affected by the cessation of the publication of USD LIBOR, was convened to identify an alternative rate and to facilitate its voluntary adoption. The ARRC recommended the SOFR as a potential replacement for USD LIBOR. Essentially all financial products and contracts that currently contain conditions or legal provisions that rely on LIBOR and IBORs are expected to transition to the SOFR or similar alternatives in the next few years. This transition will involve changes in debt, derivatives, and other financial contracts to adopt the SOFR or other alternative reference rates.

The ARRC has estimated that the total exposure to USD LIBOR was close to $200 trillion in 2016, of which approximately 95 percent were in over-the-counter derivatives.[1] ARRC further notes that USD LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, and similar financial products.

In the absence of further tax guidance, the vast majority of expected changes in such contracts could lead to the recognition of gains (or losses) in these contracts for U.S. income tax purposes and to correspondingly potentially large tax liabilities for their holders. To address this issue, the proposed regulations provide that changes in debt instruments, derivative contracts, and other affected contracts to replace reference rates based on IBORs with qualified rates (as defined in the proposed regulations) will not result in tax realization events under section 1001 and relevant regulations thereunder. The proposed regulations require that qualified rates be substantially equivalent in fair market value to the replaced rates based on any reasonable, consistently applied method of valuation. The proposed regulations further provide certain safe harbors for this comparability standard, based on historic average rates and bona fide fair market value negotiations between unrelated parties. The proposed regulations also provide corresponding guidance on hedging transactions and derivatives to the effect that taxpayers may modify the components of hedged or integrated transactions to replace IBORs with qualified rates without affecting the tax treatment of the hedges or underlying transactions.

In the absence of these proposed regulations, parties to contracts affected by the cessation of the publication of LIBOR would either suffer tax consequences to the extent that a change to the contract results in a tax realization event under section 1001 or attempt to find alternative contracts that avoid such a tax realization event, which may be difficult as a commercial matter. Both such options would be both costly and highly disruptive to U.S. financial markets. A large number of contracts may end up being breached, leading to bankruptcies or other legal proceedings. The types of actions that contract holders might take in the absence of these proposed regulations are difficult to predict because such an event is outside recent experience in U.S. financial markets. This financial disruption would be particularly unproductive because the economic characteristics of the financial products and contracts under the new rates would be essentially unchanged. Thus, there is no underlying economic rationale for a tax realization event.

The Treasury Department and the IRS project that these proposed regulations would avoid this costly and unproductive disruption. The Treasury Department and the IRS further project that these proposed regulations, by implementing the regulatory provisions requested by ARRC and taxpayers, will help facilitate the economy's adaptation to the cessation of the LIBOR in a least-cost manner.

The Treasury Department and the IRS request comments on these proposed regulations.

II. Regulatory Planning and Review and Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities that are directly affected by the proposed regulations. These proposed regulations provide rules to minimize the economic impact of the elimination of IBORs on all taxpayers. Parties to IBOR-referencing financial instruments are generally expected to alter or to modify those instruments in response to the elimination of the relevant IBOR and, in the absence of rules such as those proposed, those alterations and modifications may trigger significant tax consequences for the parties to those instruments. In addition, these proposed regulations do not impose a collection of information on any taxpayers, including small entities. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (titled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

[1] See Second Report, The Alternative Reference Rates Committee, March 2018, Table 1 and related discussion, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report.*

Comments and Requests for Public Hearing

Before these 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 specifically seek comment on any complications under any section of the Code or existing regulations that may arise from the replacement of an IBOR with a qualified rate and that are not resolved in these proposed regulations. All comments will be available at *http://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 hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Caitlin Holzem and Spence Hanemann of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

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 adding an entry in numerical order for § 1.1001–6 to read in part as follows:

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

* * * * *

Section 1.1001–6 also issued under 26 U.S.C. 148(i), 26 U.S.C. 988(d), and 26 U.S.C. 1275(d).

* * * * *

■ **Par. 2.** Section 1.860A–0 is amended by adding entries for § 1.860G–1(e) to read as follows:

§ 1.860A–0 Outline of REMIC provisions.

* * * * *

§ 1.860G–1 Definition of regular and residual interests.

* * * * *

(e) Transition from interbank offered rates.

(1) In general.

(2) Change in reference rate for a regular interest after the startup day.

(3) Contingencies of rate on a regular interest.

(4) Reasonable expenses incurred to alter a regular interest.

(5) Applicability dates.

* * * * *

■ **Par. 3.** Section 1.860G–1 is amended by adding paragraph (e) to read as follows:

§ 1.860G–1 Definition of regular and residual interests.

* * * * *

(e) *Transition from interbank offered rates*—(1) *In general.* This paragraph (e) applies to certain interests in a REMIC that provide for a rate referencing an interbank offered rate. See § 1.1001–6 for additional rules that may apply to an interest in a REMIC that provides for a rate referencing an interbank offered rate.

(2) *Change in reference rate for a regular interest after the startup day.* An alteration to a regular interest in a REMIC that occurs after the startup day and that is described in § 1.1001–6(a)(1) or (3) is disregarded in determining whether the regular interest has fixed terms on the startup day under paragraph (a)(4) of this section.

(3) *Contingencies of rate on a regular interest.* An interest in a REMIC does not fail to qualify as a regular interest solely because it is subject to a contingency whereby a rate that references an interbank offered rate and is a variable rate permitted under paragraph (a)(3) of this section may change to a fixed rate or a different variable rate permitted under paragraph (a)(3) of this section in anticipation of the interbank offered rate becoming unavailable or unreliable.

(4) *Reasonable expenses incurred to alter a regular interest.* An interest in a REMIC does not fail to qualify as a regular interest solely because it is subject to a contingency whereby the amount of payments of principal or interest (or other similar amounts) with respect to the interest in the REMIC is reduced by reasonable costs incurred to effect an alteration or modification described in § 1.1001–6(a)(1), (2), or (3). In addition, payment by a party other than the REMIC of reasonable costs incurred to effect an alteration or modification described in § 1.1001–6(a)(1), (2), or (3) is not a contribution to the REMIC for purposes of section 860G(d).

(5) *Applicability dates.* (i) Paragraphs (e)(2) and (4) of this section apply with respect to an alteration or modification that occurs on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may apply paragraphs (e)(2) and (4) of this section with respect to an alteration or a modification that occurs before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. See section 7805(b)(7).

(ii) Paragraph (e)(3) of this section applies to a regular interest in a REMIC issued on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may apply paragraph (e)(3) of this section to a regular interest in a REMIC issued before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. See section 7805(b)(7).

■ **Par. 4.** Section 1.882–5 is amended by:

■ 1. Revising the fourth sentence of paragraph (a)(7)(i).

■ 2. Revising paragraph (d)(5)(ii)(B).

■ 3. Removing the ''(1)'' from the ''(f)(1)'' paragraph designation and adding a subject heading to paragraph (f)(1).

■ 4. Adding paragraph (f)(3).

The revisions and addition read as follows:

§ 1.882–5 Determination of interest deduction.

(a) * * *

(7) * * *

(i) * * * An elected method (other than the fair market value method under paragraph (b)(2)(ii) of this section, or the published rate election in paragraph (d)(5)(ii) of this section) must be used for a minimum period of five years before the taxpayer may elect a different method. * * *

* * * * *

(d) * * *

(5) * * *

(ii) * * *

(B) *Published rate election.* For each taxable year in which a taxpayer is a bank within the meaning of section 585(a)(2)(B) (without regard to the second sentence thereof or whether any activities are effectively connected with a trade or business within the United States), the taxpayer may elect to compute the interest expense attributable to excess U.S.-connected liabilities by using the yearly average Secured Overnight Financing Rate (SOFR) published by the Federal Bank of New York for the taxable year rather than the interest rate provided in paragraph (d)(5)(ii)(A) of this section. A taxpayer may elect to apply the rate provided in paragraph (d)(5)(ii)(A) of this section or in this paragraph

(d)(5)(ii)(B) on an annual basis and the taxpayer does not need the consent of the Commissioner to change this election in a subsequent taxable year. If a taxpayer that is eligible to make the published rate election either does not file a timely return or files a calculation with no excess U.S.-connected liabilities and it is later determined by the Director of Field Operations that the taxpayer has excess U.S.-connected liabilities, then the Director of Field Operations, and not the taxpayer, may choose whether to apply the interest rate provided under either paragraph (d)(5)(ii)(A) or (B) of this section to the taxpayer's excess U.S.-connected liabilities in determining interest expense.

* * * * *

(f) * * *—

(1) *General rule.* * * *

* * * * *

(3) *Applicability date for published rate election.* Paragraph (d)(5)(ii)(B) of this section applies to taxable years ending after the date of publication of a Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

■ **Par. 5.** Section 1.1001–6 is added to read as follows:

§ 1.1001–6 Transition from interbank offered rates.

(a) *Treatment under section 1001*—(1) *Debt instruments.* An alteration of the terms of a debt instrument to replace a rate referencing an interbank offered rate (IBOR) with a qualified rate as defined in paragraph (b) of this section (qualified rate) and any associated alteration as defined in paragraph (a)(5) of this section (associated alteration) are not treated as modifications and therefore do not result in an exchange of the debt instrument for purposes of § 1.1001–3. For example, if the terms of a debt instrument that pays interest at a rate referencing the U.S.-dollar London Interbank Offered Rate (USD LIBOR) are altered to provide that the instrument pays interest at a qualified rate referencing the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York, that alteration of terms is not treated as a modification and therefore does not result in an exchange for purposes of § 1.1001–3.

(2) *Non-debt contracts.* A modification of the terms of a contract other than a debt instrument (a non-debt contract) to replace a rate referencing an IBOR with a qualified rate and any associated modification as defined in paragraph (a)(5) of this section (associated modification) are not treated as the exchange of property for other property differing materially in kind or extent for purposes of § 1.1001–1(a). A non-debt contract includes but is not limited to a derivative, stock, an insurance contract, and a lease agreement.

(3) *Fallback rate.* An alteration of the terms of a debt instrument to include a qualified rate as a fallback to a rate referencing an IBOR and any associated alteration are not treated as modifications and therefore do not result in an exchange of the debt instrument for purposes of § 1.1001–3. In addition, an alteration of the terms of a debt instrument to substitute a qualified rate in place of a rate referencing an IBOR as a fallback to another rate and any associated alteration are not treated as modifications and therefore do not result in an exchange of the debt instrument for purposes of § 1.1001–3. A modification of the terms of a non-debt contract to include a qualified rate as a fallback to a rate referencing an IBOR and any associated modification are not treated as the exchange of property for other property differing materially in kind or extent for purposes of § 1.1001–1(a). In addition, a modification of the terms of a non-debt contract to substitute a qualified rate in place of a rate referencing an IBOR as a fallback to another rate and any associated modification are not treated as the exchange of property for other property differing materially in kind or extent for purposes of § 1.1001–1(a).

(4) *Other contemporaneous alterations and modifications.* Whether an alteration of the terms of a debt instrument that is not described in paragraph (a)(1) or (3) of this section and that is made contemporaneously with an alteration described in paragraph (a)(1) or (3) of this section results in an exchange of the debt instrument is determined under § 1.1001–3. Similarly, whether a modification of the terms of a non-debt contract that is not described in paragraph (a)(2) or (3) of this section and that is made contemporaneously with a modification described in paragraph (a)(2) or (3) of this section results in an exchange of property for other property differing materially in kind or extent is determined under § 1.1001–1(a). In applying § 1.1001–3 or § 1.1001–1(a) for this purpose, the altered or modified terms described in paragraph (a)(1), (2), or (3) of this section are treated as part of the terms of the debt instrument or non-debt contract prior to any alteration or modification that is not so described. For example, if the parties to a debt instrument change the interest rate from a rate referencing USD LIBOR to a qualified rate and at the same time increase the interest rate to account for deterioration of the issuer's credit since the issue date, the qualified rate is treated as a term of the instrument prior to the alteration and only the addition of the risk premium is analyzed under § 1.1001–3.

(5) *Associated alteration or modification.* For purposes of this section, *associated alteration* or *associated modification* means any alteration of a debt instrument or modification of a non-debt contract that is associated with the alteration or modification by which a qualified rate replaces, or is included as a fallback to, the IBOR-referencing rate and that is reasonably necessary to adopt or to implement that replacement or inclusion. An associated alteration or associated modification may be a technical, administrative, or operational alteration or modification, such as a change to the definition of interest period or a change to the timing and frequency of determining rates and making payments of interest (for example, delaying payment dates on a debt instrument by two days to allow sufficient time to compute and pay interest at a qualified rate computed in arrears). An associated alteration or associated modification may also be the addition of an obligation for one party to make a one-time payment in connection with the replacement of the IBOR-referencing rate with a qualified rate to offset the change in value of the debt instrument or non-debt contract that results from that replacement (a one-time payment).

(b) *Qualified rate*—(1) *In general.* For purposes of this section, a *qualified rate* is any one of the following rates, provided that the rate satisfies the fair market value requirement of paragraph (b)(2) of this section and the currency requirement of paragraph (b)(3) of this section:

(i) The Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (SOFR);

(ii) The Sterling Overnight Index Average (SONIA);

(iii) The Tokyo Overnight Average Rate (TONAR or TONA);

(iv) The Swiss Average Rate Overnight (SARON);

(v) The Canadian Overnight Repo Rate Average (CORRA);

(vi) The Hong Kong Dollar Overnight Index (HONIA);

(vii) The interbank overnight cash rate administered by the Reserve Bank of Australia (RBA Cash Rate);

(viii) The euro short-term rate administered by the European Central Bank (€STR);

(ix) Any alternative, substitute or successor rate selected, endorsed or recommended by the central bank, reserve bank, monetary authority or similar institution (including any committee or working group thereof) as a replacement for an IBOR or its local currency equivalent in that jurisdiction;

(x) Any qualified floating rate, as defined in § 1.1275–5(b) (but without regard to the limitations on multiples set forth in § 1.1275–5(b)), that is not described in paragraphs (b)(1)(i) through (ix) of this section;

(xi) Any rate that is determined by reference to a rate described in paragraphs (b)(1)(i) through (x) of this section, including a rate determined by adding or subtracting a specified number of basis points to or from the rate or by multiplying the rate by a specified number; or

(xii) Any rate identified as a qualified rate in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter) for purposes of this section.

(2) *Substantial equivalence of fair market value*—(i) *In general.* Notwithstanding paragraph (b)(1) of this section, a rate is a qualified rate only if the fair market value of the debt instrument or non-debt contract after the alteration or modification described in paragraph (a)(1), (2), or (3) of this section is substantially equivalent to the fair market value of the debt instrument or non-debt contract before the alteration or modification. In determining fair market value for this purpose, the parties may use any reasonable, consistently applied valuation method and must take into account the value of any one-time payment that is made in connection with the alteration or modification. A reasonable valuation method may (but need not) be based in whole or in part on past or projected values of the relevant rate. The requirements of this paragraph (b)(2)(i) are deemed to be satisfied if the rate meets the safe harbor set forth in paragraph (b)(2)(ii)(A) of this section or if the parties satisfy the safe harbor set forth in paragraph (b)(2)(ii)(B) of this section.

(ii) *Safe harbors*—(A) *Historic average of rates.* Paragraph (b)(2)(i) of this section is satisfied if, on the date of the alteration or modification described in paragraph (a)(1), (2), or (3) of this section, the historic average of the relevant IBOR-referencing rate does not differ by more than 25 basis points from the historic average of the replacement rate, taking into account any spread or other adjustment to the rate, and adjusted to take into account the value of any one-time payment that is made in connection with the alteration or modification. For this purpose, an historic average may be determined by using an industry-wide standard, such as a method of determining an historic average recommended by the International Swaps and Derivatives Association for the purpose of computing the spread adjustment on a rate included as a fallback to an IBOR-referencing rate on a derivative or a method of determining an historic average recommended by the Alternative Reference Rates Committee (or a comparable non-U.S. organization or non-U.S. regulator) for the purpose of computing the spread adjustment for a rate that replaces an IBOR-referencing rate on a debt instrument. An historic average may also be determined by any reasonable method that takes into account every instance of the relevant rate published during a continuous period beginning no earlier than 10 years before the alteration or modification and ending no earlier than three months before the alteration or modification. For purposes of this safe harbor, the historic average must be determined for both rates using the same method and historical data from the same timeframes and must be determined in good faith by the parties with the goal of making the fair market value of the debt instrument or non-debt contract after the alteration or modification substantially equivalent to the fair market value of the debt instrument or non-debt contract before the alteration or modification.

(B) *Arm's length negotiations.* Paragraph (b)(2)(i) of this section is satisfied if the parties to the debt instrument or non-debt contract are not related (within the meaning of section 267(b) or section 707(b)(1)) and the parties determine, based on bona fide, arm's length negotiations between the parties, that the fair market value of the debt instrument or non-debt contract before the alteration or modification described in paragraph (a)(1), (2), or (3) of this section is substantially equivalent to the fair market value after the alteration or modification. For this purpose, the fair market value of the debt instrument or non-debt contract after the alteration or modification must take into account the value of any one-time payment that is made in connection with the alteration or modification.

(C) *Published in the Internal Revenue Bulletin.* In guidance published in the Internal Revenue Bulletin, the Commissioner may set forth additional circumstances in which a rate is treated as satisfying the requirement of paragraph (b)(2)(i) of this section (see § 601.601(d)(2)(ii)(a) of this chapter).

(3) *Currency of the interest rate benchmark.* Notwithstanding paragraph (b)(1) of this section, a rate is a qualified rate only if the interest rate benchmark to which the rate refers after the alteration or modification described in paragraph (a)(1), (2), or (3) of this section and the IBOR to which the debt instrument or non-debt contract referred before that alteration or modification are based on transactions conducted in the same currency or are otherwise reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds in the same currency.

(c) *Effect of an alteration of the terms of a debt instrument or a modification of the terms of a derivative on integrated transactions and hedges.* An alteration of the terms of a debt instrument or a modification of the terms of a derivative to replace a rate referencing an IBOR with a qualified rate on one or more legs of a transaction that is integrated under § 1.988–5 or § 1.1275–6 is not treated as legging-out of the transaction, provided that the § 1.1275–6 hedge (as defined in § 1.1275–6(b)(2)) or the § 1.988–5(a) hedge (as defined in § 1.988–5(a)(4)) as modified continues to meet the requirements for a § 1.1275–6 hedge or § 1.988–5(a) hedge, whichever is applicable. Similarly, an alteration of the terms of a debt instrument or a modification of the terms of a derivative to replace an interest rate referencing an IBOR with a qualified rate on one or more legs of a transaction that is subject to the hedge accounting rules described in § 1.446–4 will not be treated as a disposition or termination (within the meaning of § 1.446–4(e)(6)) of either leg of the transaction. In addition, a modification to replace an interest rate referencing an IBOR with a qualified rate on a hedging transaction for bonds that is integrated as a qualified hedge under § 1.148–4(h) for purposes of the arbitrage investment restrictions applicable to State and local tax-exempt bonds and other tax-advantaged bonds (as defined in § 1.150–1(b)) is not treated as a termination of that qualified hedge under § 1.148–4(h)(3)(iv)(B), provided that the hedge as modified continues to meet the requirements for a qualified hedge under § 1.148–4(h), as determined by applying the special rules for certain modifications of qualified hedges under § 1.148–4(h)(3)(iv)(C).

(d) *Source and character of a one-time payment.* For all purposes of the Internal Revenue Code, the source and

character of a one-time payment that is made by a payor in connection with the alteration or modification described in paragraph (a)(1), (2), or (3) of this section is the same as the source and character that would otherwise apply to a payment made by the payor with respect to the debt instrument or non-debt contract that is altered or modified.

(e) *Coordination with provision for grandfathered obligations under chapter 4.* A non-debt contract that is modified only as described in paragraph (a)(2) or (3) of this section is not materially modified for purposes of § 1.1471–2(b)(2)(iv).

(f) *Coordination with the OID and REMIC rules.* For rules regarding original issue discount on certain debt instruments that provide for a rate referencing an IBOR, see § 1.1275–2(m). For rules regarding certain interests in a REMIC that provide for a rate referencing an IBOR, see § 1.860G–1(e).

(g) *Applicability date.* This section applies to an alteration of the terms of a debt instrument or a modification of the terms of a non-debt contract that occurs on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Taxpayers and their related parties, within the meaning of sections 267(b) and 707(b)(1), may apply this section to an alteration of the terms of a debt instrument or a modification of the terms of a non-debt contract that occurs before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**, provided that the taxpayers and their related parties consistently apply the rules of this section before that date. See section 7805(b)(7).

■ **Par. 6.** Section 1.1271–0 is amended by adding a reserved entry for § 1.1275–2(l) and by adding entries for § 1.1275–2(m) to read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(l) [Reserved]

(m) Transition from interbank offered rates.

(1) In general.

(2) Single qualified floating rate.

(3) Remote contingency.

(4) Change in circumstances.

(5) Applicability date.

* * * * *

■ **Par. 7.** Section 1.1275–2, as proposed to be amended at 84 FR 47210, September 9, 2019, is further amended by adding paragraph (m) to read as follows:

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(m) *Transition from interbank offered rates*—(1) *In general.* This paragraph (m) applies to a variable rate debt instrument (as defined in § 1.1275–5(a)) that provides both for a qualified floating rate that references an interbank offered rate (IBOR) and for a methodology to change the IBOR-referencing rate to a different rate in anticipation of the IBOR becoming unavailable or unreliable. See § 1.1001–6 for additional rules that may apply to a debt instrument that provides for a rate referencing an IBOR.

(2) *Single qualified floating rate.* If a debt instrument is described in paragraph (m)(1) of this section, the IBOR-referencing rate and the different rate are treated as a single qualified floating rate for purposes of § 1.1275–5.

(3) *Remote contingency.* If a debt instrument is described in paragraph (m)(1) of this section, the possibility that the IBOR will become unavailable or unreliable is treated as a remote contingency for purposes of paragraph (h) of this section.

(4) *Change in circumstances.* If a debt instrument is described in paragraph (m)(1) of this section, the fact that the IBOR has become unavailable or unreliable is not treated as a change in circumstances for purposes of paragraph (h)(6) of this section.

(5) *Applicability date.* Paragraph (m) of this section applies to debt instruments issued on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may apply paragraph (m) of this section to debt instruments issued before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. See section 7805(b)(7).

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–22042 Filed 10–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104870–18]

RIN 1545–BO68

Taxable Year of Income Inclusion Under an Accrual Method of Accounting; 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–104870–18) that was published in the **Federal Register** on September 9, 2019. The proposed regulations are regarding the timing of income inclusion under section 451 of the Internal Revenue Code. The proposed regulations reflect changes made by the Tax Cuts and Jobs Act.

DATES: Written or electronic comments and requests for a public hearing are still being accepted and must be received by November 8, 2019.

ADDRESSES: Send submissions to Internal Revenue Service, CC:PA:LPD:PR (REG–104870–18), Room 5205, 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 Courier's Desk, Internal Revenue Service, CC:PA:LPD:PR (REG–104870–18), 1111 Constitution Avenue NW, Washington, DC 20224. Alternatively, persons may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–104870–18).

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.446–2, 1.451–3(d)(2), 1.451–3(i), 1.1275–2(l), and any other provisions within the jurisdiction of the Associate Chief Counsel (Financial Institutions and Products), Charles Culmer, (202) 317–4528; concerning the rest of the proposed regulations, Charles Gorham, (202) 317–5091; concerning submissions of comments and requests for a public hearing, Regina L. Johnson, (202) 317–6091 (not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Send submissions to Internal Revenue Service, CC:PA:LPD:PR (REG–104870–18), Room 5205, 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 Courier's Desk, Internal Revenue Service, CC:PA:LPD:PR (REG–104870–18), 1111 Constitution Avenue NW, Washington, DC 20224. Alternatively, persons may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–104870–18).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 451 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed regulations (REG–104870–18) contains errors which may prove to be misleading and need to be clarified.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–104870–18) that was the subject of FR Doc. 2019–19325, published at 84 FR 47191 (September 9, 2019), is corrected to read as follows:

1. On page 47192, first column, the first line under in the caption **FOR FURTHER INFORMATION CONTACT**, the language ''Concerning §§ 1.446–2, 1.451–3 (d)(2),'' is corrected to read ''Concerning §§ 1.446–2, 1.451–3 (d).''

2. On page 47192, third column, the first line of the last partial paragraph, the language ''Proposed § 1.451–3 (d)(1) clarifies that'' is corrected to read ''Proposed § 1.451–3 (d) clarifies that''.

3. On page 47193, first column, the third line of the first full paragraph, the language ''3(d)(2) also provides that the AFS'' is corrected to read ''3(d) also provides that the AFS''.

4. On page 47197, second column, the second line from the bottom of the first full paragraph, the language ''2018–80 (2018 IRB 609), issued'' is corrected to read ''2018–80 (2018 42 IRB 609), issued''.

5. On page 47197, second column, the sixth line under the caption ''Proposed Applicability Date,'' the language, ''specified fee, proposed § 1.451–3(i)(2) is'' is corrected to read ''specified fee other than a specified credit card fee, proposed § 1.451–3(i)(2) is''.

§ 1.451–3 [Corrected]

■ 6. On page 47205, first column, the entry for the table of content paragraph (h)(4), the language ''covers mismatched reportable periods'' is corrected to read ''covers mismatched reportable periods.''.

Martin V. Franks,

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

[FR Doc. 2019–21949 Filed 10–8–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0203; FRL–10000–75–Region 4]

Air Quality Plans; Tennessee; Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) submission, provided by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), through a letter dated September 13, 2018, for inclusion into the Tennessee SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. TDEC certified that the Tennessee SIP contains provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in Tennessee. EPA is proposing to determine that portions of Tennessee's SIP submission satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: Written comments must be received on or before November 8, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0203 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, 30303–8960. Ms. Bell can be reached via electronic mail at *bell.tiereny@epa.gov* or via telephone at (404) 562–9088.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On October 1, 2015 (published October 26, 2015, *see* 80 FR 65292), EPA promulgated a revised primary and secondary NAAQS for ozone revising the 8-hour ozone NAAQS from 0.075 parts per million to a new more protective level of 0.070 ppm. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP.'' States were required to submit such SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.[1]

[1] In these infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

This action is proposing to approve Tennessee's September 13, 2018,[2] revision submitted to EPA through TDEC for the applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS, with the exception of the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance in other states, and the prevention of significant deterioration (PSD) provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). With respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I) and the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), EPA will address these in separate rulemaking actions.

II. What elements are required under Sections 110(a)(1) and 110(a)(2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.[3]

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are summarized in section IV, below, and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''[4]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[5]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[6]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Tennessee that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 8-hour ozone NAAQS. Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS, commonly referred to as an ''infrastructure SIP.'' These infrastructure SIP submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[7] Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[8] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. What is EPA's analysis of how Tennessee addressed the elements of the Sections 110(a)(1) and (2) ''Infrastructure'' provisions?

The Tennessee infrastructure SIP submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) Emission Limits and Other Control Measures: Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Tennessee's SIP are

[2] The September 13, 2018, SIP submission submitted by TDEC was received by EPA on September 17, 2018.

[3] Throughout this rulemaking, unless otherwise indicated, the term ''Tennessee Air Pollution Control Regulations'' or ''Regulation'' indicates that the cited regulation has been approved into Tennessee's federally-approved SIP. The term ''Tennessee Annotated Code'', or ''TCA'', indicates cited Tennessee state statutes, which are not a part of the SIP unless otherwise indicated.

[4] Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment permitting requirements of 110(a)(2)(C).

[5] As mentioned above, the Part D permit program for construction and modification of stationary sources is not relevant to this proposed rulemaking.

[6] As also mentioned above, this element is not relevant to this proposed rulemaking.

[7] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on Tennessee's infrastructure SIP to address the 2010 Nitrogen Dioxide NAAQS (81 FR 45438 (July 14, 2016)).

[8] *See Mont. Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018).

relevant to emission limits and other air quality control measures. These regulations include enforceable emission limitations and other control measures within the following rule chapters: SIP-approved Tennessee Air Pollution Control Regulations (TAPCR) 1200–03–03, *Ambient Air Quality Standards,* 1200–03–04, *Open Burning;* 1200–03–06, *Non-process Emission Standards;* 1200–03–07, *Process Emission Standards;* 1200–03–09, *Construction and Operating Permits;* 1200–03–18, *Volatile Organic Compounds;* 1200–03–21, *General Alternate Emission Standards;* 1200–03–24, *Good Engineering Practice Stack Height Regulations;* and 1200–03–27, *Nitrogen Oxides.* Collectively, these regulations establish enforceable emissions limitations and other control measures, means, or techniques for activities that contribute to ozone concentrations in the ambient air, and provide authority for TDEC to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA. Additionally, State statutes established in the Tennessee Air Quality Act and adopted in the Tennessee Code Annotated (TCA) section 68–201–105(a), *Powers and duties of board—Notification of vacancy—Termination due to vacancy,* provide the Board and TDEC's Division of Air Pollution Control the authority to take actions in support of this infrastructure element such as issue permits, promulgate regulations, and issue orders to implement the Tennessee Air Quality Act and the CAA, as relevant. EPA has made the preliminary determination that the provisions contained in these State regulations and State statute satisfy Section 110(a)(2)(A) for the 2015 8-hour ozone NAAQS in the State.

2. 110(a)(2)(B) Ambient Air Quality Monitoring/Data System: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. TCA 68–201–105(b)(4) gives TDEC the authority to provide technical, scientific, and other services as may be required to implement the provisions of the Tennessee Air Quality Act. Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan, and includes a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[9]

On July 10, 2018, Tennessee submitted its most recent plan to EPA, which was approved by EPA on September 19, 2018. Tennessee's monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2019–0203. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the ambient air quality monitoring and data availability requirements related to the 2015 8-hour ozone NAAQS.

3. 110(a)(2)(C) Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources: This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). TDEC's 2015 8-hour ozone NAAQS infrastructure SIP submission cites a number of SIP provisions to address these requirements. EPA's rationale for its proposed action regarding each sub-element is described below.

Enforcement: The following SIP-approved regulation provides TDEC with authority for enforcement of ozone emission limits and control measures. TAPCR 1200–03–13–.01, *Violation Statement,* states that, ''Failure to comply with any of the provisions of these regulations shall constitute a violation thereof and shall subject the person or persons responsible therefore to any and all the penalties provided by law.'' Also note, under TCA 68–201–116, *Orders and assessments of damages and civil penalty—Appeal,* the State's Technical Secretary is authorized to issue orders requiring correction of violations of any part of the Tennessee Air Quality Act, or of any regulation promulgated under this State statute. Violators are subject to civil penalties of up to $25,000 per day for each day of violation and for any damages to the State resulting from the violations.

Preconstruction PSD Permitting for Major Sources: With regard to section 110(a)(2)(C) related to the programs for preconstruction PSD permitting for major sources, EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Tennessee's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2015 8-hour ozone NAAQS. TAPCR 1200–03–09–.01, *Construction Permits,* and TAPCR 1200–03–09–.03, *General Provisions,* collectively govern the preconstruction permitting of modifications and construction of minor stationary sources, and minor modifications of major stationary sources.

EPA has made the preliminary determination that Tennessee's SIP is adequate for program enforcement of control measures, and regulation of minor sources and modifications related to the 2015 8-hour ozone NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) Interstate Pollution Transport: Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1'') and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will consider these requirements in relation to Tennessee's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II)—prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3,

[9] The annual network plans are approved by EPA in accordance with 40 CFR part 58, and, on occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Tennessee's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II)—prong 4: Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other states. This requirement is satisfied for any relevant NAAQS when the state has a fully approved regional haze SIP. Tennessee's submission relied on the State's regional haze SIP submission to address the prong 4 requirements of section 110(a)(2)(D)(i) for the 2015 8-hour ozone NAAQS. EPA approved Tennessee's regional haze SIP on September 24, 2018 (83 FR 48237). EPA's approval of Tennessee's regional haze SIP therefore ensures that emissions from Tennessee are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS. Thus, EPA has made the preliminary determination that Tennessee's infrastructure SIP submissions for the 2015 8-hour ozone NAAQS meets the requirements of prong 4 of section 110(a)(2)(D)(i)(II).

5. 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution: Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. TAPCR 1200–03–09–3.04(4)(l)2, *General Provisions,* requires the permitting authority to notify air agencies whose areas may be affected by emissions from a source, which satisfies CAA section 126(a). Additionally, Tennessee does not have any pending obligation under sections 115 or 126(b) of the CAA relating to international or interstate pollution abatement. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2015 8-hour ozone NAAQS.

6. 110(a)(2)(E) Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies: Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Tennessee's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii). EPA's rationale for today's proposal respecting each element of 110(a)(2)(E) is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), TCA 68–201–105, *Powers and duties of board—Notification of vacancy—Termination due to vacancy,* gives the Board the power and duty to promulgate rules and regulations to implement the Tennessee Air Quality Act. The Board may define ambient air quality standards, set emission standards, set forth general policies or plans, establish a system of permits, and identify a schedule of fees for review of plans and specifications, issuance or renewal of permits or inspection of air contaminant sources.

TAPCR 1200–03–26, *Administrative Fees Schedule,* establishes construction fees, annual emission fees, and permit review fees sufficient to supplement existing State and Federal funding and to cover reasonable costs associated with the administration of Tennessee's air pollution control program. These costs include costs associated with the review of permit applications and reports, issuance of permits, source inspections and emission unit observations, review and evaluation of stack and/or ambient monitoring results, modeling, and costs associated with enforcement actions.

TCA 68–201–115, *Local pollution control programs—Exemption from state supervision—Applicability of part to air contaminant sources burning wood waste—Open burning of wood waste,* states that ''Any municipality or county in this state may enact, by ordinance or resolution respectively, air pollution control regulations not less stringent than the standards adopted for the state pursuant to this part, or any such municipality or county may also adopt or repeal an ordinance or resolution which incorporates by reference any or all of the regulations of the board, or any federal regulations including any changes in such regulations, when such regulations are properly identified as to date and source.'' Before such ordinances or resolutions become effective, the municipality or county must receive a certificate of exemption from the Board to enact local regulations in the State. In granting any certificate of exemption, the State of Tennessee reserves the right to enforce any applicable resolution, ordinance, or regulation of the local program.

TCA 68–201–115 also directs TDEC to ''frequently determine whether or not any exempted municipality or county meets the terms of the exemption granted and continues to comply with this section.'' If TDEC determines that the local program does not meet the terms of the exemption or does not otherwise comply with the law, the Board may suspend the exemption in whole or in part until the local program complies with the State standards.

As evidence of the adequacy of TDEC's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Tennessee on March 25, 2019, outlining section 105 grant commitments and the current status of these commitments for fiscal year 2018. The letter EPA submitted to Tennessee can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2019–0203. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Tennessee satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2018, therefore Tennessee's grants were finalized and closed out. EPA has made the preliminary determination that Tennessee has adequate resources and authority for implementation of the 2015 8-hour ozone NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP contain requirements providing that: (a)(1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. Section 110(a)(2)(E)(ii) obligations and the requirements of CAA section 128 are met in Tennessee Regulation 0400–30–17, *Conflict of Interest.* Under this regulation, the Board has authority over air permits and enforcement orders and is required to determine annually and after receiving a new member that at least a majority of its members represent the public interest and do not derive any significant portion of income from persons subject to such permits and enforcement orders. Further, the Board

cannot act to hear contested cases until it has determined it can do so consistent with CAA section 128. The regulation also requires TDEC's Technical Secretary and Board members to declare any conflict-of-interest in writing prior to the issuance of any permit, variance or enforcement order that requires action on their part.

EPA has made the preliminary determination that Tennessee's SIP adequately addresses the requirements of section 128, and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. Therefore, EPA is proposing to approve Tennessee's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) Stationary Source Monitoring and Reporting: Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. EPA's rules regarding how SIPs need to address source monitoring requirements at 40 CFR 51.212 require SIPs to exclude any provision that would prevent the use of credible evidence of noncompliance. TDEC's infrastructure SIP submission identifies TAPCR 1200–03–10, *Required Sampling, Recording, and Reporting,* which gives the State's Technical Secretary the authority to monitor emissions at stationary sources, and to require these sources to conduct emissions monitoring and to submit periodic emissions reports. This rule requires owners or operators of stationary sources to monitor emissions, submit periodic reports of such emissions and maintain records as specified by various regulations and permits. The monitoring data collected, and records of operations serve as the basis for a source to certify compliance and can be used by Tennessee as direct evidence of an enforceable violation of the underlying emission limitation or standard.

Additionally, Tennessee is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI) pursuant to Subpart A to 40 CFR part 51—''Air Emissions Reporting Requirements.'' The NEI is EPA's central repository for air emissions data. Specifically, all states are required to submit a comprehensive emission inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants.

The most recently published triennial compiled emissions information is available as part of the 2014 NEI. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the stationary source monitoring systems related to the 2015 8-hour ozone NAAQS.

Regarding credible evidence, TAPCR 1200–3–10–.04, *Sampling, Recording, and Reporting Required for Major Stationary Sources,* states that: ''the Technical Secretary is authorized to require by permit condition any periodic or enhanced monitoring, recording and reporting that he deems necessary for the verification of the source's compliance with the applicable requirements as defined in paragraph 1200–03–09–.02(11).'' TDEC states that the Tennessee SIP does not preclude the use of credible evidence and directs TDEC to give due consideration of all pertinent facts. Additionally, EPA is not aware of any SIP provision preventing the use of credible evidence. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the stationary source monitoring systems related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G): Emergency Powers: Section 110(a)(2)(G) of the Act requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Tennessee's emergency powers are outlined in TAPCR 1200–03–15, *Emergency Episode Plan,* which establishes the criteria for declaring an air pollution episode (air pollution alert, air pollution warning, or air pollution emergency), specific emissions reductions for each episode level, and emergency episode plan requirements for major sources located in or significantly impacting a nonattainment area. Additional emergency powers are codified in TCA 68–201–109, *Emergency Stop Orders for Air Contaminant Sources.* Under TCA 68–201–109, if the Commissioner of TDEC finds that emissions from the operation of one or more sources are causing imminent danger to human health and safety, the Commissioner may, with the approval of the Governor, order the source(s) responsible to reduce or discontinue immediately its (their) air emissions. Additionally, this State law requires a hearing to be held before the Commissioner within 24 hours of any such order.

Regarding the public welfare and environment, TCA 68–201–106, *Matters to be considered in exercising powers,* states that ''In exercising powers to prevent, abate and control air pollution, the board or department shall give due consideration to all pertinent facts, including, but not necessarily limited to: (1) The character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the people . . .'' Also, TCA 68–201–116, *Orders and assessments of damages and civil penalty Appeal,* provides in subsection (a) that if the Tennessee Technical Secretary discovers that any State air quality regulation has been violated, the Tennessee Technical Secretary may issue an order to correct the violation, and this order shall be complied with within the time limit specified in the order. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for emergency powers related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) SIP Revisions: Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements.

As previously discussed, TDEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Tennessee. Specifically, Section 68–201–105(a) of the Tennessee Air Quality Act authorizes the Board to promulgate rules and regulations to implement this State statute, including setting and implementing ambient air quality

standards, emission standards, general policies or plans, a permits system, and a schedule of fees for review of plans and specifications, issuance or renewal of permits, and inspection of sources. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) Consultation with Government Officials, Public Notification, and PSD and Visibility Protection: EPA is proposing to approve Tennessee's infrastructure SIP submission for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, and the public notification requirements of section 127. EPA's rationale for each sub-element is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to meet the requirements of section 121 relating to consultation with local governments, designated organizations, and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements. TAPCR 1200–03–34, *Conformity,* as well as the State's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. TAPCR 1200–03–34 provides for interagency consultation on transportation and general conformity issues. Tennessee adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. These consultation procedures were developed in coordination with the transportation partners in the State and are consistent with the approaches used for development of mobile inventories for SIPs. Required partners covered by Tennessee's consultation procedures include Federal, state, and local transportation and air quality agency officials. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with government officials related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(J) consultation with government officials.

Public notification: With respect to public notification, section 110(a)(2)(J) of the CAA requires states to notify the public of NAAQS exceedances and associated health hazards, and to enhance public awareness of measures that can prevent such exceedances. These requirements are met through the State's existing Air Quality Index and Air Quality Forecasting programs, which provide a method to alert the public if any NAAQS is exceeded in an area. Additionally, the State's annual monitoring plan update is sent out each year for public review and comment. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

PSD: With regard to the PSD element of section 110(a)(2)(J), EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Tennessee's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. As such, Tennessee's infrastructure SIP submission related to the 2015 8-hour ozone NAAQS does not address the visibility protection element of section 110(a)(2)(J).

11. 110(a)(2)(K) Air Quality Modeling and Submission of Modeling Data: Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. Tennessee states that attainment demonstrations submitted to EPA will provide any required air quality modeling, which will comply with EPA's final guidance on the use of models and will use the latest methods and techniques. Tennessee cites to TCA 68–201–105(b)(7), which authorizes TDEC to develop plans for a comprehensive air pollution control program for the State and provide technical, scientific, and other services to develop such plans, and notes that air quality modeling is part of the scientific and technical support for developing SIPs. Tennessee also states that it has personnel with training and experience to conduct dispersion modeling consistent with models approved by EPA protocols. Additionally, Tennessee participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, Tennessee's air quality regulations and practices demonstrate that TDEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) Permitting fees: Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

In Tennessee, funding for review of PSD and NNSR permits comes from permit-specific fees that are charged to new applicants and from annual emission fees charged to existing title V emission sources that are applying for major modifications under PSD or NNSR. The cost of reviewing, approving, implementing, and enforcing

PSD and major NNSR permits are covered under the following State regulations: (1) TAPCR 1200–03–26–.02(5) requires each new major stationary source to pay a construction permit application filing/processing fee and (2) TAPCR 1200–03–26–.02(9), *Annual Emission Fees for Major Sources,*[10] mandates that existing major stationary sources pay annual title V emission fees, which are used to cover the permitting costs for any new construction or modifications at these facilities as well as implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Tennessee adequately provides for permitting fees related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) Consultation/participation by affected local entities: Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. TCA 68–201–105, *Powers and duties of board Notification of vacancy Termination due to vacancy,* authorizes and requires the Board to promulgate rules and regulations under the provisions of the State's Uniform Administrative Procedures Act. TCA 4–5–202, *When hearings required,* requires agencies to precede all rulemaking with a notice and public hearing, except for exemptions. TCA 4–5–203, *Notice of hearing,* states that whenever an agency is required by law to hold a public hearing as part of its rulemaking process, the agency shall: ''(1) Transmit written notice of the hearings to the secretary of state for publication in the notice section of the administrative register website . . . and (2) Take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed rulemaking.'' TCA 68–201–105(b)(7) authorizes and requires TDEC to ''encourage voluntary cooperation of affected persons or groups in preserving and restoring a reasonable degree of air purity; advise, consult and cooperate with other agencies, persons or groups in matters pertaining to air pollution; and encourage authorized air pollution agencies of political subdivisions to handle air pollution problems within their respective jurisdictions to the greatest extent possible and to provide technical assistance to political subdivisions . . .'' TAPCR 1200–03–34, *Conformity,* requires interagency consultation on transportation and general conformity issues. Additionally, TDEC has, in practice, consulted with local entities for the development of its transportation conformity SIP and has worked with the FLMs as a requirement of EPA's regional haze rule. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with affected local entities related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(M).

[10] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

V. Proposed Action

With the exception of interstate transport provisions of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 and 2) pertaining to the contribution to nonattainment or interference with maintenance in other states and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J), EPA is proposing to approve Tennessee's September 13, 2018, infrastructure submission for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve Tennessee's infrastructure SIP submission for the 2015 8-hour ozone NAAQS because the submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 23, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–21862 Filed 10–8–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 535

[Docket No. 16–04]

RIN 3072–AC54

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Maritime Commission published a Notice of Proposed Rulemaking on August 15, 2016, which set forth proposed modifications to its rules governing agreements by or among ocean common carriers and/or marine terminal operators subject to the Shipping Act of 1984 and its rules on the delegation of authority to and redelegation of authority by the Director, Bureau of Trade Analysis. Public comments on the proposed rule were due on October 17, 2016. This notice withdraws the previous Notice of Proposed Rulemaking, and terminates this rulemaking proceeding.

DATES: The NPRM published in the **Federal Register** on August 15, 2016 at 81 FR 53986, is withdrawn as of October 9, 2019.

FOR FURTHER INFORMATION CONTACT:

For procedural questions, contact: Rachel E. Dickon, Secretary, Phone: (202) 523–5725, Email: *secretary@fmc.gov.*

For technical issues, contact: Florence A. Carr, Director, Bureau of Trade Analysis, Phone: (202) 523–5796, Email: *tradeanalysis@fmc.gov.*

For legal issues, contact: Tyler J. Wood, General Counsel, Phone: (202) 523–5740, Email: *generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Maritime Commission (Commission) issued a Notice of Proposed Rulemaking (NPRM) to obtain public comments on proposed modifications to its regulations in 46 CFR part 535, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984,* and 46 CFR 501.27, *Delegation to and redelegation by the Director, Bureau of Trade Analysis.* 81 FR 53986 (Aug. 15, 2016). The NPRM addressed comments submitted in response to the Commission's Advanced Notice of Proposed Rulemaking (ANPRM), 81 FR 10188 (Feb. 29, 2016), and requested further comments on the proposed modifications to its regulations.

The rulemaking was issued pursuant to Executive Order 13579 (E.O. 13579), *Regulation and Independent Regulatory Agencies* (July 11, 2011), and the Commission's corresponding *Plan for the Retrospective Review of Existing Rules.*[1] Under this plan, the Commission requested and received comments on how to improve its existing regulations and programs. With respect to part 535, comments with specific recommendations on regulatory modifications were submitted by ocean carrier members of major discussion agreements effective under the Shipping Act.[2] This rulemaking was also consistent with more recent Executive Orders, as it sought to modify Part 535 to remove outdated, ineffective, or unnecessary regulations.[3]

II. Procedural History and Intervening Change in Law

After the Commission instituted this rulemaking process and received comment, Congress enacted the Frank LoBiondo Coast Guard Authorization Act of 2018. Public Law 115–282 (Dec. 4, 2018). In the LoBiondo Act, Congress amended certain provisions of the Shipping Act of 1984, including several provisions relating to the statutory basis for Part 535. In light of the intervening change in law, the Commission has determined to withdraw the previous NPRM, and terminate this rulemaking proceeding. In the future, the Commission may determine to reevaluate part 535, and would seek comments on the statutory amendments to the Shipping Act.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2019–22063 Filed 10–8–19; 8:45 am]

BILLING CODE 6731–AA–P

[1] The Commission's *Plan for the Retrospective Review of Existing Rules* (Nov. 4, 2011) and *Update to Plan for Retrospective Review of Existing Rules* (Feb. 13, 2013) are published on the FMC home page under About the FMC/Report, Strategies, and Budget.

[2] *Comments of Ocean Common Carriers to Retrospective Review of Existing Rules,* dated May 18, 2012, are published on the FMC home page under *https://www2.fmc.gov/readingroom/proceeding/16-04/.*

[3] *See, e.g.,* Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs* (Jan. 30, 2017 and Executive Order 13777, *Enforcing the Regulatory Reform Agenda* (Feb. 24, 2017).

FEDERAL MARITIME COMMISSION

46 CFR Parts 503, 515, and 535

[Docket No. 19–06]

RIN 3072–AC77

Regulatory Amendments Implementing the Frank LoBiondo Coast Guard Authorization Act of 2018

AGENCY: Federal Maritime Commission

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (Commission) proposes to revise its regulations to implement the provisions of the Frank LoBiondo Coast Guard Authorization Act of 2018. The proposed revisions include amendments to the regulations governing Commission meetings, ocean transportation intermediary licensing, financial responsibility, and general duties, and the submission of public comments on ocean common carrier and marine terminal operator agreements.

DATES: Submit comments on or before November 8, 2019.

ADDRESSES: You may submit comments, identified by Docket No. 19–06, by the following methods:

- *Email: secretary@fmc.gov.* For comments, include in the subject line: ''Docket No. 19–06, Comments on LoBiondo Act Regulatory Amendments.'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.
- *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001.

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission's website, unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: *https://www2.fmc.gov/readingroom/proceeding/19-06/,* or to the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

On December 4, 2018, the ''Frank LoBiondo Coast Guard Authorization Act of 2018'' was enacted as Public Law 115–282 (LoBiondo Act or Act). The LoBiondo Act made a number of changes affecting the Federal Maritime Commission (Commission) and the Shipping Act of 1984 (Shipping Act). These included the changes made in Title VII of the Act, referred to as the ''Federal Maritime Commission Authorization Act of 2017,'' as well as a miscellaneous provision in § 834 of the LoBiondo Act. These changes were summarized by Commission staff at the Commission's May 1, 2019 meeting.[1] In this rulemaking, the Commission is focusing on the statutory changes that warrant corresponding revisions to the Commission's regulations. The proposed changes include:

- Revising several Commission regulations to update references to statutory provisions;
- Revising the regulations governing Commission meetings to include provisions on ''nonpublic collaborative discussions,'' a new type of meeting established by the LoBiondo Act that is not open to public observation;
- Revising the regulations governing ocean transportation intermediary (OTI)[2] licensing and financial responsibility to reflect statutory changes to the types of persons that are required to be licensed and maintain a bond, insurance, or other surety;
- Revising the regulations governing the general duties of non-vessel-operating common carriers (NVOCCs) to reflect amendments to several prohibited acts; and
- Revising the regulations related to comments on filed ocean common carrier and marine terminal operator (MTO) agreements to reflect that such comments are now confidential and may not be disclosed by the Commission;

The Commission is seeking comment on these proposed revisions and any others necessary to implement the statutory changes described below.

Although beyond the scope of this current rulemaking, the Commission also invites comments on any regulatory changes necessary to implement other LoBiondo Act provisions not discussed in this NPRM.[3] Such comments may be considered by the Commission in determining whether additional regulatory changes should be made in a future rulemaking.

II. Proposed Changes

A. References to Statutory Provisions (Parts 515, 530, 532, 545)

The LoBiondo Act amended 46 U.S.C. 41104 to revise several prohibited acts and added a new prohibited act. Public Law 115–282, 708. As part of those amendments, the Act changed the subsection designations in § 41104. The Commission is therefore proposing to revise its regulations to reflect the new subsection designations.

B. Commission Meetings (Part 503)

The LoBiondo Act amended 46 U.S.C. 303 to exclude certain Commission meetings from the requirements of the Government in the Sunshine Act (5 U.S.C. 552b). Public Law 115–282, 711(a). Under the revised statute, a majority of Commissioners may hold a meeting closed to the public to discuss Commission business if: (1) No vote or official Commission action is taken at the meeting; (2) only Commissioners and employees are present; (3) at least one Commissioner from each political party is present (assuming there are sitting Commissioners from more than one party); and (4) the Commission's General Counsel is present. 46 U.S.C. 303(c).[4] The statute refers to these closed meetings as ''nonpublic collaborative discussions.''

Although the Commission need not publicize such meetings beforehand or record a complete transcript or minutes, the Commission must, following the meeting, make publicly available a list of individuals present at the meeting and a summary of matters discussed, except for those matters the Commission determines may be withheld from the public under one of the applicable exemptions listed in the Sunshine Act § 303(c)(2)–(3). For those matters withheld from the public, the Commission must provide a summary with as much general information as possible. § 303(c)(3). The required disclosures must be made within two business days after the meeting, unless the meeting relates to an ongoing proceeding before the Commission, in which case the disclosures must be made on the date of the final Commission decision. § 303(c)(2), (4); *see* S. Rep. No. 115–89 at 19.

Finally, the Act includes provisions clarifying that: (1) The Sunshine Act continues to apply to all meetings other than nonpublic collaborative discussions as described in § 303(c), as well as to any information related to those discussions that the Commission proposes to withhold from the public; and (2) the provisions governing nonpublic collaborative discussions do not authorize the Commission to withhold records accessible to an individual under the Privacy Act of 1974 (5 U.S.C. 552a). § 303(b)(5)–(6).

The Commission is proposing to include a new section, § 503.84, in part 503 of its regulations mirroring the new provisions in 46 U.S.C. 303(c)(1)–(4) and to make necessary conforming revisions to other sections in that part.

C. OTI Licensing, Financial Responsibility, and General Duties (Part 515)

1. Licensing and Financial Responsibility

The LoBiondo Act amendments expanded the class of persons that must be licensed as OTIs and meet the OTI financial responsibility requirements to include persons that advertise or hold themselves out as OTIs. 46 U.S.C. 40901(a); 40902(a); Public Law 115–282, 707(a), (c). Previously, only persons that *acted* as OTIs were subject to the

[1] *Meeting of the Federal Maritime Commission* (May 1, 2019) (video available at *https://www.youtube.com/watch?v=gqpPJ3ATjS4&t=57m40s*).

[2] OTIs include non-vessel-operating common carriers (NVOCCs) and ocean freight forwarders (OFFs). 46 U.S.C. 40102(20).

[3] For example, § 834 of the LoBiondo Act amended 46 U.S.C. 3503 to exempt old passenger vessels that operate within inland waterways from the requirement that they be constructed of fire-retardant materials, provided certain conditions are met. One of those conditions is that the vessel owner acquire and maintain liability insurance in an amount to be prescribed by the Federal Maritime Commission. 46 U.S.C. 3503(b)(1)(C). The Commission is currently considering what actions are necessary to implement this provision and is not including any proposed regulatory changes as part of this rulemaking.

[4] This exclusion was modeled on a similar provision in the Surface Transportation Board Reauthorization Act of 2015. *See* S. Rep. No. 115–89 at 19 (2017) (accompanying S. 1129, an earlier authorization bill that contained many of the provisions later incorporated into the LoBiondo Act); 49 U.S.C. 1303(a)(2).

licensing and financial responsibility requirements.

The Commission is proposing to amend the general licensing and financial responsibility requirements in § 515.3 and § 515.21 to reflect this change. The Commission expects this change to have minimal, if any, effects on the universe of entities that must meet the licensing and financial responsibility requirements. In general, an entity that advertises or holds itself out as an OTI also acts as an OTI, and the practical effect of the change is to make it easier for the Commission to enforce the licensing and financial responsibility requirements and prosecute noncompliant OTIs. Instead of having to show that a noncompliant entity actually *acted* as an OTI, the mere fact that an unlicensed entity advertised or held itself out as an OTI is now sufficient to show a violation of the statute.

The LoBiondo Act also includes a new provision clarifying that the OTI licensing and financial responsibility requirements do not apply to a person ''that performs [OTI] services on behalf of an [OTI] for which it is a disclosed agent.'' 46 U.S.C. 40901(c); Public Law 115–282, 707(b). This provision appears to codify the holding in *Landstar Express Am.* v. *Fed. Mar. Comm'n,* 569 F.3d 493 (D.C. Cir. 2009), in which the D.C. Circuit held that ''[a]gents providing NVOCC services for licensed NVOCC principals are not NVOCCs (or OFFs) solely by virtue of being agents of NVOCCs,'' ''[t]hey therefore fall outside the coverage of the statute's licensing requirement,'' and ''[t]he Commission lacks authority to compel those agents to obtain licenses.'' 569 F.3d at 500. The Commission's regulations at § 515.4(b) already exclude agents of licensed OTIs from the licensing requirements, and the Commission is proposing minor revisions to that section to reflect the language of the new statutory provision.

The language of the new provision, however, is arguably broader than the holding in *Landstar,* which was focused on agents of licensed NVOCCs. The new § 40901(c) excludes agents of any OTI from the licensing and financial responsibility requirements, and does not distinguish between agents of licensed and unlicensed OTIs. The Commission has therefore tentatively determined that this statutory change may conflict with the Commission's regulations at 46 CFR 515.3 requiring that only licensed OTIs may act as agents to provide OTI services in the United States for foreign-based, registered NVOCCs (which are not licensed). The Commission seeks comment on whether to remove this requirement.

2. Common Carrier Prohibitions

The LoBiondo Act also expands the common carrier prohibition against knowingly and willfully accepting or transporting cargo for OTIs that do not meet certain Shipping Act requirements. *See* 46 U.S.C. 41104(a)(11); Public Law 115–282, 708(a)(2)(A). Previously, common carriers were prohibited from knowingly and willfully accepting or transporting cargo for an OTI that did not have a tariff *and* did not meet the OTI financial responsibility requirements. *See* 46 U.S.C. 41104(11) (2017). This wording limited the prohibition to dealing with noncompliant NVOCCs, as OFFs are not required to have a tariff. *See* 46 CFR 515.19(g)(1)(vii); 515.27(a). The LoBiondo Act split the provision into two separate prohibitions in 46 U.S.C. 41104(a)(11). The first prohibits common carriers from knowingly and willfully accepting or transporting cargo from an NVOCC that does not have a tariff. The second prohibits common carriers from knowingly and willfully accepting or transporting cargo from an OTI (*i.e.,* NVOCC or OFF) that does not meet the financial responsibility requirements.

The Commission's regulations at 46 CFR 515.19 and 515.27 reflect the earlier version of the prohibition (accepting or transporting cargo for noncompliant NVOCCs). The Commission is therefore proposing to amend these sections to reflect the new, broader statutory prohibition.

D. Comments on Filed Agreements (Part 535)

The LoBiondo Act made several changes to the provisions governing Commission action on agreements. In particular, the LoBiondo Act expanded on the existing requirement that the Commission transmit a notice of an agreement filing to the **Federal Register** within seven days, adding a requirement that the Commission request interested persons to submit relevant information and documents. 46 U.S.C. 40304(a)(2); Public Law 115–282, 706(a). Although the Commission already includes such requests in its **Federal Register** notices, *see* 46 CFR 535.603, adding this provision renders such comments confidential under 46 U.S.C. 40306, which exempts ''[i]nformation and documents . . . filed with the . . . Commission under [chapter 403]'' from disclosure under the Freedom of Information Act. Previously, only information provided by the filing parties was protected from disclosure under § 40306. *See* Final Rule: Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, 49 FR 45320, 45336 (Nov. 15, 1984) (interpreting the provision (as originally enacted in the Shipping Act of 1984) as only protecting information provided by the filing parties).

In addition, the Act includes a saving clause stating that nothing in § 706 of the Act or the amendments made to 46 U.S.C. 40304 may be construed to prescribe a specific deadline for the submission of relevant information and documents from interested persons in response to a request for comment on an agreement filing. Public Law 115–282, 706(c).

The Commission is proposing to revise its regulations in part 535 to address these changes. In particular, the Commission proposes to revise the procedures for submitting comments on filed agreements in § 535.603 to reflect that such comments are exempt from disclosure under FOIA and to make conforming changes to the list of confidentially submitted material in § 535.608. The Commission also proposes to revise the **Federal Register** notice requirements in § 535.602 to reflect the saving clause, namely that the Shipping Act may not be construed as prescribing a deadline for the submission of comments on filed agreements. Specifically, under revised § 535.602, **Federal Register** notices would no longer include a ''final date'' or rigid deadline for filing comments; rather, notices would include a date by which comments are most useful for the Commission's analysis of an agreement within the statutory 45-day review period. Comments received before that date would be considered by the Commission and staff in making determinations within the 45-day review period, while comments received after that date may be considered, to the extent practicable, within the 45-day review period or as part of the Commission's continuing review of the agreement after the 45-day period.

III. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the

docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

You may also submit comments by mail to the address listed above under **ADDRESSES**.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under **ADDRESSES**.

IV. Rulemaking Analyses and Notices

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. Based on the analysis below, the Chairman of the Federal Maritime Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Most of the proposed changes will clearly have no economic impact on any regulated entities, *i.e.,* updating references to statutory provisions, the amendments relating to nonpublic collaborative discussions by the Commission, and the amendments relating to comments on filed agreements.

With respect to the proposed amendments to the regulations governing OTI licensing, financial responsibility, and general duties, the Commission recognizes that the majority of businesses affected by these proposed changes (OTIs) qualify as small entities under the guidelines of the Small Business Administration. The proposed rule would not, however, result in a significant economic impact on these entities. The proposed regulatory changes include: (1) Expanding the class of entities that must obtain a license to include those holding themselves out or advertising as OTIs; and (2) expanding the prohibition on common carriers transporting cargo for noncompliant OTIs to include OFFs that have not met the financial responsibility requirements. The Commission is also seeking comment regarding whether to eliminate the requirement that foreign-based, registered NVOCCs employ only licensed OTIs as their agents in the United States.

These changes are expected to have minimal, if any, economic impact. As explained above, the Commission expects that requiring entities that hold themselves out or advertise as OTIs to obtain a license and bond, insurance, or other surety will have minimal, if any, effects on the universe of entities that must meet the licensing and financial responsibility requirements. In general, an entity that advertises or holds itself out as an OTI also acts as an OTI, and the practical effect of the change is to make it easier for the Commission to enforce the licensing and financial responsibility requirements and prosecute noncompliant OTIs. Further, if the Commission determines to eliminate the requirement that agents of foreign-based, registered NVOCCs obtain licenses in a final rule, the change would, at most, reduce the regulatory burden on those agents.[5] Finally, the changes to the prohibition on transporting cargo for noncompliant OTIs would have little, if any, economic impact on common carriers, including NVOCCs. NVOCCs would continue to be able to rely on the Commission's website, which contains an easily searchable database of OTIs, to ascertain both NVOCC and OFF compliance with the relevant requirements.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. In addition to correcting references to statutory provisions, the proposed rule would make changes to the regulations governing Commission meetings in part 503, the regulations governing OTI licensing, financial responsibility, and general duties in part 515, and the regulations governing the submission of comments on filed agreements in part 535. This rulemaking thus falls within the categorical exclusion for actions regarding access to public information under part 503 (§ 504.4(a)(24)), actions related to the issuance, modification, denial and revocation of ocean transportation intermediary licenses (§ 504.4(a)(1)), and actions related to the consideration of agreements (§ 504.4(a)(9)–(13), (30)–(35)). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and

[5] When originally proposing this requirement in 1998, the Commission stated that it expected that most U.S. agents would already be licensed and the impact of the requirement would be *de minimis.* 1998 NPRM, 63 FR at 70714. If the Commission determines to remove the requirement in a final rule, the Commission would expect this change to have a similar, minimal economic impact.

Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This proposed rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). 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, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects

46 CFR Part 503

Freedom of Information, Privacy, Sunshine Act.

46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 532

Common carriers, Exports, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure, Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 545

Antitrust, Maritime carriers.

For the reasons set forth above, the Federal Maritime Commission proposes to amend 46 CFR parts 503, 515, 530, 532, 535, and 545 as follows:

PART 503—PUBLIC INFORMATION

■ 1. The authority citation for part 503 is revised to read as follows:

Authority: 5 U.S.C. 331, 552, 552a, 552b, 553; 31 U.S.C. 9701; 46 U.S.C. 303; E.O. 13526 of January 5, 2010 75 FR 707, 3 CFR, 2010 Comp., p. 298, sections 5.1(a) and (b).

■ 2. Amend § 503.72 by revising paragraph (a) to read as follows:

§ 503.72 General rule—meetings.

(a) Except as otherwise provided in §§ 503.73, 503.74, 503.75, 503.76, and 503.84, every portion of every meeting and every portion of a series of meetings of the agency shall be open to public observation.

* * * * *

■ 3. Amend § 503.78 by revising paragraph (a) to read as follows:

§ 503.78 General rule—information pertaining to meeting.

(a) As defined in § 503.71, all information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings of the agency shall be disclosed to the public unless excepted from such disclosure under §§ 503.79 through 503.81 or § 503.84.

* * * * *

■ 4. Add § 503.84 to subpart I to read as follows:

§ 503.84 Nonpublic Collaborative Discussions.

(a) *General.* Notwithstanding § 503.72, a majority of the Commissioners may hold a meeting that is not open to public observation to discuss official agency business if:

(1) No formal or informal vote or other official agency action is taken at the meeting;

(2) Each individual present at the meeting is a Commissioner or an employee of the Commission;

(3) At least one (1) Commissioner from each political party is present at the meeting, if there are sitting Commissioners from more than one party; and

(4) The General Counsel of the Commission is present at the meeting.

(b) *Disclosure of nonpublic collaborative discussions.* Except as provided under paragraph (c) of this section, not later than two (2) business days after the conclusion of a meeting under paragraph (a) of this section, the Commission shall make available to the public, in a place easily accessible to the public:

(1) A list of the individuals present at the meeting; and

(2) A summary of the matters discussed at the meeting, except for any matters the Commission properly determines may be withheld from the public under § 503.73.

(c) *Exception.* If the Commission properly determines matters may be withheld from the public under § 503.73, the Commission shall provide a summary with as much general information as possible on those matters withheld from the public.

(d) *Ongoing proceedings.* If a meeting under paragraph (a) of this section directly relates to an ongoing proceeding before the Commission, the Commission shall make the disclosure under paragraph (b) of this section on the date of the final Commission decision.

■ 5. Amend § 503.85 by revising paragraph (a) introductory text to read as follows:

§ 503.85 Agency recordkeeping requirements.

(a) In the case of any portion or portions of a meeting or portion or portions of a series of meetings determined by the agency to be closed to public observation under the provisions of §§ 502.73 through 503.75, the following records shall be maintained by the Secretary of the agency:

* * * * *

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 6. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

■ 7. Revise § 515.3 to read as follows:

§ 515.3 License; when required.

Except as otherwise provided in this part, no person in the United States may advertise, hold itself out, or act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission. For purposes of this part, a person is considered to be ''in the United States'' if such person is resident in, or incorporated or established under, the laws of the United States. Registered NVOCCs must utilize only licensed ocean transportation intermediaries to provide NVOCC services in the United States. In the United States, only licensed OTIs may act as agents to provide OTI services for registered NVOCCs.

■ 8. Amend § 515.4 by revising paragraph (b) to read as follows:

§ 515.4 License; when not required.

* * * * *

(b) *Agents, employees, or branch offices of an ocean transportation intermediary.* A disclosed agent, individual employee, or branch office of a licensed ocean transportation intermediary is not required to be licensed in order to act on behalf of and in the name of such licensee; however, branch offices must be reported to the Commission in Form FMC–18 or under the procedures in § 515.20(e). A licensed ocean transportation intermediary is fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of such licensee's business.

* * * * *

■ 9. Amend § 515.19 by revising paragraph (g)(1)(vii) to read as follows:

§ 515.19 Registration of foreign-based unlicensed NVOCC.

* * * * *

(g) * * *

(1) * * *

(vii) Knowingly and willfully accepting cargo from or transporting cargo for the account of:

(A) An NVOCC that does not have a published tariff as required by 46 U.S.C. 40501 and part 520 of this chapter, and a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; or

(B) an OFF that does not have a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; and

* * * * *

■ 10. Amend § 515.21 by revising paragraph (a) introductory text, and paragraphs (a)(1), and (a)(2) to read as follows:

§ 515.21 Financial Responsibility Requirements

(a) *Form and amount.* Except as otherwise provided in this part, no person may advertise, hold oneself out, or act as an ocean transportation intermediary unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. The bond, insurance, or other surety covers the transportation-related activities of an ocean transportation intermediary only when acting as an ocean transportation intermediary.

(1) Any person in the United States advertising, holding oneself out, or acting as an ocean freight forwarder as defined in § 515.2(m)(1) shall furnish evidence of financial responsibility in the amount of $50,000.

(2) Any person in the United States advertising, holding oneself out, or acting as an NVOCC as defined in § 515.2(m)(2) shall furnish evidence of financial responsibility in the amount of $75,000.

* * * * *

■ 11. Amend § 515.27 by revising paragraph (a), paragraph (b) introductory text, and paragraphs (b)(1), and (c) to read as follows:

§ 515.27 Proof of compliance—NVOCC.

(a) No common carrier may knowingly and willfully accept cargo from or transport cargo for the account of:

(1) An NVOCC that does not have a published tariff as required by 46 U.S.C. 40501 and part 520 of this chapter, and a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; or

(2) An OFF that does not have a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part.

(b) A common carrier can obtain proof of an NVOCC or OFF's compliance with the OTI licensing, registration, tariff and financial responsibility requirements by:

(1) Consulting the Commission's website *www.fmc.gov* as provided in paragraph (d) of this section, to verify that the NVOCC or OFF has complied with the applicable licensing, registration, tariff, and financial responsibility requirements; or

* * * * *

(c) A common carrier that has employed the procedure prescribed in paragraph (b)(1) of this section shall be deemed to have met its obligations under 46 U.S.C. 41104(a)(11), unless the common carrier knew that such NVOCC or OFF was not in compliance with the applicable tariff or financial responsibility requirements.

* * * * *

PART 530—SERVICE CONTRACTS

■ 12. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40301–40306, 40501–40503, 41307.

■ 13. Amend § 530.6 by revising paragraph (d) to read as follows:

§ 530.6 Certification of shipper status.

* * * * *

(d) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier, agreement or conference executing a service contract shall be deemed to have complied with 46 U.S.C. 41104(a)(12) upon meeting the requirements of paragraphs (a) and (b) of this section, unless the carrier party had reason to know such certification or documentation of NVOCC tariff and bonding was false.

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

■ 14. The authority citation for part 530 continues to read as follows:

Authority: 46 U.S.C. 40103.

■ 15. Amend § 532.2 by revising paragraph (e) to read as follows:

§ 532.2 Scope and applicability.

* * * * *

(e) The prohibition in 46 U.S.C. 41104(a)(2)(A);

* * * * *

■ 16. Amend § 532.7 by revising paragraph (c) to read as follows:

§ 532.7 Recordkeeping and audit.

* * * * *

(c) Failure to keep or timely produce original NRAs will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(a)(1), 41104(a)(2)(A) or other acts prohibited by the Shipping Act.

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

■ 17. The authority citation for part 535 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307.

■ 18. Amend § 535.602 by revising paragraph (b)(6) to read as follows:

§ 535.602 Federal Register notice.

* * * * *

(b) * * *

(6) A request for comments, including relevant information and documents, regarding the agreement and the date by which comments should be submitted in order to be most useful to the Commission's review of the agreement during the 45-day waiting period.

■ 19. Amend § 535.603 by revising paragraph (a) to read as follows:

§ 535.603 Comment.

(a) Persons may file with the Secretary written comments, including relevant information and documents, regarding a filed agreement. Commenters may submit the comment by email to *secretary@fmc.gov* or deliver to Secretary, Federal Maritime Commission, 800 N Capitol St. NW,

Washington, DC 20573–0001. The Commission will treat such comments as confidential in accordance with § 535.608.

* * * * *

■ 20. Amend § 535.608 by revising paragraph (a) to read as follows:

§ 535.608 Confidentiality of submitted material.

(a) Except for an agreement filed under 46 U.S.C. ch. 403, all information and documents submitted to the Commission by the filing party(ies) or third parties regarding an agreement will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, replies to requests for additional information, and third-party comments.

* * * * *

PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY

■ 21. The authority citation for part 545 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501–40503, 41101–41106, and 40901–40904; 46 CFR 515.23.

■ 22. Amend § 545.1 by revising paragraph (a) to read as follows:

§ 545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) 46 U.S.C. 40502 authorizes ocean common carriers and agreements between or among ocean common carriers to enter into a service contract with a shippers' association, subject to the requirements of the Shipping Act of 1984 (''Act''). 46 U.S.C. 41104(a)(10) prohibits carriers from unreasonably refusing to deal or negotiate. 46 U.S.C. 40307(a)(3) exempts from the antitrust laws any activity within the scope of the Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

* * * * *

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2019–21537 Filed 10–8–19; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 355, and 388

[Docket No. FMCSA–2017–0370]

Motor Carrier Safety Assistance Program; Extension of Comment Period

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) extends the comment period for its August 22, 2019, notice of proposed rulemaking (NPRM) to amend its rules concerning the Agency's financial assistance programs. FMCSA received a request for an extension to the comment period from the Commercial Vehicle Safety Alliance (CVSA). The Agency believes it is appropriate to extend the comment period to provide interested parties additional time to submit their responses to the NPRM. Therefore, the Agency extends the deadline for the submission of comments until October 21, 2019.

DATES: The comment period for the NPRM published August 22, 2019, at 84 FR 44162, is extended to October 21, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2017–0370 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/docket?D=FMCSA-2017-0370.* 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 Wl2–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, 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'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kostelnik, State Programs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by telephone at (202) 366–5721, or by email at *jack.kostelnik@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for the NPRM (Docket No. FMCSA–2017–0370), indicate the specific section of the NPRM 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 *https://www.regulations.gov/docket?D=FMCSA-2017-0370.* 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 the NPRM as being available in the docket, go to *https://www.regulations.gov/docket?D=FMCSA-2017-0370* 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., 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

The August NPRM proposed amendments to the Agency's financial assistance programs resulting from the Fixing America's Surface Transportation (FAST) Act, including amendments based on the funding formula recommendations derived from the Motor Carrier Safety Assistance Program (MCSAP) Formula Working Group (working group). The NPRM proposed reorganizing the Agency's regulations to create a standalone subpart for the High Priority Program. It also proposed other programmatic changes to reduce redundancies, require the use of 3-year MCSAP commercial vehicle safety plans (CVSPs), and align the financial assistance programs with FMCSA's current enforcement and compliance programs.

The comment period for the NPRM was set at 45 days, and would end on October 7, 2019. FMCSA received a request to extend the comment period for an additional 45 days from the CVSA (available in the docket). CVSA stated that the original 45-day period did not allow enough time to prepare and approve comments on such a complicated and important issue.

In consideration of the CVSA request, FMCSA extends the public comment period until October 21, 2019.

Issued under authority delegated in 49 CFR 1.87.

Dated: October 1, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–22062 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 191001–0048]

RIN 0648–BI80

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 8

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

ACTION: Proposed rule, request for comments.

SUMMARY: This rule proposes regulations to implement Amendment 8 to the Atlantic Herring Fishery Management Plan. The New England Fishery Management Council developed Amendment 8 to specify a long-term acceptable biological catch control rule for Atlantic herring and address localized depletion and user group conflict. This amendment would establish an acceptable biological catch control rule that accounts for herring's role in the ecosystem and prohibit midwater trawling in inshore Federal waters from the U.S./Canada border to the Rhode Island/Connecticut border. Amendment 8 is intended to support sustainable management of the herring resource and help ensure that herring is available to minimize possible detrimental biological impacts on predators of herring and associated socioeconomic impacts on other user groups.

DATES: Public comments must be received by November 25, 2019.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2019–0078, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0078;*

2. Click the ''Comment Now!'' icon and complete the required fields; and

3. Enter or attach your comments.

• *Mail:* Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule for Herring Amendment 8.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us. 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. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of Amendment 8, including the Environmental Impact Statement, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA) prepared in support of this action are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone: (978) 282–9272 or email: *Carrie.Nordeen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The goal of the Atlantic Herring Fishery Management Plan (FMP) is to manage the herring fishery at long-term sustainable levels and objectives of the FMP include providing for full utilization of the optimum yield (OY) and, to the extent practicable, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. The Herring FMP describes OY as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, taking into account the protection of marine ecosystems, including maintenance of a biomass that supports the ocean ecosystem, predator consumption of herring, and biologically sustainable human harvest. This includes recognition of the importance of herring as one of many forage species of fish, marine mammals, and birds in the Greater Atlantic Region. Consistent with these aims, the goals for Amendment 8 are to: (1) Account for the role of herring within the ecosystem, including its role as forage; (2) stabilize the fishery at a level designed to achieve OY; and (3) address localized depletion in inshore waters.

On February 26, 2015 (80 FR 10458), the New England Fishery Management Council (Council) published a notice of intent (NOI) to prepare an EIS for Amendment 8 to consider long-term harvest strategies for herring, including an acceptable biological catch (ABC) control rule that addressed the biological and ecological requirements of the herring resource. The importance of herring as a forage species was underscored by the Council's specified intent to consider a wide range of ABC control rule alternatives, including those that explicitly account for herring's role in the ecosystem. The Council held scoping meetings during March and April of 2015 to solicit comments on ABC control rule alternatives.

An ABC control rule is a formulaic approach for setting a harvest limit. For herring and other stocks with a defined overfishing limit (OFL), the ABC is reduced from the OFL by scientific uncertainty, such as uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, so that the OFL will not be exceeded. The ABC control rule is developed by the Council to reflect its risk tolerance for not exceeding the OFL and provides guidance to the Council's Scientific and Statistical Committee for recommending annual ABCs based on the best available scientific information about stock status. The specific parameters of an ABC control rule are: (1) Upper biomass parameter; (2) maximum fishing mortality (F); and (3) lower biomass parameter. The values assigned to each of these parameters dictate the overall ''shape'' or function of the ABC control rule and determine whether F increases or decreases in response to the current estimate of stock biomass.

The Council developed alternatives for a herring ABC control rule using a Management Strategy Evaluation (MSE). MSE is a decision-making tool that uses computer modeling to compare the performance of alternatives (*i.e.,* management strategies) under various scenarios to achieve multiple, competing objectives. Because we do not have a complete understanding of the ocean ecosystem and all the sources of uncertainty, MSEs are useful to evaluate how alternatives perform under different environmental conditions. The Council held two public workshops to generate stakeholder input to help identify objectives for the MSE analysis. Input generated by the workshops was considered by the Council and, for the most part, adopted and included in Amendment 8. The MSE used three models, a herring model, a predator model, and an economic model, to compare ABC control rule performance. The models simulated how well the ABC control rules achieved herring management objectives, such as biomass, yield, revenue, and predator considerations, under simulated environmental conditions related to herring growth, stock assessment bias, and productivity of herring. Results of the MSE informed the range of ABC control rule alternatives and impact analyses of those alternatives in Amendment 8.

On August 21, 2015 (80 FR 50825), the Council published a supplemental NOI announcing it was expanding the scope of Amendment 8 to consider localized depletion in inshore waters. The supplemental NOI defined localized depletion as harvesting more fish from an area than can be replaced within a given time period. It also explained the Council was seeking input from the interested public as to how to define, measure, and evaluate impacts, and minimize inshore, localized depletion in the herring fishery as part of Amendment 8. Public comment during the supplemental scoping made it clear that localized depletion concerns voiced by many stakeholders were not just related to the biological impacts of herring removals on the herring stock and on predators of herring. Public comment also indicated that impacts of localized depletion should be measured and evaluated relative to competing uses for the herring resource and potentially negative economic impacts on businesses that rely on predators of herring.

The Council's interest in the localized depletion of herring extends back to the early development of the Herring FMP. Despite a lack of quantitative evidence demonstrating localized depletion, Amendment 1 to the Herring FMP (72 FR 11252, March 12, 2007) prohibited midwater trawling for herring in Herring Management Area 1A from June through September as a proactive measure to prevent potential negative impacts on the stock, the fishery, and predators of herring resulting from over harvesting in Area 1A.

Ultimately, the Council's consideration of localized depletion in Amendment 8 included describing localized depletion as involving user group conflict and included both an evaluation of impacts of the user group conflict and consideration of competing interests for how herring should be used. The Council's concern with localized depletion and user group conflict is explained in this excerpt from the Council's April 2016 problem statement: ''. . . concerns with concentrated, intense commercial fishing of Atlantic herring in specific areas and at certain times that cause detrimental socioeconomic impacts on other user groups (commercial, recreational, ecotourism) who depend upon adequate local availability of Atlantic herring to support business and recreational interests both at sea and on shore.'' The range of localized depletion and user group conflict alternatives in Amendment 8 were developed to address potential localized depletion of herring to minimize possible detrimental biological impacts on predators of herring and associated socioeconomic impacts on other user groups.

A Notice of Availability (NOA) for Amendment 8 was published in the **Federal Register** on August 21, 2019 (84 FR 43573). The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows us to approve, partially approve, or disapprove measures recommended by the Council in an amendment based on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. The Council develops policy for its fisheries, and we defer to the Council on policy decisions unless those policies are inconsistent with the Magnuson-Steven Act or other applicable law. As such, we are seeking comments on whether measures in Amendment 8 are consistent with the Herring FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. The comment period for the NOA ends on October 21, 2019. Comments submitted on the NOA and/or this proposed rule prior to October 21, 2019, will be considered in our decision to approve, partially approve, or disapprove Amendment 8. We will consider comments received by the end of the comment period for this proposed rule November 25, 2019 in our decision to implement measures proposed by the Council.

Proposed Measures

This rule proposes a long-term ABC control rule for herring. Under the proposed control rule, when biomass is at or above 50 percent of the biomass associated with maximum sustainable yield (B_{MSY}) or its proxy, ABC is the catch associated with a maximum fishing mortality (F) of 80 percent of F_{MSY} or its proxy. When biomass falls below 50 percent of B_{MSY} or its proxy, F declines linearly to 0 at 10 percent of B_{MSY} or its proxy. The control rule would set ABC for a three-year period

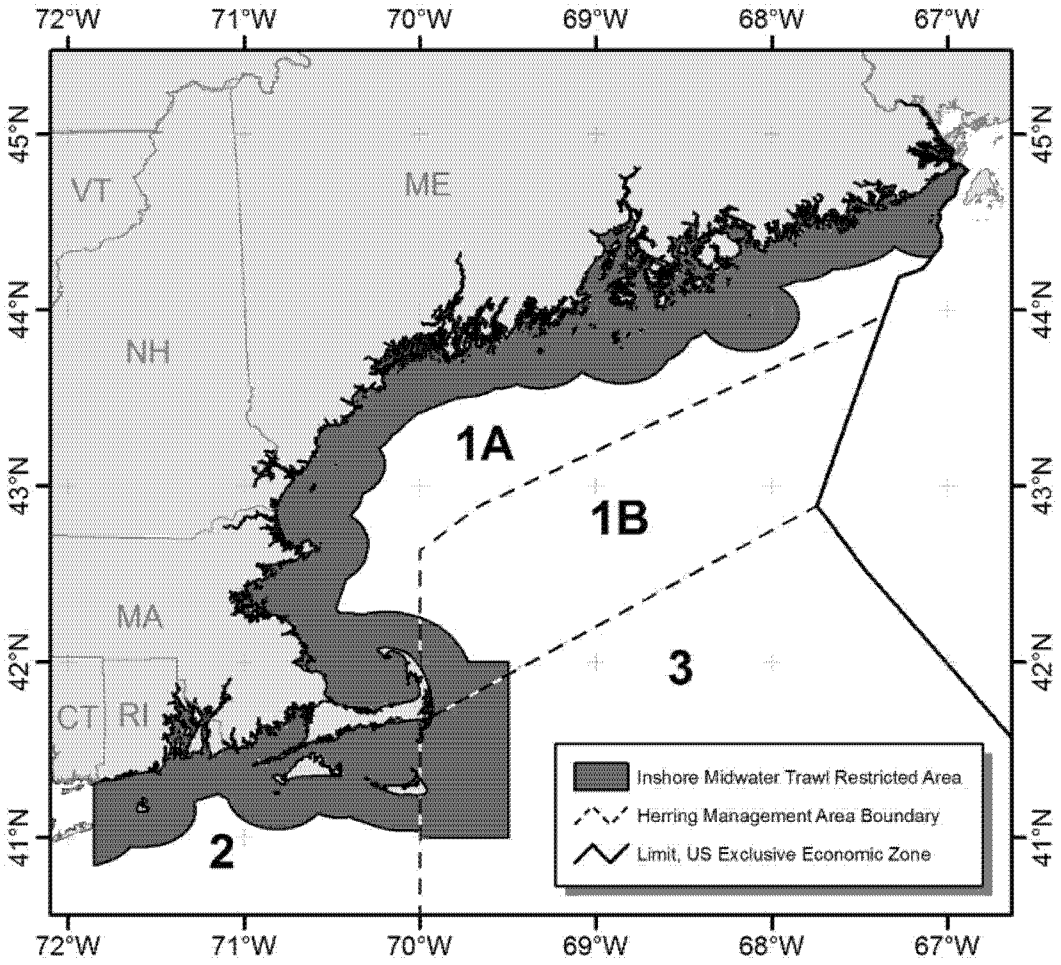
but would allow ABC to vary year-to-year in response to projected changes in biomass. This rule proposes that the control rule could be revised via a framework adjustment if a quantitative assessment is not available, if projections are producing ABCs that are not justified or consistent with available information, or if the stock requires a rebuilding program.

The proposed control rule is intended to explicitly account for herring as forage in the ecosystem by limiting F to 80 percent of F_{MSY} when biomass is high and setting it at zero when biomass is low. It is also intended to generate an ABC consistent with specific criteria identified by the Council, including low variation in yield, low probability of the stock becoming overfished, low probability of a fishery shutdown, and catch limits set at a relatively high proportion of MSY. The Council anticipates that short-term negative economic impacts on participants in the herring or lobster fisheries, resulting from a reduced herring harvest in response to low herring biomass, may become a long-term economic benefit for industry participants, especially if the proposed control rule results in low variation in yield, low probability of a fishery shutdown, and low probability of overfishing. Relative to other control rules considered by the Council, the proposed control rule is designed to more effectively balance the goal and objectives of the Herring FMP, including managing the fishery at long-term sustainable levels, taking forage for predators into account to support the ocean ecosystem, and providing a biologically sustainable harvest as a source of revenue for fishing communities and bait for the lobster fishery.

Shortly before the Council took final action on Amendment 8, an updated stock assessment concluded that herring biomass is low, and the probability of overfishing and the stock becoming overfished is high. While not directly applicable to a long-term harvest policy, the Council noted that under herring's current condition of low biomass, setting catch more conservatively than status quo may increase the likelihood of stock growth. In turn, this would have positive impacts on the herring fishery, predators, and predator fisheries.

This rule also proposes prohibiting the use of midwater trawl gear inshore of 12 nautical miles (22 km) from the U.S./Canada border to the Rhode Island/Connecticut border and inshore of 20 nautical miles (37 km) off the east coast of Cape Cod. Specifically, federally permitted vessels would be prohibited from using, deploying, or fishing with midwater trawl gear within the inshore midwater trawl restricted area located shoreward of the 12-nautical mile (22-km) territorial sea boundary from Canada to Connecticut and within thirty-minute squares 114 and 99 off Cape Cod (Figure 1). Midwater trawl vessels would be able to transit the inshore midwater trawl restricted gear area provided gear was stowed and not available for immediate use. The proposed measure would be in addition to the existing prohibition on midwater trawling for herring in Area 1A during June 1 through September 30.

Figure 1. Proposed Inshore Midwater Trawl Restricted Area



The Council recommended the proposed inshore midwater trawl restricted area to minimize local depletion and user group conflict when midwater trawl vessels harvesting herring overlap with other user groups (*i.e.,* commercial fisheries, recreational fisheries, ecotourism) that rely on herring as forage and provide inshore conservation benefits. The Council focused on midwater trawl gear to mitigate potential negative socioeconomic impacts on other user groups in response to short duration, high volume herring removals by midwater trawl vessels that are relatively more mobile and capable of fishing in offshore areas than vessels using other gear types. Information to quantify the impact of midwater trawling on other user groups is scarce, so the amendment analyzed the degree of overlap between midwater trawl vessels and other user groups. The proposed measure is intended to incorporate areas with a high degree of overlap between midwater trawl vessels and other user groups throughout the year. Specifically, it incorporates the overlap with predator fisheries in the Gulf of Maine and southern New England throughout the year, as well as the overlap with ecotourism and the tuna fishery in Area 1A during the fall. While overlap with the midwater trawl vessels does not necessarily translate into negative biological impacts on predators, less overlap may reduce potential user conflicts, provided midwater trawl effort does not shift into other areas and generate additional overlap.

The Herring FMP specifies that herring research set-aside (RSA) can equal up to three percent of the sub-annual catch limit for a herring management area. This rule proposes that RSA compensation fishing using midwater trawl gear would be permitted within the inshore midwater trawl restricted area. The Council recommended permitting RSA compensation fishing within the inshore midwater trawl restricted area to help ensure the RSA would be harvested and those funds would be available to support the projects awarded RSA. Vessels engaged in herring RSA compensation fishing typically operate as authorized by an exempted fishing permit (EFP) so they can request exemptions from certain regulations that would otherwise restrict herring harvest. While vessels would be permitted to use midwater trawl gear within the inshore midwater trawl restricted area while RSA compensation fishing, it does not mean that compensations trips would be without restrictions. Terms and conditions of the EFP must be consistent with the Magnuson-Stevens Act, other applicable

law, and Herring FMP. Additionally, we would consider whether additional terms and conditions would be required for EFPs to ensure RSA compensation trips do not exacerbate the overlap between midwater trawl vessels and other user groups.

This rule proposes that the inshore midwater trawl restricted area or new closures to address localized depletion and/or user group conflict could be modified or implemented via framework adjustment. The list of framework provisions at § 648.206 already includes closed areas; this amendment would add the inshore midwater trawl restricted area to that list.

The Council's recommendation to prohibit midwater trawling in inshore areas is an allocation decision intended to balance the needs of user groups and provide conservation benefits. Consistent with objectives in the Herring FMP, the proposed measure is intended to facilitate an efficient, fair, and equitable accommodation of social, economic, and ecological factors associated with achieving OY, in part by providing, to the extent practicable, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. Because midwater trawl vessels historically harvested a larger percentage of herring than other gear types and are able to fish offshore, the Council recommended prohibiting them from inshore waters to help ensure herring was available inshore for other user groups and predators of herring. The proposed inshore midwater trawl restricted area is designed to be reasonably large enough to address the overlap between midwater trawl vessels and other user groups and, ultimately, user group conflict in inshore waters. This proposed measure is likely to negatively impact the midwater trawl fleet, with potentially increased trip costs and lower annual catches, but the Council believes that, on balance, the benefits to other user groups, such as potentially reduced trips costs, higher annual catches, and improved safety, outweigh the costs to midwater trawl vessels. The proposed measure may also have biological benefits if moving midwater trawl vessels offshore minimizes catch of river herring and shad, reduces fishing pressure on the inshore component of the herring stock, and helps ensure herring are available to predators. Herring is currently assessed as one stock, but it likely has stock components. Reducing fishing pressure inshore would benefit an inshore stock component. Analyses in Amendment 8 estimate that in recent years approximately 30 percent of the midwater trawl fleet's annualized revenue came from within the proposed inshore midwater trawl restricted area. Negative economic impacts on the midwater trawl fleet may be mitigated if the fleet is able to offset lost revenue from inshore areas with increased revenue from offshore areas. Herring catch limits are currently low, so the fishery has the capacity to harvest the OY. Recent midwater trawl landings (2007–2015) offshore of the proposed midwater trawl restricted area (36,903 mt) are much higher than the Council-recommended OY for 2020 and 2021 (11,621 mt). In the longer-term, the fishery will likely adapt to be able harvest an increased OY, provided vessels are able to locate herring.

Proposed Clarifications

We propose the following revision and clarifications to § 648.202(a) under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to carry out a FMP or the Magnuson-Stevens Act.

First, this rule proposes revising the title from ''Purse Seine/Fixed Gear Only Area'' to ''Midwater Trawl Restricted Area.'' Bottom trawl gear, in addition to purse seine and fixed gear, is permitted in the referenced area; only midwater trawl gear is prohibited in the area. The proposed revision is a more accurate description of the referenced area and is necessary to clarify the intent of the regulation.

Second, this rule proposes clarifying that the regulation applies to all federally permitted vessels fishing for herring. The regulation currently applies midwater trawl gear restrictions to vessels fishing for herring. This clarification is necessary to specify that restrictions on fishing for herring with midwater trawl gear only apply to federally permitted vessels and do not apply to vessels with only a state herring permit fishing exclusively in state waters.

Third, the rule proposes clarifying the conditions under which midwater trawl vessels may transit the ''Midwater Trawl Restricted Area'' described above. Current regulations specify that midwater trawl vessels with a limited access herring permit may transit Area 1A during June through September with midwater trawl gear on board, provided the gear is stowed and not available for immediate use. This rule proposes clarifying that any federally permitted herring vessel may transit Area 1A during June through September, provided midwater trawl gear is stowed and not available for immediate use. The unnecessary addition of a limited access permit requirement to transit Area 1A is likely a byproduct of the impact analysis identifying the number of limited access vessels that would be affected by the prohibition of midwater trawling in Area 1A implemented in Amendment 1 to the Herring FMP.

Lastly, we propose a revision to § 648.200(b)(3) under the authority of section 305(d) to the Magnuson-Stevens Act. This revision would change the reference from ''at'' § 648.201(a) to ''in'' § 648.201(a) to be consistent with other regulatory references within § 648.200.

Classification

Pursuant to section 304(a)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent the Magnuson-Stevens Act and other applicable law. In making the final determination, we will consider the data, views, and comments received during the public comment period.

This proposed rule has been preliminarily determined to be not significant for purposes of Executive Order (E.O.) 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule would have on small entities, including small businesses, and also determines ways to minimize these impacts.

The IRFA includes this section of the preamble to this rule and analyses contained in Amendment 8 and its accompanying EIS/RIR/IRFA. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

Description of the Reason Why Action by the Agency Is Being Considered and Statement of the Objective of, and Legal Basis for, This Proposed Rule

This action proposes management measures for the herring fishery. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

Effective July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing

industry for RFA compliance purposes only (80 FR 81194, December 29, 2015). A commercial fishing business is classified as a small business if it is independently owned and operated, is not dominant in its field of operation, and has combined annual receipts not in excess of $11 million.

This action would affect all permitted herring vessels; therefore, the direct regulated entity is a firm that owns at least one herring permit. There are many firms that hold an open-access (Category D) herring permit. These firms harvest only a small fraction of herring; furthermore, they are minimally affected by the regulations.

As of June 1, 2018, there were 862 firms (852 small) that held at least one herring permit. There were 126 (123 small) active firms that held at least one herring permit. There were 101 (94 small) firms that held at least one limited access (Categories A, B, C) herring permit or a Category E open access herring permit. There were 53 (50 small) firms that held a limited access or Category E herring permit and were active in the herring fishery. Table 1 characterizes ''gross receipts'' and ''herring receipts'' for firms that held a limited access or Category E open access herring permit. Table 2 characterizes ''gross receipts'' and ''herring receipts'' for firms that held a limited access or Category E open access herring permit and were active in the herring fishery. In both tables, the small entities are further characterized by gear type to facilitate comparisons. There are fewer than three large entities that use midwater trawl gear, so the description of the large entities is not disaggregated to gear type to preserve confidentiality under the Magnuson-Stevens Act. Table 3 characterizes ''gross receipts'' and ''herring receipts'' for firms that held a herring permit and Table 4 characterizes ''gross receipts'' and ''herring receipts'' for firms that held a herring permit and were active in the herring fishery. Tables 3 and 4 include firms with Category D open access herring permits that would be minimally impacted by this action.

TABLE 1—AVERAGE RECEIPTS FROM FIRMS WITH LIMITED ACCESS AND CATEGORY E OPEN ACCESS HERRING PERMITS IN 2017

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large	7	All	$20,396,374	$492,598
Small	9	Midwater Trawl	2,499,646	1,241,225
Small	85	Non-Midwater Trawl	1,299,110	137,954

Source: NMFS.

TABLE 2—AVERAGE RECEIPTS FROM FIRMS WITH LIMITED ACCESS AND CATEGORY E OPEN ACCESS HERRING PERMITS THAT WERE ACTIVE IN THE HERRING FISHERY IN 2017

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large	3	All	$16,567,731	$1,149,395
Small	9	Midwater Trawl	2,499,646	1,241,225
Small	41	Non-Midwater Trawl	1,276,255	286,002

Source: NMFS.

TABLE 3—AVERAGE RECEIPTS FROM ALL FIRMS WITH A HERRING PERMIT IN 2017

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large	10	All	$19,873,801	$344,818
Small	9	Midwater Trawl	2,499,646	1,241,225
Small	843	Non-Midwater Trawl	639,591	14,002

Source: NMFS.

TABLE 4—AVERAGE RECEIPTS FROM ALL FIRMS WITH A HERRING PERMIT THAT WERE ACTIVE IN THE HERRING FISHERY IN 2017

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large	3	All	$16,567,731	$1,149,395
Small	9	Midwater Trawl	2,499,646	1,241,225
Small	114	Non-Midwater Trawl	681,943	103,540

Source: NMFS.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

This action does not duplicate, overlap, or conflict with any other Federal rules.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

When evaluating ABC control rule alternatives, Alternative 1 is the non-preferred alternative with potential to lessen economic impacts on small entities compared to the proposed measure. Alternative 1 is less conservative than the proposed ABC control rule and represents the interim control rule that was used to set herring ABC for 2016–2018. Analyses in Amendment 8 suggest the difference between the average ABCs under Alternative 1 (24,553 mt) and the proposed ABC control rule (22,685 mt) in the short-term (2019–2021) is less than 2,000 mt. Long-term differences between the average ABCs resulting from Alternative 1 and the proposed ABC control rule are expected to be minimal. Relative to Amendment 8's goal for an ABC control rule, F is lower under the proposed ABC control rule (80 percent of F_{MSY}) than under Alternative 1 (90 percent of F_{MSY}), therefore, the proposed ABC control rule likely better accounts for herring's role as forage in the ecosystem by limiting fishing than Alternative 1.

When evaluating localized depletion and user group conflict alternatives, several of the non-preferred alternatives have the potential to lessen economic impacts on small entities compared to the proposed measure. The proposed measure would prohibit federally permitted vessels from fishing inshore with midwater trawl gear. Under the proposed measure, analyses in Amendment 8 estimate that herring revenue will decline by about 13 percent for small firms that use midwater trawl gear compared to the no action alternative. Additionally, under the proposed measure, small firms that use purse seine or bottom trawl gear may have revenue increases of 29 percent compared to the no action alternative. Negative economic impacts on midwater trawl vessels may be mitigated if vessels are able to catch a greater percentage of fish offshore or if they switch to purse seine or bottom trawl gear and continue to fish inshore. Relative to the goals in Amendment 8, the proposed action is expected to minimize potential localized depletion and user group conflict, by reducing the overlap between midwater trawl vessels and other user groups, better than the non-preferred alternatives that would minimize economic impacts on midwater trawl vessels.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 1, 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 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.14, add paragraphs (r)(1)(vi)(H) and (I) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(vi) * * *

(H) Use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted area as defined in § 648.202(a)(2), unless the vessel is on a declared research set-aside trip and operating as authorized by an exempted fishing permit or the vessel has not been issued a valid, Federal permit under this part and fishes exclusively in state waters.

(I) Transit the inshore midwater trawl restricted area, defined in § 648.202(a)(2), with midwater trawl gear onboard unless midwater trawl gear is stowed and not available for immediate use, as defined in § 648.2 or the vessel has not been issued a valid, Federal permit under this part and fishes exclusively in state waters.

* * * * *

■ 3. In § 648.200, revise paragraphs (b)(1) through (3) to read as follows:

§ 648.200 Specifications.

* * * * *

(b) * * *

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is the fishing rate supporting maximum sustainable yield (F_{MSY} or proxy). Catch that exceeds this amount would result in overfishing.

(2) ABC must be less than the OFL. The Council's Scientific and Statistical Committee (SSC) shall recommend ABC to the Council by applying the ABC control rule in § 648.200 and considering scientific uncertainty. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC.

(3) ACL must be equal to or less than the ABC. Management uncertainty, which includes, but is not limited to, expected catch of herring in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters, shall be considered when setting the ACL. Catch in excess of the ACL shall trigger accountability measures (AMs), as described in § 648.201(a).

* * * * *

■ 4. In § 648.202, revise paragraph (a) to read as follows:

§ 648.202 Season and area restrictions.

(a) *Midwater Trawl Restricted Areas*—(1) *Area 1A.* Federally permitted vessels fishing for Atlantic herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels may use any authorized gear type to harvest herring in Area 1A from October 1—May 31.

(2) *Inshore.* Federally permitted vessels may not use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted area. A federally permitted vessel with midwater trawl gear on board may transit the inshore midwater trawl restricted area, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels on a declared research set-aside trip are permitted to use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted areas provided the vessel is operating as authorized by an exempted fishing permit. The Inshore Midwater Trawl Restricted Area includes all state and Federal waters between the U.S.

coastline and the following points, connected in the order listed by straight lines, unless otherwise noted:

TABLE 1 TO PARAGRAPH (A)(2)

Point	Latitude	Longitude	Note
IMT1	44° 17.986′ N	67° 5.503′ W	(1)(2)
IMT2	42° 00.00′ N	69° 43.474′ W	(2)(3)
IMT3	42° 00.00′ N	69° 30.00′ W	
IMT4	41° 00.00′ N	69° 30.00′ W	
IMT5	41° 00.00′ N	70° 00.00′ W	
IMT6	41° 2.339′ N	70° 00.00′ W	(4)(5)
IMT7	40° 50.637′ N	71° 51.00′ W	(5)(6)
IMT8	41° 18.503′ N	71° 51.00′ W	(7)

[1] Point IMT1 represents the intersection of the U.S./Canada Maritime Boundary and the 12 nautical mile (nmi) Territorial Sea boundary.
[2] From Point IMT1 to Point IMT2 following the 12 nmi Territorial Sea boundary.
[3] Point IMT2 represents the intersection of the 12 nmi Territorial Sea boundary and 42°00′ N lat.
[4] Point IMT6 represents the intersection of 70°00′ W long. and the 12 nmi Territorial Sea boundary.
[5] From Point IMT6 to Point IMT7 following the 12 nmi Territorial Sea Boundary.
[6] Point IMT7 represents the intersection of 71°51′ W long. and the 12 nmi Territorial Sea boundary.
[7] Point IMT8 represents the intersection of 71°51′ W long. and the coastline of Watch Hill, RI.

* * * * *

■ 5. In § 648.206, revise paragraphs (b)(3), (37), and (38) and add paragraph (b)(39) to read as follows:

§ 648.206 Framework provisions.

* * * * *

(b) * * *

(3) Closed areas, including midwater trawl restricted areas, other than spawning closures;

* * * * *

(37) River herring and shad Catch Cap Areas and Catch Cap Closure Areas;

(38) Modifications to the ABC control rule in § 648.200, including, but not limited to, control rule parameters, if a quantitative stock assessment is not available, if the projections are producing ABCs that are not justified or consistent with available information, or if the stock requires a rebuilding program; and

(39) Any other measure currently included in the FMP.

* * * * *

[FR Doc. 2019–21712 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 196

Wednesday, October 9, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on the Federal Rules of Appellate Procedure

AGENCY: Advisory Committee on the Federal Rules of Appellate Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Appellate Procedure has been canceled: Appellate Rules Hearing on October 30, 2019, in Washington DC.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

SUPPLEMENTARY INFORMATION: Announcements for this hearing were previously published in 84 FR 42951.

Dated: October 4, 2019.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2019–22092 Filed 10–8–19; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–19–0076; SC19–0581/0189–1 N]

Fruit Crops; Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision to the approved forms and generic information collection for marketing orders covering fruit crops.

DATES: Comments on this notice are due by December 9, 2019 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. 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: *www.regulations.gov.* Comments should reference the docket 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: *www.regulations.gov.* All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Andrew Hatch, Chief, Rulemaking Services Branch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 720–6862; Fax: (202) 720–8938; or Email: *andrew.hatch@usda.gov.*

Small businesses may request information on this notice by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone (202) 720–2491; Fax: (202) 720–8938; or Email: *richard.lower@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Fruit Crops.

OMB Number: 0581–0189.

Expiration Date of Approval: January 31, 2020.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: Marketing orders provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. This notice covers the following marketing order citations: 7 CFR parts 905 (Florida citrus), 906 (Texas citrus), 915 (Florida avocados), 920 (California kiwifruit), 922 (Washington apricots), 923 (Washington cherries), 925 (California table grapes), 927 (Oregon/Washington pears), and 929 (Cranberries grown in 10 States). Marketing order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Marketing orders are authorized under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674). The Secretary of Agriculture is authorized to oversee the marketing order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing orders. Under the Act, marketing orders may authorize: Production and marketing research, including paid advertising; volume regulations; reserves, including pools and producer allotments; container regulations; and quality control. Assessments are levied on handlers regulated under the marketing orders.

USDA requires several forms to be filed to enable the administration of each marketing order. These include forms covering the selection process for industry members to serve on a marketing order's committee or board and ballots used in referenda to amend or continue marketing orders.

Under Federal marketing orders, producers and handlers are nominated by their peers to serve as representatives on a committee or board which administers each program. Nominees must provide information on their qualifications to serve on the committee or board. Qualified nominees are then appointed by the Secretary. Formal rulemaking amendments must be approved in referenda conducted by USDA and the Secretary. For the purposes of this action, ballots are

considered information collections and are subject to the Paperwork Reduction Act. If a marketing order is amended, handlers are asked to sign an agreement indicating their willingness to abide by the provisions of the amended marketing order.

Some forms are required to be filed with the committee or board. The marketing orders and their rules and regulations authorize the respective commodities' committees and boards, the agencies responsible for local administration of the marketing orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The committees and boards have developed forms as a means for persons to file required information relating to supplies, shipments, and dispositions of their respective commodities, and other information needed to effectively carry out the purpose of the Act and their respective orders, and these forms are utilized accordingly.

The forms covered under this information collection require respondents to provide the minimum information necessary to effectively carry out the requirements of the marketing orders, and use of these forms is necessary to fulfill the intent of the Act as expressed in the marketing orders' rules and regulations.

The information collected is used only by authorized employees of the committees and authorized representatives of the USDA, including AMS, Specialty Crops Program's regional and headquarters' staff. Authorized committee or board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .310 hours per response.

Respondents: Producers, handlers, processors, cooperatives, and public members.

Estimated Number of Respondents: 6,800.

Estimated Number of Responses: 25,088.

Estimated Number of Responses per Respondent: 3.69.

Estimated Total Annual Burden on Respondents: 7,780 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

AMS is committed to compliance 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.

A 60-day comment period is provided to allow interested persons to respond to the notice.

Dated: October 4, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–22077 Filed 10–8–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 3, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by November 8, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Specialty Crops Market News Reports.

OMB Control Number: 0581–0006.

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621) directs and authorizes the collection of information and disseminating of marketing information including adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and bring about balance between production and utilization of agriculture products. Market News provides all interested segments of the market chain with market information tends to equalize the competitive position of all market participants. The fruit and vegetable industries, through their organizations, or government agencies present formal requests that the Department of Agriculture issue daily, weekly, semi-monthly, or monthly market news reports on various aspects of the industry.

Need and Use of the Information: AMS will collect market information on some 411 specialty crops for prices and supply. The production of Market News

reports that are then available to the industry and other interested parties in various formats. Information is provided on a voluntary basis and collected in person through face-to-face interviews and by confidential telephone throughout the country by market reporters. The absence of these data would deny primary and secondary users information that otherwise would be available to aid them in their production, marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 2,776.

Frequency of Responses: Reporting: Daily; Weekly; Monthly.

Total Burden Hours: 56,636.

Title: Reporting and Recordkeeping Requirements under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Control Number: 0581–0031.

Summary of Collection: The Perishable Agricultural Commodities Act (PACA). (7 U.S.C. 499a–499t) and 7 CFR part 46, establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers and distributors by prohibiting unfair practices. PACA requires nearly all persons who operate as commission merchants, dealers and brokers buying or selling fruit and or vegetables in interstate or foreign commerce to be licensed. The license for retailers and grocery wholesalers is effective for three years and for all other licensees up to three years, unless withdrawn.

Need and Use of the Information: Using various forms and business records, AMS will collect information from the applicant to administer licensing provisions under the Act, to adjudicate contract disputes, and for the purpose of enforcing the PACA and its regulations. If this information were unavailable, it would be impossible to identify and regulate the individuals or firms that are restricted due to sanctions imposed because of the reparation or administrative actions.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 13,600.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 87,409.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–22006 Filed 10–8–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Membership of the Performance Review Board for the Office of the Secretary

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of Membership on the Office of the Secretary Performance Review Board.

SUMMARY: The Office of the Secretary, the Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and Senior Level (SL) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for the Office of the Secretary Performance Review Board begins on October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Joan Nagielski, U.S. Department of Commerce, Office of Human Resources Management, Department of Commerce Human Capital Client Services, Office of Employment and Compensation, 14th and Constitution Avenue NW, Room 50013, Washington, DC 20230, at (202) 482–6342.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314 (c) (4), the Office of the Secretary, Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Office of the Secretary Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) and (SL) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

Dates: The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. Robert Preston II, Chief Contract Law Division, Career SES
2. Michelle McClelland, Assistant General Counsel for Administration and Transactions, Career SES
3. Kurt Bersani, Chief Financial Officer and Director of Administration, Enterprise Services, Career SES
4. Catrina Purvis, Senior Agency Official for Privacy (SAOP)/Chief Privacy Officer (CPO) & Director of Open Government (OPOG), Career SES
5. Veronica LeGrande, Chief Human Resources Division, Census, Career SES
6. William P. Wilson, Director, Office of Business Liaison, Non-career SES
7. Jon Alexander, Deputy Director, Office of Financial Management Systems, Career SES

Dated: October 3, 2019.

Joan Nagielski,

Human Resources Specialist, Office of Employment and Compensation, Department of Commerce Human Capital Client Services, Office of Human Resources Management, Office of the Secretary, Department of Commerce.

[FR Doc. 2019–21985 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

Membership of the International Trade Administration Performance Review Board

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of membership on the International Trade Administration's Performance Review Board.

SUMMARY: The International Trade Administration (ITA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of ITA's Performance Review Board. The Performance Review Board is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES. The

appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for ITA's Performance Review Board begins on October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Joan Nagielski, U.S. Department of Commerce, Office of Human Resources Management, Department of Commerce Human Capital Client Services, Office of Employment and Compensation, 14th and Constitution Avenue NW, Room 50013, Washington, DC 20230, at (202) 482–6342.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314 (c) (4), the International Trade Administration (ITA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the ITA Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other Performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES. The Appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. Andre Mendes, Chief Information Officer, Career SES
2. Scott Tatlock, Executive Director, Office of China, Career SES
3. James Sullivan, Senior Advisor, I & A, Noncareer SES
4. Lisa Casias, DAS for Administration, Department of Commerce, Career SES
5. Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, Career SES
6. Anne Driscoll, Deputy Assistant Secretary for Industry and Analysis, Career SES
7. Timothy Rosado, Chief Financial and Administrative Officer, Career SES
8. Praveen Dixit, Deputy Assistant Secretary for Trade Policy and Analysis, Career SES
9. Rona Bunn, Deputy Chief Financial Officer, Career SES
10. John Cooney, DAS for Services, Noncareer SES
11. Kurt Bersani, Chief Financial Officer, Enterprise Services, Career SES
12. Seward Jones, DAS for Middle East & Africa, Career SES
13. James Maeder, DAS for AD/CVD Operations, Career SES

Dated: October 3, 2019.

Joan Nagielski,

Human Resources Specialist, Office of Employment and Compensation, Department of Commerce Human Capital Client Services, Office of Human Resources Management, Office of the Secretary, Department of Commerce.

[FR Doc. 2019–21986 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Economic Development Administration

National Telecommunications and Information Administration

Bureau of Industry and Security

Minority Business Development Agency

Membership of the Performance Review Board

AGENCY: Economic Development Administration (EDA), National Telecommunications and Information Administration (NTIA), Bureau of Industry and Security (BIS), Minority Business Development Agency (MBDA), Department of Commerce.

ACTION: Notice of membership on the EDA, NTIA, BIS and MBDA's Performance Review Board.

SUMMARY: The EDA, NTIA, BIS and MBDA, Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of the Performance Review Board. The Performance Review Board is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and Senior Level (SL) members and making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES and SL members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA, NTIA, BIS and MBDA's Performance Review Board begins on October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Joan Nagielski, U.S. Department of Commerce, Office of Human Resources Management, Department of Commerce Human Capital Client Services, Office of Employment and Compensation, 14th and Constitution Avenue NW, Room 50013, Washington, DC 20230, at (202)482–6342.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314 (c) (4), the EDA, NTIA, BIS and MBDA, Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of EDA, NTIA, BIS and MBDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) and Senior Level (SL)members and (2) making recommendations to the appointing authority on other Performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES and SL members. The Appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. *Department of Commerce, Bureau of Industry and Security (BIS),* John Sonderman, Deputy Director for Office of Export Enforcement, Career SES
2. *Department of Commerce, National Telecommunications and Information Administration (NTIA),* Peter Tenhula, Deputy Associate Administrator for Spectrum Management, Career SES
3. *Department of Commerce, Economic Development Agency (EDA),* Angela Martinez, Regional Director for Denver Office, Career SES
4. *Department of Commerce, National Telecommunications and Information Administration (NTIA),* James Gwinn, Chief Information Officer, First Responder Network Authority, Career SES
5. *Department of Commerce, National Telecommunications and Information Administration (NTIA),* Steven Molina, Deputy Associate Administrator for Spectrum Planning and Policy, Career SES
6. *Department of Commerce, Office of the General Counsel, Office of the Secretary (OGC/OS),* Robert Preston II, Chief, Contract Law Division, Career SES
7. *Department of Commerce, Economic Development Agency (EDA),* Linda Cruz-Carnall, Regional Director for Philadelphia Office, Career SES
8. *Department of Commerce, Bureau of Industry and Security (BIS),* Karen Nies-Vogel, Director, Office of Exporter Services, Career SES
9. *Department of Commerce, International Trade Administration (ITA),* Gregory Kalbaugh, Deputy Chief of Staff for Strategic Initiatives, Non-career SES
10. *Department of Commerce, International Trade Administration (ITA),* Brian Lenihan, Executive Director, Select USA, Non-career SES

Dated: October 3, 2019.

Joan Nagielski,

Human Resources Specialist, Office of Employment and Compensation, Department of Commerce Human Capital Client Services, Office of Human Resources Management, Office of the Secretary, Department of Commerce.

[FR Doc. 2019–21987 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–106]

Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that wooden cabinets and vanities and components thereof (wooden cabinets and vanities) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, Rachel Greenberg, or Eliza Siordia, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593, (202) 482–0652, or (202) 482–3878, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 2, 2019.[1] On August 5, 2019, Commerce postponed the preliminary determination of this investigation and the revised deadline is now October 2, 2019.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is wooden cabinets and vanities from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value (NV) in accordance with section 773(c) of the Act. In addition, pursuant to section 776(a) and (b) of the Act, Commerce preliminarily has relied on facts otherwise available, with adverse inferences, for Dalian Meisen Woodworking Co., Ltd. (Meisen), certain separate rate applicants, and the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[7] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8] In this investigation, we calculated producer/exporter combination rates for respondents eligible for separate rates.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

[1] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 84 FR 12587 (April 2, 2019) (*Initiation Notice*).

[2] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 84 FR 37988 (August 5, 2019).

[3] *See* Memorandum, ''Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Decision Memorandum for Preliminary Affirmative Determination of Sales at Less-Than-Fair Value,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Certain Hardwood Plywood Products from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 2, 2019 (Preliminary Scope Decision Memorandum).

[7] *See Initiation Notice,* 84 FR at 12590–91.

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' dated April 5, 2005 (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
The Ancientree Cabinet Co., Ltd	The Ancientree Cabinet Co., Ltd	4.49	0.00
Dalian Meisen Woodworking Co., Ltd	Dalian Meisen Woodworking Co., Ltd	262.18	251.64
Foremost Worldwide Company Limited	Rizhao Foremost Woodwork Manufacturing Company, Ltd.	80.96	70.42
Foremost Worldwide Company Limited	Henan AiDiJia Furniture Co., Ltd	80.96	70.42
Foremost Worldwide Company Limited	Suzhou Weiye Furniture Co., Ltd	80.96	70.4
Foremost Worldwide Company Limited	Changsha Minwan Furniture Manufacturing Co., Ltd	80.96	70.4
ANHUI JIANLIAN WOOD PRODUCTS CO., LTD	ANHUI JIANLIAN WOOD PRODUCTS CO., LTD&	39.25	28.7
Anhui Swanch Cabinetry Co., Ltd	Anhui Swanch Cabinetry Co., Ltd	39.25	28.71
ANHUI XINYUANDA CUPBOARD CO., LTD	ANHUI XINYUANDA CUPBOARD CO., LTD	39.25	28.71
Beijing Oulu Jinxin International Trade Co., Ltd	Beijing Oulu Jinxin International Trade Co., Ltd	39.25	28.71
Boloni Smart Home Decor (Beijing) Co., LTD	Boloni Smart Home Decor (Beijing) Co., LTD	39.25	28.71
Caoxian Brothers Hengxin Wood Industry Co., Ltd	Caoxian Brothers Hengxin Wood Industry Co., Ltd	39.25	28.71
Changyi Zhengheng Woodwork Co., Ltd	Changyi Zhengheng Woodwork Co., Ltd	39.25	28.71
CHAOZHOU YAFENG BATHROOM EQUIPMENT CO., LTD.	CHAOZHOU YAFENG BATHROOM EQUIPMENT CO., LTD.	39.25	28.71
China Friend Limited	Dongming Sanxin Wood Industry Co., Ltd	39.25	28.71
Dalian Jiaye Wood Products Co., Ltd	Dalian Jiaye Wood Products Co., Ltd	39.25	28.71
Dalian Xingsen Wooden Products Co., Ltd	Dalian Xingsen Wooden Products Co., Ltd	39.25	28.71
Dandong City Anmin Wooden Products Group Co., Ltd.	Dandong City Anmin Wooden Products Group Co., Ltd.	39.25	28.71
Dandong Laroyal Cabinetry Co., Ltd	Dandong Laroyal Cabinetry Co., Ltd	39.25	28.71
DEHK LIMITED	DIAM DISPLAY (CHINA) CO., LTD	39.25	28.71
Deqing China-Africa Foreign Trade Port Co., Ltd	Suqian Welcomewood Products Co., Ltd	39.25	28.71
Dewell Wooden Products Haian Co., Ltd	Dewell Wooden Products Haian Co., Ltd	39.25	28.71
Dongguan American Parts Supplier Co., Ltd	Dongguan American Parts Supplier Co., Ltd	39.25	28.71
Dongguan Niusaiqu Wood Industry Co., Ltd	Dongguan Niusaiqu Wood Industry Co., Ltd	39.25	28.71
Dongguan Unique Life Furniture Co., Ltd. also known as Unique Life Furniture Co., Ltd (trade name).	Dongguan Unique Life Furniture Co., Ltd	39.25	28.71
Dorbest Ltd	Rui Feng Woodwork (Dongguan) Co., Ltd	39.25	28.71
EZIDONE DISPLAY CORPORATION LTD	EZIDONE DISPLAY CORPORATION LTD	39.25	28.71
EZIDONE DISPLAY CORPORATION LTD	EZIDONE DISPLAY INC	39.25	28.71
Forcer International Limited	QUFU XINYU FURNITURE CO., LTD	39.25	28.71
Forcer International Limited	LINYI RUNKANG CABINET CO., LTD	39.25	28.71
Forcer International Limited	BEIJING OULU JINXIN INTERNATIONAL TRADE CO., LTD.	39.25	28.71
Foshan City Shunde District Refined Furniture Co., Ltd. also known as Refined Furniture Co., Ltd. (trade name).	Foshan City Shunde District Refined Furniture Co., Ltd. also known as Refined Furniture Co., Ltd. (trade name).	39.25	28.71
Foshan Liansu building material Trading Co., Ltd	Guangdong Lesso Home Furnishing Co., Ltd	39.25	28.71
FOSHAN NANHAI HONGZHOU WOOD CO., LTD	FOSHAN NANHAI HONGZHOU WOOD CO., LTD	39.25	28.71
Foshan Shunde Yajiasi Kitchen Cabinet Co., Ltd	Foshan Shunde Yajiasi Kitchen Cabinet Co., Ltd	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	FOSHAN DIBIAO BATHROOM CO., LTD	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	FOSHAN MK HOME FURISHING CO., LTD	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	PROUDER INDUSTRIAL LIMITED	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	FOSHAN DEMAX SANITARY WARE CO., LTD	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	HEBEI SHUANGLI FURNITURE CO., LTD	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	ZHANGZHOU GUOHUI INDUSTRIAL & TRADE CO., LTD.	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	SHOUGUANG FUSHI WOOD CO., LTD	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	Foshan Virtu Bathroom Furniture Ltd	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	Guangdong Purefine Kitchen & Bath Technology Co., LTD.	39.25	28.71
FOSHAN SOURCEVER (CN) CO., LIMITED	KAIPING HONGITARYWARE TECHNOLOGY LTD	39.25	28.71
Foshan Sourcever Company Limited	FOSHAN DIBIAO BATHROOM CO., LTD	39.25	28.71
Foshan Sourcever Company Limited	FOSHAN MK HOME FURISHING CO., LTD	39.25	28.71
Foshan Sourcever Company Limited	PROUDER INDUSTRIAL LIMITED	39.25	28.71
Foshan Sourcever Company Limited	FOSHAN DEMAX SANITARY WARE CO., LTD	39.25	28.71
Foshan Sourcever Company Limited	HEBEI SHUANGLI FURNITURE CO., LTD	39.25	28.71
Foshan Sourcever Company Limited	ZHANGZHOU GUOHUI INDUSTRIAL & TRADE CO., LTD.	39.25	28.71
Foshan Sourcever Company Limited	SHOUGUANG FUSHI WOOD CO., LTD	39.25	28.71
Foshan Sourcever Company Limited	Foshan Virtu Bathroom Furniture Ltd	39.25	28.71
Foshan Sourcever Company Limited	Guangdong Purefine Kitchen & Bath Technology Co., LTD.	39.25	28.71
Foshan Sourcever Company Limited	KAIPING HONGITARYWARE TECHNOLOGY LTD	39.25	28.71
Foshan Xinzhongwei Economic & Trade Co., Ltd	Foshan Lihong Furniture Sanitary Ware Co., Ltd	39.25	28.71
FUJIAN DUSHI WOODEN INDUSTRY CO., LTD	FUJIAN DUSHI WOODEN INDUSTRY CO., LTD	39.25	28.71
FUJIAN LEIFENG CABINETRY CO., LTD	FUJIAN LEIFENG CABINETRY CO., LTD	39.25	28.71
Fujian Panda Home Furnishing Co., Ltd	Fujian Panda Home Furnishing Co., Ltd	39.25	28.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Fujian Senyi Kitchen Cabinet Co., Ltd	Fujian Senyi Kitchen Cabinet Co., Ltd	39.25	28.71
Fuzhou Biquan Trading Co., Ltd	Biquan (Fujian) Group Co., Ltd	39.25	28.71
Fuzhou CBM Import & Export Co., Ltd	Fuzhou CBM Import & Export Co., Ltd	39.25	28.71
Fuzhou Desource Home Décor Co., Ltd	Fuzhou Desource Home Decor Co., Ltd	39.25	28.71
FUZHOU LIMIN STONE PRODUCTS CO., LTD	Fuzhou YST Cabinet Co., Ltd	39.25	28.71
FUZHOU MASTONE IMPORT & EXPORT CO., LTD	Fuzhou Yuansentai Cabinet Co., Ltd	39.25	28.71
Fuzhou Minlian Wood Industry Co., Ltd	Fuzhou Minlian Wood Industry Co., Ltd	39.25	28.71
FUZHOU SUNRISING HOME DECO MANUFACTURING CO., LTD.	FUZHOU SUNRISING HOME DECO MANUFACTURING CO., LTD.	39.25	28.71
FUZHOU XINRUI CABINET CO., LTD	FUZHOU XINRUI CABINET CO., LTD	39.25	28.71
Gaomi City Haitian Wooden Ware Co., Ltd	Gaomi City Haitian Wooden Ware Co., Ltd	39.25	28.71
GAOMI HONGTAI HOME FURNITURE CO., LTD	GAOMI HONGTAI HOME FURNITURE CO., LTD	39.25	28.71
Guangde Bozhong Trade Company, Ltd	Guangde Bozhong Trade Company, Ltd	39.25	28.71
GUANGDONG CACAR KITCHEN TECHNOLOGY CO., LTD.	GUANGDONG CACAR KITCHEN TECHNOLOGY CO., LTD.	39.25	28.71
Guangdong G-Top Import and Export Co., Ltd	Foshan Shunde Rongao Furniture CO., LTD	39.25	28.71
Guangzhou Nuolande Import and Export Co., Ltd	Guangzhou Nuolande Import and Export Co., Ltd	39.25	28.71
Haiyang Kunlun Wood Co., Ltd	Haiyang Kunlun Wood Co., Ltd	39.25	28.71
Hangzhou Bestcraft Sanitary Equipments Co., Ltd	Hangzhou Bestcraft Sanitary Equipments Co., Ltd	39.25	28.71
Hangzhou Entop Houseware Co., Ltd	Jinhua Aonika Sanitary Ware Co., Ltd	39.25	28.71
Hangzhou Entop Houseware Co., Ltd	Hangzhou Bestcraft Sanitary Equipments Co., Ltd	39.25	28.71
Hangzhou Hansen Sanitary Ware Co., Ltd	Hangzhou Hansen Sanitary Ware Co., Ltd	39.25	28.71
Hangzhou Hoca Kitchen & Bath Products Co., Ltd	Hangzhou Hoca Kitchen & Bath Products Co., Ltd	39.25	28.71
Hangzhou Home Dee Sanitary Ware Co., Ltd	Hangzhou Home Dee Sanitary Ware Co., Ltd	39.25	28.71
Hangzhou Oulang Bathroom Equipment Co., Ltd	Hangzhou Oulang Bathroom Equipment Co., Ltd	39.25	28.71
Hangzhou Royo Import & Export Co., Ltd	Jinhua Aonika Sanitary Ware Co., Ltd	39.25	28.71
Hangzhou Royo Import & Export Co., Ltd	Hangzhou Yuxin Sanitary Ware Co., Ltd	39.25	28.71
Hangzhou Royo Import & Export Co., Ltd	Hangzhou Fuyang Beautiful Sanitary Ware Co., Ltd	39.25	28.71
Hangzhou Sunlight Sanitary Co., Ltd	Hangzhou Sunlight Sanitary Co., Ltd	39.25	28.71
Hangzhou Weinuo Sanitary Ware Co., Ltd	PINGHU AIPA SANITARY WARE CO., LTD	39.25	28.71
Hangzhou Weinuo Sanitary Ware Co., Ltd	HANGZHOU QILONG SANITARY WARE CO., LTD	39.25	28.71
Hangzhou Xinhai Sanitary Ware Co., Ltd	Hangzhou Xinhai Sanitary Ware Co., Ltd	39.25	28.71
Hangzhou Yewlong Import&Export Co., Ltd	Hangzhou Yewlong Industry Co., Ltd	39.25	28.71
Hangzhou Zhuangyu Import & Export Co., Ltd	Hangzhou Zhuangyu Import & Export Co., Ltd	39.25	28.71
Henan Aotin Home Furnishing Co., Ltd	Henan Aotin Home Furnishing Co., Ltd	39.25	28.71
Heyond Cabinet Co., Ltd	Heyond Cabinet Co., Ltd	39.25	28.71
Homestar Corporation	Homestar Corporation	39.25	28.71
HONG KONG JIAN CHENG TRADING CO., LIMITED	ZHONGSHAN YAYUE FURNITURE CO., LTD	39.25	28.71
Xiamen Honglei Imp.&Exp. Co., Ltd. also known as Honglei (Xiamen) Stone Co., Ltd.	Changtai Guanjia Industry & Trade Company Co., Ltd	39.25	28.71
Xiamen Honglei Imp.&Exp. Co., Ltd. also known as Honglei (Xiamen) Stone Co., Ltd.	Zhangzhou Huihua Industry and Trade Co., Ltd	39.25	28.71
Xiamen Honglei Imp.&Exp. Co., Ltd. also known as Honglei (Xiamen) Stone Co., Ltd.	Fujian Xinanlong Wood Industry Co., Ltd	39.25	28.71
Honsoar New Building Material Co., Ltd	Shandong Honsoar Cabinet Materials Co., Ltd	39.25	28.71
Hua Yin Trading Development Co., Ltd of Jiangmen City.	Jianfa Wooden Co., Ltd	39.25	28.71
Hua Yin Trading Development Co., Ltd of Jiangmen City.	Heshan Yingmei Cabinets Co., Ltd	39.25	28.71
Hua Yin Trading Development Co., Ltd of Jiangmen City.	Hesha Feiqiu Cabinet Co., Ltd	39.25	28.71
Huimin Hanlong Furniture Co., Ltd	Huimin Hanlong Furniture Co., Ltd	39.25	28.71
HUISEN FURNITURE (LONG NAN) CO., LTD. also known as HUISEN FURNITURE (LONGNAN) CO., LTD.	HUISEN FURNITURE (LONG NAN) CO., LTD. also known as HUISEN FURNITURE (LONGNAN) CO., LTD.	39.25	28.71
HUIZHOU MANDARIN FURNITURE CO., LTD	HUIZHOU MANDARIN FURNITURE CO., LTD	39.25	28.71
Jiang Su Rongxin Cabinets Ltd	Jiang Su Rongxin Cabinets Ltd	39.25	28.71
Jiangmen Kinwai Furniture Decoration Co., Ltd	Jiangmen Kinwai Furniture Decoration Co., Ltd	39.25	28.71
Jiangmen Kinwai International Furniture Co., Ltd	Jiangmen Kinwai International Furniture Co., Ltd	39.25	28.71
Jiangsu Beichen Wood Co., Ltd	Jiangsu Beichen Wood Co., Ltd	39.25	28.71
Jiangsu Meijun Intelligent Home Co., Ltd	Jiangsu Meijun Intelligent Home Co., Ltd	39.25	28.71
Jiangsu Pusite Furniture Co., Ltd	Jiangsu Pusite Furniture Co., Ltd	39.25	28.71
Jiangsu Roc Furniture Industrial Co., Ltd	Jiangsu Roc Furniture Industrial Co., Ltd	39.25	28.71
JIANGSU SUNWELL CABINETRY CO., LTD	JIANGSU SUNWELL CABINETRY CO., LTD	39.25	28.71
JIANGSU WEISEN HOUSEWARE CO., LTD	JIANGSU WEISEN HOUSEWARE CO., LTD	39.25	28.71
Jiangsu Xiangsheng Bedtime Furniture Co., Ltd	Jiangsu Xiangsheng Bedtime Furniture Co., Ltd	39.25	28.71
Jiayuan (Xiamen) Industrial Co., Ltd	Jiayuan (Xiamen) Industrial Co., Ltd	39.25	28.71
JINJIANG PERFECT GENERATION IMP. & EXP. CO., LTD.	Homebi Technology Co., LTD	39.25	28.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
King's Group Furniture (Enterprises) Co., Ltd	Zhongshan King's Group Furniture (ENTERPRISES) Co., Ltd.	39.25	28.71
KM Cabinetry Co., Limited	Zhongshan KM Cabinetry Co., Ltd	39.25	28.71
Kunshan Baiyulan Furniture Co., Ltd	Kunshan Baiyulan Furniture Co., Ltd	39.25	28.71
Kunshan Home Right Trade Corporation	Kunshan Fangs Furniture Co., Ltd	39.25	28.71
LIANYUNGANG SUN RISE TECHNOLOGY CO., LTD.	LIANYUNGANG SUN RISE TECHNOLOGY CO., LTD.	39.25	28.71
Linshu Meibang Furniture Co., Ltd	Linshu Meibang Furniture Co., Ltd	39.25	28.71
Linyi Bomei Furniture Co., Ltd	Linyi Bomei Furniture Co., Ltd	39.25	28.7
LINYI BONN FLOORING MANUFACTURING CO., LTD.	LINYI BONN FLOORING MANUFACTURING CO., LTD.	39.25	28.71
Linyi Kaipu Furniture Co., Ltd	Linyi Kaipu Furniture Co., Ltd	39.25	28.71
Linyi Runkang Cabinet Co., Ltd	Linyi Runkang Cabinet Co., Ltd	39.25	28.71
Liu Shu Woods Product (Huizhou) Co., Ltd also known as Liu Shu Wood Products Co., Ltd (trade name) and Liu Shu Woods Product Co., Ltd (trade name).	Liu Shu Woods Product (Huizhou) Co., Ltd	39.25	28.71
Master Door & Cabinet Co., Ltd	Master Door & Cabinet Co., Ltd	39.25	28.7
Masterwork Cabinetry Company Limited	Shandong Compete Wood Co., Ltd	39.25	28.71
Masterwork Cabinetry Company Limited	Linyi Zhongsheng Jiaju Zhuangshi Co., Ltd	39.25	28.71
MEILIN WOOD PRODUCTS(DALIAN)CO., LTD	MEILIN WOOD PRODUCTS(DALIAN)CO., LTD	39.25	28.71
Minhou Beite Home Decor Co., Ltd	Minhou Beite Home Decor Co., Ltd	39.25	28.71
MJB Supply (Dalian) Co., Ltd	Mulin City Baimiantong Linyeju Jisen Wood	39.25	28.71
MOREWOOD CABINETRY CO., LTD	MOREWOOD CABINETRY CO., LTD	39.25	28.71
Nanjing Kaylang Co., Ltd	Nanjing Kaylang Co., Ltd	39.25	28.71
Nantong Aershin Cabinets Co., Ltd	Nantong Aershin Cabinets Co., Ltd	39.25	28.71
Nantong Ouming Wood Co., Ltd.	Nantong Ouming Wood Co., Ltd.	39.25	28.71
NANTONG YANGZI FURNITURE CO., LTD	NANTONG YANGZI FURNITURE CO., LTD	39.25	28.71
NINGBO KINGWOOD FURNITURE CO., LTD	NINGBO KINGWOOD FURNITURE CO., LTD	39.25	28.71
NINGBO ROVSA HOME FURNISHING CO., LTD	NINGBO ROVSA HOME FURNISHING CO., LTD	39.25	28.71
Ojans Company Limited	Foshan Shunde Ojans Intelligent Sanitary Ware Co., Ltd.	39.25	28.71
Oppein Home Group Inc	Oppein Home Group Inc	39.25	28.71
PIZHOU OUYME IMPORT & EXPORT TRADE CO., LTD.	XUZHOU OUMEC WOOD–BASED PANEL CO., LTD	39.25	28.71
Pneuma Asia Sourcing & Trading Co. LIMITED	Dalian Tianxin Home Product Co., Ltd	39.25	28.71
Pneuma Asia Sourcing & Trading Co. LIMITED	Qingdao Haiyan Drouot Household Co., Ltd	39.25	28.71
Putian Jinggong Furniture Co., Ltd	Putian Jinggong Furniture Co., Ltd	39.25	28.71
Qingdao Coomex Sources Co., Ltd. also known as Coomex Sources Co., Ltd.	Nantong Aershin Cabinets Co., Ltd	39.25	28.71
Qingdao Haiyan Drouot Household Co., Ltd	Qingdao Haiyan Drouot Household Co., Ltd	39.25	28.71
Qingdao Liangmu Hongye Co., Ltd	Qingdao Liangmu Hongye Co., Ltd	39.25	28.71
Qingdao Liangmu Jinshan Woodwork Co., Ltd	Qingdao Liangmu Jinshan Woodwork Co., Ltd	39.25	28.71
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Lankao Sanqiang Wooden Products Co., Ltd	39.25	28.71
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Linyi Lanshan Chengxinli Woods Co., Ltd	39.25	28.71
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Shouguang Shi Qifeng Woods Co., Ltd	39.25	28.71
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Linyi Mingzhu Woods Co., Ltd	39.25	28.71
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Yichun Senhai Woods Industry Co., Ltd	39.25	28.71
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Linyi Jinde Arts & Crafts Co., Ltd	39.25	28.71
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Qingdao Ruirong Woods Co., Ltd	39.25	28.71
Qingdao Shousheng Industry Co., Ltd	Qingdao Shousheng Industry Co., Ltd	39.25	28.71
Qingdao Yimei Wood Work Co., Ltd	Qingdao Yimei Wood Work Co., Ltd	39.25	28.71
QINGDAOHONGXINCHENGDA WOOD INDUSTRY CO., LTD.	QINGDAOHONGXINCHENGDA WOOD INDUSTRY CO., LTD.	39.25	28.71
QUFU XINYU FURNITURE CO., LTD	QUFU XINYU FURNITURE CO., LTD	39.25	28.71
Ronbow Hong Kong Limited	Wuxi Yusheng Kitchen-Bathroom Equipment Co., Ltd	39.25	28.71
Sagarit Bathroom Manufacturer Limited	Shouguang Fushi Wood Co., Ltd	39.25	28.71
Sagarit Bathroom Manufacturer Limited	Zhangzhou Guohui Industrial & Trade Co., Ltd	39.25	28.71
Sagarit Bathroom Manufacturer Limited	Qingdao Runpeng Wood Industrial Co., Ltd	39.25	28.71
Sankok Arts Co., Ltd	Sankok Arts Co., Ltd	39.25	28.71
Senke Manufacturing Company	Qindao Yimei Wood Work Co., Ltd	39.25	28.71
Senke Manufacturing Company	Linyi Kaipu Furniture Co., Ltd	39.25	28.71
Senke Manufacturing Company	Shandon Honsoar Cabinetry Co., Ltd	39.25	28.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Senke Manufacturing Company	Huimin Hanlong Furniture Co, Ltd	39.25	28.71
Shandong Cubic Alpha Timber Co., Ltd	Shandong Cubic Alpha Timber Co., Ltd	39.25	28.71
Shandong Fusheng Wood Co., Ltd	Shandong Fusheng Wood Co., Ltd	39.25	28.71
Shandong Huanmei Wood Co., Ltd	Shandong Huanmei Wood Co., Ltd	39.25	28.71
SHANDONG JINGYAO HOME DECORATION PRODUCTS CO., LTD.	SHANDONG JINGYAO HOME DECORATION PRODUCTS CO., LTD.	39.25	28.71
Shandong Longsen Woods Co., Ltd	Shandong Longsen Woods Co., Ltd	39.25	28.71
Shandong Sanfortune Home and Furniture Co., Ltd	Shandong Sanfortune Home and Furniture Co., Ltd	39.25	28.7
Shanghai Aiwood Home Supplies Co., Ltd	Jiangsu Gangxing Kitchen Cabinet Co., Ltd	39.25	28.71
Shanghai Aiwood Home Supplies Co., Ltd	Shanghai Homebase SanSheng Household Product Co., Ltd.	39.25	28.71
Shanghai Baiyulan Furniture Co., Ltd	Kunshan Baiyulan Furniture Co., Ltd	39.25	28.71
Shanghai Beautystar Cabinetry Co., Ltd	Jiangsu Sunwell Cabinetry Co., Ltd	39.25	28.71
Shanghai Beautystar Cabinetry Co., Ltd	Nantong Jiegao Furniture Co., Ltd	39.25	28.71
Shanghai Jiang Feng Furniture Co., Ltd	Shanghai Jiang Feng Furniture Co., Ltd	39.25	28.71
SHANGHAI LINE KING INTERNATIONAL TRADING CO., LTD.	SHANGHAI YAZHI WOODEN INDUSTRY CO., LTD	39.25	28.71
Shanghai Mebo Industry Co. Ltd	Shanghai Mebo Industry Co. Ltd	39.25	28.71
Shanghai Qingzhou Woodenware Co., Ltd	Shanghai Qingzhou Woodenware Co., Ltd	39.25	28.71
Shanghai S&M Trade Co., Ltd	Anhui GeLun Wood Industry Co., Ltd	39.25	28.71
Shanghai S&M Trade Co., Ltd	Ning'an City Jiude Wood Co., Ltd	39.25	28.71
Shanghai S&M Trade Co., Ltd	Muling City Bamiantong Forestry Bureau Jisen Wood Co., Ltd.	39.25	28.71
Shanghai S&M Trade Co., Ltd	Dalian Ruiyu Mountain Wood Co., Ltd	39.25	28.71
Shanghai S&M Trade Co., Ltd	Linshu Meibang Furniture Co., Ltd	39.25	28.71
Shanghai S&M Trade Co., Ltd	Jiamusi City Quanhong Wood Industry Co., Ltd	39.25	28.71
Shanghai S&M Trade Co., Ltd	Kunshan Fangs Furniture Co., Ltd	39.25	28.71
Shanghai S&M Trade Co., Ltd	Dalian Chunyao Wood Industry Co., Ltd	39.25	28.71
Shanghai S&M Trade Co., Ltd	Anhui Juxin Wood Industry Co., Ltd	39.25	28.71
Shanghai Wang Lei Industries—Taicang Branch	Shanghai Wang Lei Industries—Taicang Branch	39.25	28.71
Shanghai Wen Bo Industries Co. Ltd	Shanghai Yinbo Manufacturing Co. Ltd	39.25	28.71
Shanghai Wen Bo Industries Co. Ltd	Dalian Jiaye Wood Products Co., Ltd	39.25	28.71
Shanghai Wen Bo Industries Co. Ltd	Shanghai Baiyulan Furniture Co., Ltd	39.25	28.71
Shanghai Xietong (Group) Co., Ltd	Nantong Jiegao Furniture Co., Ltd	39.25	28.71
Shanghai Xietong (Group) Co., Ltd	Jiangsu Senwei Smart Home Co., Ltd	39.25	28.71
SHANGHAI ZIFENG INTERNATIONAL TRADING CO., LTD.	SHANDONG GAINVAST WOODEN PRODUCTS CO., LTD.	39.25	28.71
SHANGHAI ZIFENG INTERNATIONAL TRADING CO., LTD.	SHANGHAI WENYI WOODEN CO., LTD	39.25	28.71
SHANGHAI ZIFENG INTERNATIONAL TRADING CO., LTD.	NAN TONG DI LIN FURNITURE CO., LTD	39.25	28.71
SHANGHAI ZIFENG INTERNATIONAL TRADING CO., LTD.	JIANGSU YANAN WOODEN CO., LTD	39.25	28.71
Sheen Lead International Trading (Shanghai)Co., Ltd	SHANGHAI RUIYING FURNITURE CO., LTD	39.25	28.71
Shouguang Fushi Wood Co., Ltd	Shouguang Fushi Wood Co., Ltd	39.25	28.71
Shouguang Honsoar Imp. & Exp. Trading Co., Ltd	Shouguang Honsoar Imp. & Exp. Trading Co., Ltd	39.25	28.71
SHOUGUANG JIAXIU WOOD CO., LTD	SHOUGUANG JIAXIU WOOD CO., LTD	39.25	28.71
SHOUGUANG JIAXIU WOOD CO., LTD	SHOUGUANG JIAXIU WOOD CO., LTD	39.25	28.71
Shouguang Jinxiangyuan Home Furnishing Co., Ltd	Shouguang Jinxiangyuan Home Furnishing Co., Ltd	39.25	28.71
Shouguang Sanyang Wood Industry Co., Ltd	Shouguang Sanyang Wood Industry Co., Ltd	39.25	28.71
Silver Stone Group Co., Ltd	QINGDAO FAMILY CRAFTS CO., LTD	39.25	28.71
Silver Stone Group Co., Ltd	QingDao XiuZhen Furniture Co., Ltd	39.25	28.71
Smart Gift International	Anhui GeLun Wood Industry Co., Ltd	39.25	28.71
Smart Gift International	Ning'an City Jiude Wood Co., Ltd	39.25	28.71
Smart Gift International	Muling City Bamiantong Forestry Bureau Jisen Wood Co., Ltd.	39.25	28.71
Smart Gift International	Dalian Ruiyu Mountain Wood Co., Ltd	39.25	28.71
Smart Gift International	Jiamusi City Quanhong Wood Industry Co., Ltd	39.25	28.71
Smart Gift International	Dalian Chunyao Wood Industry Co., Ltd	39.25	28.71
SUNCO TIMBER(KUNSHAN) CO., LTD	SUNCO TIMBER(KUNSHAN) CO., LTD	39.25	28.71
Supree (Fuijian) Wood Co., Ltd	Supree (Fuijian) Wood Co., Ltd	39.25	28.71
Supree (Fujian) Construction Materials Co., Ltd	Supree (Fujian) Construction Materials Co., Ltd	39.25	28.71
SUZHOU BAOCHENG INDUSTRIES CO., LTD	WALLBEYOND (SHUYANG) HOME DECOR CO., LTD.	39.25	28.71
Suzhou Five Cubic Wood Co., Ltd	Suzhou Geda Office Equipment Manufacturing Co., Ltd.	39.25	28.71
Suzhou Oriental Dragon Import and Export Co., Ltd. also known as Suzhou Oriental Dragon Import and Export Corp., Ltd.	Lingbi Xianghe Wood Co., Ltd	39.25	28.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Tai Yuan Trading Co., Ltd also known as Heshan Tai Yuan Trading Co., Ltd.	Heshan Yingmei Cabinet Co., Ltd	39.25	28.71
Taishan Changfa Wood Industry Co., Ltd	Taishan Changfa Wood Industry Co., Ltd	39.25	28.71
TAISHAN HONGXIANG TRADING CO., LTD	Chang He Xing Wood Manufacturer Co., Ltd	39.25	28.71
TAISHAN HONGXIANG TRADING CO., LTD	Heshan Yingmei Cabinets Co., Ltd	39.25	28.71
TAISHAN HONGXIANG TRADING CO., LTD	Heshan Feiqiu Cabinet Co., Ltd	39.25	28.71
TAISHAN HONGXIANG TRADING CO., LTD	Yuanwang Wood Product Factory Dajiang Taishan	39.25	28.71
TAISHAN HONGXIANG TRADING CO., LTD	Can-Am Cabinet Ltd	39.25	28.71
Taishan Hongzhou Cabinet Co., Ltd	Taishan Hongzhou Cabinet Co., Ltd	39.25	28.71
Taishan Jiahong Trade Co., Ltd	Taishan Dajiang Town Dutou Wood Furniture Factory	39.25	28.71
Taishan Jiahong Trade Co., Ltd	Foshan Nanhai Jinwei Cabinet Furniture Co., Ltd	39.25	28.71
Taishan Jiahong Trade Co., Ltd	Taishan Huali Kitchen Cabinet Co., Ltd	39.25	28.71
Taishan Jiahong Trade Co., Ltd	Taishan Empire Wood Co., Ltd	39.25	28.71
TAISHAN OVERSEA TRADING COMPANY LTD	TAISHAN GANHUI STONE KITCHEN CO., LTD	39.25	28.71
TAISHAN OVERSEA TRADING COMPANY LTD	Can-Am Cabinet Ltd	39.25	28.71
TAISHAN OVERSEA TRADING COMPANY LTD	TAISHAN QUANMEI KITCHEN WARE CO., LTD	39.25	28.71
TAISHAN OVERSEA TRADING COMPANY LTD	TAISHAN JIAFU CABINET CO., LTD	39.25	28.71
TAISHAN OVERSEA TRADING COMPANY LTD	TAISHAN DAJIANG TOWN DUTOU FURNITURE FACTORY.	39.25	28.71
TAISHAN OVERSEA TRADING COMPANY LTD	Feiteng Kitchen Cabinets Taishan Corporation	39.25	28.71
Taizhou Overseas Int'l Ltd	Zhejiang Royal Home Co., Ltd	39.25	28.71
TANGSHAN BAOZHU FURNITURE CO., LTD	TANGSHAN BAOZHU FURNITURE CO., LTD	39.25	28.71
Tech Forest Cabinetry Co., Ltd	Tech Forest Cabinetry Co., Ltd	39.25	28.71
The Frame Manufacturing Co. Ltd	HUIZHOU DIWEIXIN JIATINGYONGPIN CO., LTD	39.25	28.71
Top Goal International Group Ltd. (Hong Kong)	Dongguan City Top Goal Furniture Co., Ltd	39.25	28.71
Tradewinds Furniture Ltd	Tradewinds Furniture Ltd	39.25	28.71
Wa Fok Art Craft Furniture (MACAO) Co., Ltd	Zhongshan Huafu Art Craft Furniture Co., Ltd	39.25	28.71
Weifang Fuxing Wood Co., Ltd	Weifang Fuxing Wood Co., Ltd	39.25	28.71
WEIFANG KITCHINET CORPORATION	WEIFANG KITCHINET CORPORATION	39.25	28.71
Weifang Lan Gu Wood Industry Co., Ltd	Weifang Lan Gu Wood Industry Co., Ltd	39.25	28.71
Weifang Master Wood Industry Co., Ltd	Weifang Master Wood Industry Co., Ltd	39.25	28.71
Weifang Yuanlin Woodenware Co., Ltd	Weifang Yuanlin Woodenware Co., Ltd	39.25	28.71
Weihai Adornus Cabinetry Manufacturing Co., Ltd	Weihai Adornus Cabinetry Manufacturing Co., Ltd	39.25	28.71
WEIHAI JARLIN CABINETRY MANUFACTURE CO., LTD.	WEIHAI JARLIN CABINETRY MANUFACTURE CO., LTD.	39.25	28.71
Wellday International Company Limited also known as Dongguan Wellday Household Co., Ltd.	Wellday International Company Limited also known as Dongguan Wellday Household Co., Ltd.	39.25	28.71
Wenzhou Youbo Industrial Co., Ltd	Wenzhou Youbo Industrial Co., Ltd	39.25	28.71
Wuxi Yushea Furniture Co., Ltd	Wuxi Yushea Furniture Co., Ltd	39.25	28.71
Wuxi Yusheng Kitchen-Bathroom Equipment Co., Ltd	Wuxi Yusheng Kitchen-Bathroom Equipment Co., Ltd	39.25	28.71
Xiamen Adler Cabinetry Co., Ltd	Xiamen Adler Cabinetry Co., Ltd	39.25	28.71
XIAMEN GOFOR STONE CO., LTD	KAICHENG (FUJIAN) KITCHEN CABINET CO., LTD	39.25	28.71
XIAMEN GOLDEN HUANAN IMP. & EXP. CO., LTD	Changtai Guanjia Industrial Co., Ltd	39.25	28.71
XIAMEN GOLDENHOME CO., LTD	XIAMEN GOLDENHOME CO., LTD	39.25	28.71
XIAMEN KAICHENG TRADING LIMITED COMPANY	KAICHENG (FUJIAN) KITCHEN CABINET CO., LTD	39.25	28.71
Xiamen Sintop Display Fixtures Co., Ltd	Xiamen Sintop Display Fixtures Co., Ltd	39.25	28.71
XINGZHI INTERNATIONAL TRADE LIMITED	XUZHOU YIHE WOOD CO., LTD	39.25	28.71
XUZHOU JIA LI DUO IMPORT&EXPORT CO., LTD	XUZHOU OUMEC WOOD–BASED PANEL CO., LTD	39.25	28.71
XUZHOU YIHE WOOD CO., LTD	XUZHOU YIHE WOOD CO., LTD	39.25	28.71
YEKALON INDUSTRY, INC	DONGGUAN TODA FURNITURE CO., LTD	39.25	28.71
YEKALON INDUSTRY, INC	GUANGZHOUSHI BAISEN DECORATIVE MATERIALS COMPANY LIMITED.	39.25	28.71
YEKALON INDUSTRY, INC	DONGGUAN FANYANUO FURNITURE CO., LTD	39.25	28.71
YEKALON INDUSTRY, INC	DONGGUANSHI ANKE BUILDING MATERIALS CO., LTD.	39.25	28.71
YEKALON INDUSTRY, INC	Oriental Chic Furniture Company Limited	39.25	28.71
YEKALON INDUSTRY, INC	DONGGUAN FRANCISS FURNITURE CO., LTD	39.25	28.71
YEKALON INDUSTRY, INC	SHANGHAI YUANYANG WOODEN CO., LTD	39.25	28.71
Yi Sen Wood Industry Limited Company of Ning An City.	Yi Sen Wood Industry Limited Company of Ning An City.	39.25	28.71
Yichun Dongmeng Wood Co., Ltd	Yichun Dongmeng Wood Co., Ltd	39.25	28.71
Yichun Dongmeng Wood Co., Ltd	Qingdao Dimei Wood Co., Ltd	39.25	28.71
Yichun Sunshine Wood Products Co., Ltd	Yichun Sunshine Wood Products Co., Ltd	39.25	28.71
Yixing Pengjia Cabinetry Co. Ltd	Yixing Pengjia Cabinetry Co. Ltd	39.25	28.71
Zhangjiagang Daye Hotel Furniture Co., Ltd	Zhangjiagang Daye Hotel Furniture Co., Ltd	39.25	28.71
ZHANGJIAGANG PRO-FIXTURE CO., LTD	Zhangjiagang Yuanjiahe Home Furniture Co., Ltd	39.25	28.71
ZHANGZHOU CITY XIN JIA HUA FURNITURE CO., LTD.	ZHANGZHOU CITY XIN JIA HUA FURNITURE CO., LTD.	39.25	28.71
Zhangzhou Guohui Industrial & Trade Co., Ltd	Zhangzhou Guohui Industrial & Trade Co., Ltd	39.25	28.71
Zhangzhou OCA Furniture Co., Ltd	Zhangzhou OCA Furniture Co., Ltd	39.25	28.71

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Zhaoqing Centech Decorative Material Company Ltd	Zhaoqing Centech Decorative Material Company Ltd	39.25	28.71
Zhejiang Jindi Holding Group Co., Ltd	Zhejiang Jindi Holding Group Co., Ltd	39.25	28.71
Zhong Shan Shi Yicheng Furniture & Craftwork Co., Ltd.	Zhong Shan Shi Yicheng Furniture & Craftwork Co., Ltd.	39.25	28.71
Zhong Shan Yue Qin Imp. & Exp. Co., Ltd	Zhongshan Jinpeng Furniture Co., Ltd	39.25	28.71
Zhongshan City Shenwan Meiting Furniture Factory	Zhongshan City Shenwan Meiting Furniture Factory	39.25	28.71
Zhongshan Fookyik Furniture Co., Ltd	Zhongshan Fookyik Furniture Co., Ltd	39.25	28.71
ZHONGSHAN GAINWELL FURNITURE CO., LTD	ZHONGSHAN GAINWELL FURNITURE CO., LTD	39.25	28.71
Zhongshan Guanda Furniture Manufacturing Co., Ltd also known as Guanda Furniture Co., Ltd.	Zhongshan Guanda Furniture Manufacturing Co., Ltd	39.25	28.71
ZHONGSHAN HENGFU FURNITURE COMPANY LIMITED.	ZHONGSHAN HENGFU FURNITURE COMPANY LIMITED.	39.25	28.71
Zhongshan King's Group Furniture (ENTERPRISES) Co., Ltd.	Zhongshan King's Group Furniture (ENTERPRISES) Co., Ltd.	39.25	28.71
Zhoushan For-strong Wood Co., Ltd	Zhoushan For-strong Wood Co., Ltd	39.25	28.71
Zhoushan For-strong Wood Co., Ltd	Shanghai Wanmuda Furniture Co., Ltd	39.25	28.71
Zhucheng Tonghe Woodworks Co., ltd	Zhucheng Tonghe Woodworks Co., ltd	39.25	28.71
Zhuhai Seagull Kitchen and Bath Products Co., Ltd	Zhuhai Seagull Kitchen and Bath Products Co., Ltd	39.25	28.71
ZIEL INTERNATIONAL CO., LIMITED	DONGGUAN FANG CHENG FURNITURE LTD	39.25	28.71
ZIEL INTERNATIONAL CO., LIMITED	ZhongShan PRO–YEARN Crafts Product Co., Ltd	39.25	28.71
ZIEL INTERNATIONAL CO., LIMITED	FUJIAN NEWMARK INDUSTRIAL CO., LTD	39.25	28.71
ZIEL INTERNATIONAL CO., LIMITED	Fuzhou Zhonghe Houseware CO., LTD	39.25	28.71
ZIEL INTERNATIONAL CO., LIMITED	MING LIANG FURNITURE PRODUCT CO., LTD	39.25	28.71
ZIEL INTERNATIONAL CO., LIMITED	XIANJU JUNYANG HOUSEHOLD PRODUCTS CO., LTD.	39.25	28.71
ZIEL INTERNATIONAL CO., LIMITED	DongGuan HeTai Homewares CO., LTD	39.25	28.71
ZIEL INTERNATIONAL CO., LIMITED	CHENG TONG HARDWARE RPODUCT LTD	39.25	28.71
ZIEL INTERNATIONAL CO., LIMITED	Nantong Jon Ergonomic office Co., Ltd	39.25	28.71
China-Wide Entity [9]		262.18	251.64

Suspension of Liquidation

In accordance with section 733(d)(2)[9] of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-country exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, Commerce has made a preliminary affirmative determination for an export subsidy adjustment; however, Commerce has not made a preliminary affirmative determination for a domestic subsidy pass-through adjustment in this investigation.[10] Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the chart of estimated weighted-average dumping margins in the Preliminary Determination section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal**

[9] Commerce preliminarily determined that BRENTRIDGE HOLDING CO., LTD., Harbin Hongsen Wood Co., Ltd., SAICG International Trading Co., Ltd, Shanghai East Best Foreign Trade Co., Ltd., SHANGHAI TIMBER IMPORT & EXPORT CORP., and ZHONG SHAN KING YUANDUN WOOD PRODUCTS CO., LTD. also known as CHIN–SHU WOODEN LTD each failed to establish their eligibility for a separate rate and, therefore, we preliminarily determined that these companies are part of the China-wide entity. *See* Preliminary Decision Memorandum.

[10] *See* sections titled, ''Adjustment Under Section 777A(F) of the Act'' and ''Adjustment to Cash Deposit Rate for Export Subsidies'' in the Preliminary Decision Memorandum.

Register, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify certain information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last final verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC, 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Pursuant to 19 CFR 351.210(e), The Ancientree Cabinet Co., Ltd., Dalian Meisen Woodworking Co., Ltd., and Rizhao Foremost Woodwork Manufacturing Company Ltd. requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will be issued no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 2, 2019.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations, Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation consists of wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo. Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may not include a frame, door, drawers and/or shelves. Subject merchandise includes wooden cabinets and vanities with or without wood veneers, wood, paper or other overlays, or laminates, with or without non-wood components or trim such as metal, marble, glass, plastic, or other resins, whether or not surface finished or unfinished, and whether or not completed.

Wooden cabinets and vanities are covered by the investigation whether or not they are imported attached to, or in conjunction with, faucets, metal plumbing, sinks and/or sink bowls, or countertops. If wooden cabinets or vanities are imported attached to, or in conjunction with, such merchandise, only the wooden cabinet or vanity is covered by the scope.

Subject merchandise includes the following wooden component parts of cabinets and vanities: (1) Wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.

Subject merchandise includes all unassembled, assembled and/or ''ready to assemble'' (RTA) wooden cabinets and vanities, also commonly known as ''flat packs,'' except to the extent such merchandise is already covered by the scope of antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018). RTA wooden cabinets and vanities are defined as cabinets or

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See* Letter from The Ancientree Cabinet Co., Ltd., ''Wooden Cabinets and Vanities from China: Ancientree Request to Extend Final Determination,'' dated September 13, 2019; *see also* Letter from Dalian Meisen Woodworking Co., Ltd., ''Wooden Cabinets and Vanities from the People's Republic of China: Request for Postponement of the Final Determination,'' dated September 12, 2019; Letter from Rizhao Foremost Woodwork Manufacturing Company Ltd., ''Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request to Postpone Final Determination and Extend Provisional Measures,'' dated September 17, 2019.

vanities packaged so that at the time of importation they may include: (1) Wooden components required to assemble a cabinet or vanity (including drawer faces and doors); and (2) parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a cabinet or vanity. RTAs may enter the United States in one or in multiple packages.

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: Trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Excluded from the scope of this investigation, if entered separate from a wooden cabinet or vanity are:

(1) Aftermarket accessory items which may be added to or installed into an interior of a cabinet and which are not considered a structural or core component of a wooden cabinet or vanity. Aftermarket accessory items may be made of wood, metal, plastic, composite material, or a combination thereof that can be inserted into a cabinet and which are utilized in the function of organization/accessibility on the interior of a cabinet; and include:

- Inserts or dividers which are placed into drawer boxes with the purpose of organizing or dividing the internal portion of the drawer into multiple areas for the purpose of containing smaller items such as cutlery, utensils, bathroom essentials, etc.
- Round or oblong inserts that rotate internally in a cabinet for the purpose of accessibility to foodstuffs, dishware, general supplies, etc.

(2) Solid wooden accessories including corbels and rosettes, which serve the primary purpose of decoration and personalization.

(3) Non-wooden cabinet hardware components including metal hinges, brackets, catches, locks, drawer slides, fasteners (nails, screws, tacks, staples), handles, and knobs.

(4) Medicine cabinets that meet all of the following five criteria are excluded from the scope: (1) Wall mounted; (2) assembled at the time of entry into the United States; (3) contain one or more mirrors; (4) be packaged for retail sale at time of entry; and (5) have a maximum depth of seven inches.

Also excluded from the scope of this investigation are:

(1) All products covered by the scope of the antidumping duty order on *Wooden Bedroom Furniture from the People's Republic of China. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005).

(2) All products covered by the scope of the antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR. 513 (January 4, 2018).

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Product Characteristics
VI. Selection of Respondents
VII. Determination Not to Select Wen Bo As A Voluntary Respondent
VIII. Discussion of the Methodology
IX. Currency Conversion
X. Adjustment Under Section 777(A)(f) of the Act
XI. Adjustments to Cash Deposit Rates for Export Subsidies
XII. Recommendation

[FR Doc. 2019–21998 Filed 10–8–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–869]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Continuation of Antidumping 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 International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on diffusion-annealed, nickel-plated flat-rolled steel products from Japan would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this AD order.

DATES: Applicable October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, Office II, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2014, Commerce published its antidumping duty order on diffusion-annealed, nickel-plated flat-rolled steel products from Japan in the **Federal Register**.[1] On April 1, 2019, the ITC instituted,[2] and Commerce initiated,[3] the first sunset review of the antidumping duty order on diffusion-annealed, nickel-plated flat-rolled steel products from Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* on diffusion-annealed, nickel-plated flat-rolled steel products from Japan would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins of dumping likely to prevail were the orders revoked.[4]

On October 2, 2019, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The diffusion-annealed, nickel-plated flat-rolled steel products included in this order are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.,* ''diffusion-annealed''); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes

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[1] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Antidumping Duty Order,* 79 FR 30816 (May 29, 2014) (*Order*).

[2] *See Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Institution of Five-Year Review,* 84 FR 12282 (April 1, 2019).

[3] *See Initiation of Five-Year (Sunset) Review,* 84 FR 12227 (April 1, 2019).

[4] *See Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Final Results of the Expedited First Five-Year Sunset Review of the Antidumping Duty Order,* 84 FR 38001 (August 5, 2019), and accompanying Issues and Decision Memorandum.

[5] *See Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan (Inv. No. 731–TA–1206 (Review)),* 84 FR 52534 (October 2, 2019); *see also Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan (Inv. No. 731–TA–1206 (Review),* USITC Publication 4971, September 2019).

of this order, ''nickel-based alloys'' include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports of merchandise included in the scope of this order are classified primarily under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or a recurrence of dumping and of 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 *Order*. U.S. Customs and Border Protection (CBP) will continue to collect AD 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 *Order* 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 review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (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

This five-year (sunset) reviews and this notice are in accordance with sections 751(c) and (d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: October 2, 2019.

P. Lee Smith

Deputy Assistant Secretary for Policy and Negotiations Enforcement and Compliance.

[FR Doc. 2019–22055 Filed 10–8–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–057]

Certain Tool Chests and Cabinets From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Zhongshan Geelong Manufacturing Co. Ltd. (Geelong), the sole producer subject to this administrative review of certain tool chests and cabinets (tool chests) from the People's Republic of China (China) received countervailable subsidies during the period of review (POR), September 15, 2017 through December 31, 2018. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2018, Commerce published the countervailing duty (CVD) order on tool chests from China.[1] On February 8, 2019, we published a notice of opportunity to request an administrative review of the *Order* for the POR.[2] On February 28, 2019, we received timely requests from Geelong[3] and Home Depot[4] to conduct an administrative review of the *Order* with regard to Geelong.[5] On April 1, 2019, we published a notice of initiation for this administrative review.[6]

Scope of the Order

The scope of the *Order* covers tool chests from China. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.[7]

Methodology

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is provided in the appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a

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[1] *See Certain Tool Chests and Cabinets from the People's Republic of China: Countervailing Duty Order,* 83 FR 3299 (January 24, 2018) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 2816, 2817 (February 8, 2019).

[3] *See* Geelong's Letter, ''Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People's Republic of China: Request for Review,'' dated February 28, 2019.

[4] *See* Home Depot's Letter, ''Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People's Republic of China: Request for Review,'' dated February 28, 2019.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200, 12206 (April 1, 2019) (*Initiation Notice*). The parties requested reviews of Geelong, Geelong Sales (MCO) Ltd. (MCO), and Geelong Sales Co. International (HK) Ltd. However, neither of the latter two companies produce subject merchandise and we preliminarily determine that neither of these two companies received any subsidies. *See* ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People's Republic of China; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum) at ''Attribution of Subsidies.'' MCO, an affiliate of Geelong located in Macau, exports the subject merchandise Geelong produces to the United States. *See* Letter, ''Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People's Republic of China: First Supplemental Questionnaire Response,'' dated May 10, 2019, at Exhibit SQl-1.

[6] *See Initiation Notice,* 84 FR at 12206.

[7] *See* Preliminary Decision Memorandum.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily find that the following net countervailable subsidy rates exist for the sole respondent, Geelong, for the period September 15, 2017 through December 31, 2018:

Company	Subsidy rate–2017 (percent *ad valorem*)	Subsidy rate–2018 (percent *ad valorem*)
Zhongshan Geelong Manufacturing Co. Ltd.	1.27	1.15

Assessment Rates

Upon issuance of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, we intend, upon publication of the final results, to instruct CBP to collect cash deposits of estimated CVDs, in the amounts indicated above for Geelong, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[11] 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. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Unless the deadline is extended, pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, no later than 120 days after the date of publication of this notice.

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 3, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Diversification of China's Economy
V. Subsidies Valuation
VI. Benchmarks and Discount Rates
VII. Use of Facts Otherwise Available and Application of Adverse Inferences
VIII. Analysis of Programs
IX. Conclusion

[FR Doc. 2019–22071 Filed 10–8–19; 8:45 am]

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[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Papahānaumokuākea Marine National Monument Permit Application and Reports for Permits

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before December 9, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Justin Rivera, Papahānaumokuākea Marine National

Monument, NOAA/Inouye Regional Center, NOS/ONMS/PMNM/Attn.: Justin Rivera, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, 808–725–5831, or *Justin.Rivera@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

On June 15, 2006, President Bush established the Papahānaumokuākea Marine National Monument by issuing Presidential Proclamation 8031 (71 FR 36443, June 26, 2006) under the authority of the Antiquities Act (16 U.S.C. 431). The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), has primary responsibility regarding the management of the marine areas of the Monument, in consultation with the Secretary of the Interior. Similarly, the Secretary of the Interior, through the Fish and Wildlife Service (FWS), has sole responsibility for management of the areas of the Monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce.

The Proclamation includes restrictions and prohibitions regarding activities in the Monument consistent with the authority provided by the act. Specifically, the Proclamation prohibits access to the Monument except when passing through without interruption or as allowed under a permit issued by NOAA and the U.S. Fish and Wildlife Service (FWS). Vessels passing through the Monument without interruption are required to notify NOAA and FWS upon entering into and leaving the monument. Individuals wishing to access the Monument to conduct certain regulated activities must first apply for and be granted a permit issued by NOAA and FWS to certify compliance with vessel monitoring system requirements, Monument regulations, and best management practices.

On August 29, 2006, NOAA and FWS published a final rule codifying the provisions of the proclamation (71 FR 51134). These agencies have since worked extensively with the State to ensure the permitting requirements and processes of all three entities are sufficiently coordinated to ensure applicants for permits for Monument activities require only a single application and receive one, combined agency permit.

The information submitted by permit applicants will be used to decide whether to approve or deny a permit application. In making this decision, the agencies will consider such factors as:

- The professional qualifications and financial ability of the applicant as related to the proposed activity;
- The duration of the activity and its effects;
- The appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity;
- The extent to which the conduct of the activity may diminish or enhance the qualities for which the Monument was designated;
- The end value of the activity; and
- Other such matters as agency staff deem appropriate.

In addition to informing the agencies' decisions on permit applications, information submitted in permit applications and reports submitted pursuant to permit conditions may also be used by the agencies to inform—

- Administrative appeals of permit decisions;
- Decision making on a permit amendment request or another permit application; or
- Other management actions (*e.g.,* emergency response and enforcement).

In terms of frequency of use, the information submitted in permit applications will, in general, only be used at the time the application is submitted to make a final decision on the application. Some of the information may also be used subsequent to the initial decision making to inform management actions or decision making. For example, a survey of a project location by one permit applicant may be used by the agencies in the future to respond to a vessel grounding in the same area in addition to facilitating the agencies' decision on that application. Information submitted in a report will be used to periodically assess the permittee's compliance with permit terms and conditions and to assist in evaluating the appropriateness of the permitted activity.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0548.

Form Number: None.

Type of Review: Regular submission

Affected Public: Individuals, non-profit institutions; Federal, State, local, government, Native Hawaiian organizations; business or other for-profit organizations.

Estimated Number of Respondents: 411.

Estimated Time per Response: Research, Conservation and Management and Education (''general'' permits), 5 hours; Special Ocean Use permits, 10 hours; Native Hawaiian Practices permits, 8 hours; Recreation permits, 6 hours; permit modification requests and final reports, 10 hours; and annual reports, 5 hours.

Estimated Total Annual Burden Hours: 1,343.

Estimated Total Annual Cost to Public: $61,783 in recordkeeping/reporting costs and vessel monitoring system installation and maintenance.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–21993 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Region Permit Family of Forms—Southwest

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before December 9, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Shannon Penna, National Marine Fisheries Service (NMFS), West Coast Region (WCR) Long Beach Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802, (562) 980–4238 or *Shannon.Penna@nooa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved collection. The WCR Southwest Permits Office administers permits required for persons participating in Federally-managed fisheries off the West Coast under the Magnuson-Stevens Fishery Conservation and Management act, 16 U.S.C. 1801 *et seq.* There are three types of permits: Open access fishery permits, limited entry permits for selected fisheries, and exempted fishing permits (EFPs). Open access permits are used in all fisheries where there are no specific limitations or eligibility criteria for entry to the fishery. Limited entry permits are used to prevent overcapitalization or address other management goals in the fishery and are issued to applicants for fishing activities that would otherwise be prohibited under a fisheries management plan. Permits also provide an important link between the NMFS and fishermen via the permit application process. The permit application process also makes it easier for NMFS staff to contact fishermen and advise them of changes in the regulations or fishery conditions, and give fishermen a direct point of contact in case they have questions or issues they want to bring to the attention of NMFS or a fishery management council.

This collection consists of four permits: the General Highly Migratory Species permit, limited entry permits for coastal pelagic species and drift gillnet, and EFPs.

II. Method of Collection

Forms are available on the internet; paper applications are also available and may be submitted by mail to the Long Beach Permits Office. In addition, an online submission option is available for the general Highly Migratory Species permit through the National Permits System.

III. Data

OMB Control Number: 0648–0204.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 855.

Estimated Time per Response: HMS permit (new 20 minutes, renew 10 minutes); CPS (renew 15 minutes, transfer 30 minutes); DGN (renew 20 minutes, transfer 30 minutes); EFP, 60 minutes; appeals, 2 hours.

Estimated Total Annual Burden Hours: 246.

Estimated Total Annual Cost to Public: $26,515.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–21994 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Region, Pacific Coast Groundfish Fishery: Trawl Rationalization Cost Recovery Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 9, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Biegel, (503) 231–6291 or *christopher.biegel@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection. The Magnuson-Stevens Fishery Conservation and Management Act authorizes and requires the collection of cost recovery fees for Limited Access Privilege Programs, such as the Pacific Coast Groundfish Trawl Rationalization Program (Trawl Program). Cost recovery fees may not exceed three percent of the ex-vessel value and must recover costs associated with the management, data collection and analysis, and enforcement of these programs. The Trawl Program's cost

recovery program requires fish sellers to submit fees to fish buyers who then submit those fees to NOAA's National Marine Fisheries Service (NMFS). Fish buyers must also submit information to NMFS on the volume and value of harvested groundfish when submitting the fees. Information is collected from monthly and annual reports as well as non-payment documents when necessary.

This program is authorized under the Pacific coast groundfish fishery regulations, trawl rationalization cost recovery program at 50 CFR 660.115.

II. Method of Collection

Cost recovery fee payments for the Trawl Program must be submitted online through the Federal web portal *Pay.gov*. Annual reports are submitted by mail or email.

Payments for the Shorebased Individual Fishing Quota (IFQ) and Mothership (MS) sectors cost recovery fees are submitted online monthly through *Pay.gov*. The Catcher Processer (CP) sector submits cost recovery fees online yearly through *Pay.gov*. All payments must be made online.

The MS sector submits an annual report yearly by mail or email.

III. Data

OMB Control Number: 0648–0663.
Form Number(s): None.
Type of Review: Regular submission.
Affected Public: Individuals or households, Business or other for-profit organizations.
Estimated Number of Respondents: 167.
Estimated Time per Response: Cost recovery forms (online fee payments): 1 hour; Annual report: 1 hour; Failure to pay report: 4 hours.
Estimated Total Annual Burden Hours: 1,862.
Estimated Total Annual Cost to Public: $22,344 in reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–22000 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Implementation of Vessel Speed Restrictions To Reduce the Threat of Ship Collisions With North Atlantic Right Whales

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 9, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Caroline Good, Ph.D., *caroline.good@noaa.gov,* Office of Protected Resources, NMFS.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection.

On October 10, 2008, the National Marine Fisheries Service published a final rule implementing speed restrictions to reduce the incidence and severity of ship collisions with North Atlantic right whales (73 FR 60173). Under this rule, most non-sovereign vessels greater than or equal to 65ft in overall length are required to travel at a speed of 10 knots or less within Seasonal Management Areas along the east coast at certain times of year.

The final rule contained a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) in limited circumstances when a vessel needs to transit at a speed above 10 knots to maintain safe maneuverability. Specifically, 50 CFR 224.105(c) requires a logbook entry if a deviation from the 10 knot speed limit is necessary for safe maneuverability of a vessel ''in an area where oceanographic, hydrographic and/or meteorological conditions severely restrict the maneuverability of the vessel''. The logbook entry must provide the reasons for the deviation, the speed at which the vessel is operated and the area, time and duration of the deviation.

This extension includes a modest increase in the anticipated number of respondents and annual burden hours due to an increase in the number of vessels transiting through seasonal speed restricted areas over time.

II. Method of Collection

This information collection requires an entry into the vessel's logbook.

III. Data

OMB Control Number: 0648–0580.
Form Number(s): None.
Type of Review: Regular submission.
Affected Public: Businesses or other for-profit organizations, non-profit institutions and individuals or households.
Estimated Number of Respondents: 3263.
Estimated Time per Response: 5 minutes.
Estimated Total Annual Burden Hours: 272.
Estimated Total Annual Cost to Public: $0 in recordkeeping/recording costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–22001 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Commercial Remote Sensing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before December 9, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Tahara Dawkins, Director, Commercial Remote Sensing Regulatory Affairs, 1335 East-West Highway, G101, Silver Spring, Maryland 20910; 301–713–3385; *tahara.dawkins@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is being collected as a necessary step to regulate the private space-based remote sensing industry, which involves issuing licenses to applicants and ensuring their compliance with license terms. The Department of Commerce (DOC), through the National Oceanic and Atmospheric Administration (NOAA), has the authority to regulate private space-based remote sensing under the Land Remote Sensing Policy Act of 1992, 51 U.S.C. 60101 *et seq.* (the Act) and regulations at 15 CFR part 960. The regulations facilitate the development of the U.S. private remote sensing industry and thus promote the collection and widespread availability of remote sensing data, while preserving essential U.S. national security interests and observing international obligations.

Applications are made in response to the requirements in the Act, as amended, and no collection forms are used. The application information received is used to determine if the applicant meets the legal criteria for issuance of a license to operate a private remote sensing space system *i.e.,* the proposed system will be operated in accordance with the Act, U.S. national security concerns and international obligations. Application information includes: Corporate information; launch segment information; space segment information; ground segment information; plans and/or pricing policy for providing access to or distributing the unenhanced data generated by the system; and the plan for post-mission disposition of any Remote Sensing satellites.

Once an applicant holds a license, he/she is subject to amendment filings and notification requirements concerning an executive summary of the licensed system, foreign agreements, deviation in orbits, planned disposition of the spacecraft, data protection plans, preliminary design reviews, critical design reviews, certification of launch contract and pre-ship review of the satellite; and notification of system demise or decision to discontinue operations. The licensee is required to provide NOAA an executive summary that can be provided to the public within 30 days of obtaining a NOAA license.

Monitoring and compliance information is used to ascertain that the licensee's activities meet the requirements of the Act, applicable regulations, and license conditions. The following information collections serve as part of the monitoring and compliance function: Annual compliance audits; data collection restriction plans; operation plans for restricting collection and dissemination of imaging Israeli territory; data flow diagrams; satellite sub-system diagrams and imaging system specification sheets; operational declarations; quarterly reports; purge notifications; and annual operational audits.

II. Method of Collection

Information is collected primarily via email and sometimes by mail.

III. Data

OMB Control Number: 0648–0174.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other not-for-profit.

Estimated Number of Respondents: 50.

Estimated Time per Response: 40 hours for the submission of a license application; 10 hours for the submission of a data protection plan; 5 hours for the submission of a plan describing how the licensee will comply with data collection restrictions; 3 hours for the submission of an operations plan for restricting collection or dissemination of imagery of Israeli territory; 3 hours for submission of a data flow diagram; 2 hours for the submission of satellite subsystems drawings; 3 hours for the submission of a final imaging system specifications document; 2 hours for the submission of a public summary for a licensed system; 2 hours for the submission of a preliminary design review; 2 hours for the submission of a critical design review; 1 hour for notification of a binding launch services contract; 1 hour for notification of completion of pre-ship review; 10 hours for the submission of a license amendment; 2 hours for the submission of a foreign agreement notification; 2 hours for the submission of spacecraft operational information submitted when a spacecraft becomes operational; 2 hours for notification of deviation in orbit or spacecraft disposition; 2 hours for notification of any operational deviation; 2 hours for notification of planned purges of information to the National Satellite Land Remote Sensing Data Archive; 3 hours for the submission of an operational quarterly report; 8 hours for an annual compliance audit; 10 hours for an

annual operational audit; and 2 hours for notification of the demise of a system or a decision to discontinue system operations.

Estimated Total Annual Burden Hours: 1,533

Estimated Total Annual Cost to Public: $2,777 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–21991 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits or permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Sara Young (Permit No. 21006–01), Amy Hapeman (Permit No. 21163), and Erin Markin (Permit Nos. 22822, 22988, and 22991), Shasta McClenahan (Permit No. 22884); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search on the permit number provided in the table below.

Permit No.	RIN	Applicant	Previous **Federal Register** notice	Permit or amendment issuance date
21006–01	0648–XF530	Linnea Pearson, California Polytechnic State University, 1 Grand Ave, San Luis Obispo, CA 93407.	84 FR 31306; July 1, 2019	September 12, 2019.
21163	0648–XR004	Marine Ecology and Telemetry Research, 2468 Camp McKenzie Trl NW, Seabeck WA 98380 (Responsible Party: Greg Schorr).	84 FR 30093; June 26, 2019.	September 23, 2019.
22822	0648–XR019	Pamela Plotkin, Ph.D., Texas A&M University, 797 Lamar Street, 4115 TAMU, College Station, TX 77843.	84 FR 33239; July 12, 2019	September 26, 2019.
22884	0648–XR022	Mark Baumgartner, Ph.D., Woods Hole Oceanographic Institution, MS No. 33, Biology Department, Woods Hole, MA 02543.	84 FR 43793; August 22, 2019.	September 26, 2019.
22988	0648–XR019	Lawrence Wood, Ph.D., LDWood BioConsulting, Inc., 425 Kennedy Street, Jupiter, FL 33468.	84 FR 33239; July 12, 2019	September 26, 2019.
22991	0648–XR019	NMFS Pacific Islands Regional Office 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818 (Responsible Party: Michael Tosatto).	84 FR 33239; July 12, 2019	September 26, 2019.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: October 3, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–21999 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Ocean Exploration Advisory Board (OEAB)

AGENCY: Office of Ocean Exploration and Research (OER), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Ocean Exploration Advisory Board (OEAB). OEAB

members will discuss and provide advice on Federal ocean exploration programs, with a particular emphasis on the topics identified in the section on *Matters to Be Considered*.

DATES: The announced meeting is scheduled for Tuesday, December 3, 2019 from 9:00 a.m. to 5:00 p.m. EST and Wednesday, December 4, 2019 from 9:00 to 5:00 p.m. EST.

ADDRESSES: The meeting will be held at: Consortium for Ocean Leadership, 1201 New York Avenue NW, Suite 420, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mr. David McKinnie, Designated Federal Officer, Ocean Exploration Advisory Board, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Seattle, WA 98115, (206) 526–6950.

SUPPLEMENTARY INFORMATION: NOAA established the OEAB under the Federal Advisory Committee Act (FACA) and legislation that gives the agency statutory authority to operate an ocean exploration program and to coordinate a national program of ocean exploration. The OEAB advises NOAA leadership on strategic planning, exploration priorities, competitive ocean exploration grant programs and other matters as the NOAA Administrator requests.

OEAB members represent government agencies, the private sector, academic institutions, and not-for-profit institutions involved in all facets of ocean exploration—from advanced technology to citizen exploration.

In addition to advising NOAA leadership, NOAA expects the OEAB to help to define and develop a national program of ocean exploration—a network of stakeholders and partnerships advancing national priorities for ocean exploration.

Matters to be Considered: The OEAB will discuss the following topics: (1) The Ocean Science and Technology Summit; (2) the NOAA fleet plan; (3) OER updates, including the OER program review, the OER annual review, and the Ocean Exploration Fiscal Year 2019 Funding Opportunity projects; (4) an update on the U.S. critical minerals strategy; and (5) other matters as described in the agenda. The agenda and other meeting materials are available on the OEAB website at *http://oeab.noaa.gov.*

Status: The meeting will be open to the public with a 15-minute public comment period on Wednesday, December 4, 2019 from 11:45 a.m. to 12:00 p.m. EST (please check the final agenda on the OEAB website to confirm the time). The public may listen to the meeting and provide comments during the public comment period via teleconference. Dial-in information may be found on the meeting agenda on the OEAB website.

The OEAB expects that public statements at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to three minutes. The Designated Federal Officer must receive written comments by November 26, 2019, to provide sufficient time for OEAB review. Written comments received after November 26, 2019, will be distributed to the OEAB but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Special Accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Designated Federal Officer by November 26, 2019.

Dated: October 2, 2019.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–22111 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV031

Draft Outline for a Work Plan for a Federal Aquaculture Regulatory Task Force

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

ACTION: Notice of availability; request for comments.

SUMMARY: On behalf of the National Science and Technology Council's Subcommittee on Aquaculture, NOAA announces the availability of the Draft Outline for a Work Plan for a Federal Aquaculture Regulatory Task Force for public review and comment.

DATES: NOAA will consider public comments received on or before November 8, 2019.

ADDRESSES:

Obtaining Documents: You may download the Draft Outline for a Work Plan for a Federal Aquaculture Regulatory Task Force at: *https://www.ars.usda.gov/SCA/taskforce.html.*

Submitting Comments: Interested persons may submit comments by any of the following methods:

- *Electronic Submissions:* Submit electronic public comments to *Aqua.RegPlan@noaa.gov.*
- *Mail:* Susan Bunsick, Attn: Aquaculture Work Plan Comments, Office of Aquaculture, F/AQ, 1315 East-West Highway, 12th Floor, Silver Spring, MD 20910.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be made available for public viewing upon request. 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.

FOR FURTHER INFORMATION CONTACT: National Oceanic and Atmospheric Administration—Susan Bunsick, *susan.bunsick@noaa.gov,* 301–427–8325.

SUPPLEMENTARY INFORMATION:

Background

The U.S. national policy on aquaculture states that (from the National Aquaculture Act of 1980): ''Congress declares that aquaculture has the potential for reducing the United States trade deficit in fisheries products, for augmenting existing commercial and recreational fisheries, and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.''

The Subcommittee on Aquaculture (SCA), previously known as the Interagency Working Group on Aquaculture (IWGA) and the Joint Subcommittee on Aquaculture (JSA), is a statutory subcommittee that operates under the Committee on Environment of the National Science and Technology Council (NSTC) under the Office of Science and Technology Policy in the Executive Office of the President. It is co-chaired by the Department of Agriculture, Department of Commerce, and the White House Office of Science and Technology Policy. Members include the Department of Agriculture,

Department of Commerce, Army Corps of Engineers, Department of the Interior, Food and Drug Administration, Environmental Protection Agency and the Office of Management and Budget. The SCA serves as the Federal interagency coordinating group to increase the overall effectiveness and productivity of Federal aquaculture research, regulation, technology transfer, and assistance programs. This interagency coordinating group has been functioning since before the National Aquaculture Act was signed into law in 1980.

This draft outline lays out the components of a Work Plan for a Federal Aquaculture Regulatory Task Force. The proposed goal of this plan is to address the Federal strategic goal of improving regulatory efficiency and predictability for domestic freshwater and marine aquaculture under existing laws and regulations. The plan proposes to describe key interagency and federal-state issues raised by aquaculture regulations relating to permitting and aquatic animal health as well as the key science and technology needs to facilitate streamlined regulations and timely management decisions under current regulations.

Next Steps

The public is encouraged to review and comment on the Draft Outline for a Work Plan for a Federal Aquaculture Regulatory Task Force. After the public comment period ends, NOAA and the SCA will consider and address the comments received before issuing a draft work plan.

Invitation to Comment

NOAA, on behalf of the National Science and Technology Council's Subcommittee on Aquaculture, seeks public review and comment on the Draft Outline for a Work Plan for a Federal Aquaculture Regulatory Task Force (see **ADDRESSES** above). Before including your address, telephone number, email address, or other personal identifying information in your comment, please be aware that your entire comment, including your personal identifying information, will become part of the public record.

Authority: This outline and plan is being issued under the following authorities: National Aquaculture Act of 1980 (Public Law 96–362, 94 Stat. 1198, 16 U.S.C. 2801, *et seq.*) and the National Aquaculture Improvement Act of 1985 (Public Law 99–198, 99 Stat. 1641).

Dated: October 3, 2019.

David O'Brien,

Acting Director, Office of Aquaculture, National Marine Fisheries Service.

[FR Doc. 2019–21988 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Reporting Requirements for Sea Otter Interactions With the Pacific Sardine Fishery; Coastal Pelagic Species Fishery Management Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 9, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Joshua Lindsay, (562) 980–4034 or *Joshua.Lindsay@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a regular submission, an extension of a currently approved collection.

On May 30, 2007, NMFS published a final rule (72 FR 29891) implementing a requirement under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) to report any interactions that may occur between a CPS vessel and/or fishing gear and sea otters. In accordance with the regulations implementing the Endangered Species Act (ESA), NOAA's National Marine Fisheries Service (NFMS) initiated an ESA section 7 consultation with the United States Fish and Wildlife Service (USFWS) regarding the effects of implementing the final rule (72 FR 29891), which codified Amendment 11 to the CPS FMP. USFWS determined that formal consultation was necessary on the possible effects to the threatened southern sea otter. USFWS completed a biological opinion (BO) for this action and although it was concluded that fishing activities were not likely to jeopardize the continued existence of the southern sea otter, that there remained the potential to incidentally take southern sea otters. USFWS determined that certain measures should be put in place to ensure the continued protection of the species, including certain reporting requirements.

Specifically, these reporting requirements are:

1. If a southern sea otter is entangled in a net, regardless of whether the animal is injured or killed, such an occurrence must be reported within 24 hours to the Regional Administrator, NMFS West Coast Region.

2. While fishing for CPS, vessel operators must record all observations of otter interactions (defined as otters within encircled nets or coming into contact with nets or vessels, including but not limited to entanglement) with their purse seine net(s) or vessel(s). With the exception of an entanglement, which will be initially reported as described in #1 above, all other observations must be reported within 20 days to the Regional Administrator.

When contacting NMFS after an interaction, fishermen are required to provide information regarding the location, specifically latitude and longitude, of the interaction and a description of the interaction itself. Descriptive information of the interaction should include: Whether or not the otters were seen inside or outside the net; if inside the net, had the net been completely encircled; did contact occur with net or vessel; the number of otters present; duration of interaction; otter's behavior during interaction; and, measures taken to avoid interaction.

II. Method of Collection

The information will be collected on forms submitted by mail, phone, facsimile or email.

III. Data

OMB Control Number: 0648–0566.

Form Number(s): None.

Type of Review: Regular submission (Extension of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost to Public: $10.00 in reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–22004 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Dealer and Interview Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 9, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. David Gloeckner, (305) 361–4257 or *david.gloeckner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for renewal of a current information collection. Fishery quotas are established for many species in the fishery management plans developed by the Gulf of Mexico Reef Fish Fishery Management Council, the South Atlantic Fishery Management Council, and the Caribbean Fishery Management Council. The Southeast Fisheries Science Center has been delegated the responsibility to monitor these quotas. To do so in a timely manner, seafood dealers that handle these species are required to report the purchases (landings) of these species. The frequency of these reporting requirements varies depending on the magnitude of the quota (*e.g.,* lower quota usually require more frequent reporting) and the intensity of fishing effort. The most common reporting frequency is weekly. Daily reporting is only used for one fishery.

In addition, information collection included in this family of forms includes interview with fishermen to gather information on the fishing effort, location and type of gear used on individual trips. This data collection is conducted for a subsample of the fishing trips and vessel/trips in selected commercial fisheries in the Southeast region and commercial fisheries of the US Caribbean. Fishing trips and individuals are selected at random to provide a viable statistical sample. These data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations.

This data collection is authorized under 50 CFR part 622.5.

II. Method of Collection

Dealer reports used for quota monitoring are reported electronically for all but one fishery (mackerel gillnet) is reported via fax. Bio profile data from Trip Interview programs is obtained by face-to-face interviews with fisherman or sea food dealers.

III. Data

OMB Number: 0648–0013.

Form Number: None.

Type of Review: Regular submission (renewal of a current information collection).

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 6,188.

Estimated Time per Response:

Dealer reporting for monitoring Federal fishery annual catch limits (ACLs): Coastal fisheries dealers reporting, 10 minutes; mackerel dealer reporting (gillnet), 10 minutes; wreckfish dealer reporting, 10 minutes.

Bio profile data from Trip Interview programs (TIP): Shrimp Interviews, 10 minutes; Fin Fish interviews, 10 minutes.

Estimated Total Annual Burden Hours: 4,334.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–21990 Filed 10–8–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2019–HQ–0009]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice of a new System of Records.

SUMMARY: The Office of the Deputy Assistant Secretary of the Air Force for Financial Operations (SAF/FMF) is adding a new System of Records titled, ''Forms and Account Management Service (FAMS),'' F065 SAF FMF A. FAMS will be the sole, web-based platform for the appointment and termination of Departmental Accountable Officials, appointment and termination of Key Signatories of financial documentation, and access management to a portfolio of information systems, which are material for audit.

DATES: This addition is effective upon publication; however, comments on the Routine Uses will be accepted on or before November 8, 2019. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. LaDonne White, Department of the Air Force, Air Force Privacy Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: During Financial Improvement and Audit Readiness (FIAR) audits of Air Force Information Technology (IT) processes, numerous notices of findings and recommendations were issued, related to vulnerabilities in managing Air Force systems account access and appointment of accountable official positions. Findings identified gaps in properly handling and managing accounts for access and authority to act. Improper account management presents information security risks that could result in unauthorized access. Historically, many of these functions were performed in a decentralized manner and conducted manually without effective checks and balances on accuracy. Introduction of the new web-based platform will reduce and eliminate the use of paper forms as it will automate the request and approval processes and enable periodic validation and reconciliation of account records against actual account permissions.

OMB Circular No. A–123 defines management's responsibility for internal control in Federal agencies. A re-examination of the existing internal control requirements for Federal agencies was initiated in light of the new internal control requirements for publicly-traded companies contained in the Sarbanes-Oxley Act of 2002. Circular A–123 and the statute it implements, the Federal Managers' Financial Integrity Act of 1982, are at the center of the existing Federal requirements to improve internal control.

This circular reflects policy recommendations developed by a joint committee of representatives from the Chief Financial Officer Council (CFOC) and the President's Council on Integrity and Efficiency (PCIE). The policy changes in this circular are intended to strengthen the requirements for conducting management's assessment of internal control over financial reporting. SAF/FMF is responsible for developing and maintaining effective internal control that provides assurance that significant weaknesses in the design or operation of internal control, such as unauthorized access to Air Force systems, that could adversely affect the agency's ability to meet its objectives, would be prevented or detected in a timely manner. FAMS enables SAF/FMF the means to track and manage the appointment of qualified personnel (Departmental Accountable Officials and Financial Signatories) to key positions and control Air Force system access to appropriately cleared Air Force employees, thereby meeting the requirements of OMB A–123.

The OSD notices for Systems of Records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address provided in the **FOR FURTHER INFORMATION CONTACT** paragraph or are available at the Defense Privacy, Civil Liberties, and Transparency Division website via at *http://dpcld.defense.gov.*

The proposed systems reports, as required by the Privacy Act, as amended, were submitted on August 5, 2019, to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 of OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: October 4, 2019.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Forms and Account Management Service (FAMS), F065 SAF FMF A

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Air Force Life Cycle Management Center, 9 Eglin Street, Building 1606, Hanscom Air Force Base, MA 01731.

SYSTEM MANAGER(S):

Program Manager, SAF/FMFSA, 1500 West Perimeter Road, Suite 3130, Joint Base Andrews NAF, MD 20762–6604. System Managers: Michael Holloway (240–612–5307 | *michael.l.holloway.civ@mail.mil*); Waqasul Haq (202–320–2372 | *waqasul.haq.ctr@us.af.mil*); Hubert Chin (240–612–5199 | *hubert.chin.ctr@mail.mil*)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9013, Armed Forces, Secretary of the Air Force; 31 U.S.C. 902, Authority and Functions of Agency

Chief Financial Officers, as amended; 31 U.S.C. 3325, Vouchers; 31 U.S.C. 3528, Responsibilities and Relief from Liability of Certifying Officials; Chief Financial Officers Act of 1990, 31 U.S.C., chapters 5, 9, 11, and 35; also 5 U.S.C. 5313–5315, 38 U.S.C. 201 and 42 U.S.C. 3533; Government Management Reform Act of 1994, Public Law 103–356; Federal Financial Management Improvement Act of 1996, Public Law 104–208, Title VIII; 44 U.S.C. 3541, Federal Information Security Modernization Act of 2014; Executive Order 10450, Security Requirements for Government Employment; DoD Financial Management Regulation 7000.14–R, Vol. 5.

PURPOSE(S) OF THE SYSTEM:

The Air Force (AF) FAMS is a secure, cloud-based set of tools and services established to automate key Financial Management Forms, workflow, and reporting processes (audit materials). FAMS optimizes the use of information technology and streamlines the financial management processes by eliminating paper form routing and physical storage requirements and closing the associated access control performance gaps. The data acquired and updated from each record source is used not only for identity validation, but is also stored and revalidated for subsequent workflow actions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Within the Department of the Air Force: Active Duty service members, Reserve service members, Air National Guard service members, Presidential Appointees, Civilians, and Contractors. Also includes Foreign Military Members and Foreign Civilian hire employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Electronic Data Interchange Personal Identifier Number (EDIPI), also referred to as the DoD ID number, current rank/grade, current organization, current duty location, security clearance level, security clearance completion date, Active/Reserve/Guard designation, Air Force specialty code used by the United States Air Force to identify a specific job, hire date, hire location, separation/retirement date, and date of death.

RECORD SOURCE CATEGORIES:

Individuals; DoD databases accessed through Defense Manpower Data Center (DMDC) Identity Web Services—Personal Identity Data and DMDC Information System for Security—Personal Security Clearance Data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

b. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

c. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

d. To the National Archives and Records Administration for the purpose of records management inspections conducted. This routine use complies with 44 U.S.C. 2904 and 2906.

e. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

f. To appropriate agencies, entities, and persons when (1) The DoD suspects or has confirmed that the security or confidentiality of the information in the System of Records has been compromised; (2) the DoD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

g. To another Federal agency or Federal entity, when the DoD 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Individual's full name and EDIPI/DoD ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Destroy 10 years after cancellation or revocation of the order, provided there are no outstanding discrepancies for which corrective action has been prescribed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Role-based access control restricts the system access to authorized users with a need-to-know. Network encryption protects data transmitted over the network while disk encryption secures the disks storing data. Key management services safeguards encryption keys.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this System of Records contains information on themselves should address written inquiries to the Department of the Air Force, FM Chief Information Officer, SAF/FMFS, 1500 West Perimeter Road, Suite 3130, Joint Base Andrews Naval Air Facility, MD 20762–6604. For verification purposes, individuals should provide full name, EDIPI/DoD ID number from Common Access Card (CAC), office or organization where currently assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or

commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rule for accessing, contesting and appealing agency determinations by the individual concerned are published in 32 CFR part 310 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Department of the Air Force, FM Chief Information Officer, SAF/FMFS, 1500 West Perimeter Road, Suite 3130, Joint Base Andrews NAF, MD 20762–6604. For verification purposes, individuals should provide full name, EDIPI/DoD ID number from CAC, office or organization where currently assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2019–22037 Filed 10–8–19; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2019–OS–0114]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice of a modified System of Records.

SUMMARY: The Office of the Secretary of Defense (OSD) is modifying a System of Records titled, ''Defense Sexual Assault Incident Database (DSAID),'' DHRA 06 DoD. DSAID is a centralized case-level database, which collects and maintains information on sexual assaults involving Armed Forces members. DSAID gives Sexual Assault Response Coordinators (SARCs) the enhanced ability to provide comprehensive and standardized victim case management.

DSAID is funded and operated by the Department of Defense Sexual Assault Prevention and Response Office (DoD SAPRO) and enables service SAPR Programs to meet congressional reporting requirements and ensure transparency of sexual assault-related data.

DATES: These modifications are effective upon publication; however, comments on the Routine Uses will be accepted on or before November 8, 2019. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: DoD SAPRO represents the Secretary of Defense as the central authority charged with preventing sexual assault in the military and facilitating recovery for survivors. DoD SAPRO promotes military readiness by reducing sexual assault through advocacy and execution of program policy, planning, and oversight across the DoD community.

To meet the expanded sexual assault and response reporting requirements of Section 543 of the National Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. 1561) as well as establish the DSAID File Locker, the OSD is modifying this System of Records by changing the following sections: System location, purpose(s) of the system, categories of individuals covered by the system, categories of records in the system, routine use of records maintained in the system, records access procedures, and notification procedures. The DoD notices for Systems of Records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *http://dpcld.defense.gov/.* The proposed systems reports, as required by the Privacy Act, as amended, were submitted on August 7, 2019, to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 of OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: October 4, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Defense Sexual Assault Incident Database (DSAID), DHRA 06 DoD.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Washington Headquarters Services (WHS), 1155 Defense Pentagon, Washington, DC 20301–1155.

SYSTEM MANAGER(S):

Defense Sexual Assault Incident Database Program Manager, 4800 Mark Center Drive, Alexandria, VA 22350–8000, email: *whs.mc-alex.wso.mbx.SAPRO@mail.mil;* telephone: (571) 372–2657.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; 32 U.S.C. 102, National Guard; DoD Directive 6495.01, SAPR Program; DoD Instruction 6495.02, SAPR Program Procedures; Army Regulation 600–20, Chapter 8, Army Command Policy (Sexual Assault Prevention and

Response Program); OPNAV Instruction 1752.1C, SAPR Program; Marine Corps Order 1752.5B, SAPR Program; Air Force Instruction 90–6001, SAPR Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

To centralize case-level sexual assault data involving a member of the Armed Forces, in a manner consistent with statute and DoD regulations for Unrestricted and Restricted reporting. To facilitate reports to Congress on claims of retaliation in connection with an Unrestricted Report of sexual assault made by or against a member of the Armed Forces. Records may also be used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, conducting research, and case and business management. De-identified data may also be used to respond to mandated reporting requirements. The DSAID File Locker, a separate module within the system, is used to maintain Victim Reporting Preference Statements and DoD Sexual Assault Forensic Examinations (SAFEs) to ensure compliance with federal records retention requirements and allow victims and reporters to access to these forms for potential use in Department of Veterans Affairs (DVA) benefits applications.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Victims and/or alleged perpetrators in a sexual assault involving a member of the Armed Forces, including: Active duty Army, Navy, Marine Corps, and Air Force members; active duty Reserve members and National Guard members covered by Title 10 or Title 32; service members who were victims of a sexual assault prior to enlistment or commissioning; military dependents age 18 and older; DoD civilians; DoD contractors; other Federal government employees; U.S. civilians; and foreign military members who may be lawfully admitted into the U.S. or who are not covered under the Privacy Act. Sexual assault victims, family members, bystanders, witnesses, first responders, or other parties (*e.g.,* co-workers and friends) who report (hereafter ''retaliation reporters''), and/or are the alleged perpetrators of (hereafter ''alleged retaliators'') retaliation related to reports of sexual assault involving a member of the Armed Forces, including: Active duty Army, Navy, Marine Corps, and Air Force members; active duty Reserve members and National Guard members covered by Title 10 or Title 32 (hereafter ''service members''); DoD civilians; and other Federal government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Victim and alleged perpetrator information includes: Age at the time of incident; gender, race, ethnicity; affiliation (*e.g.,* military, DoD civilian/contractor, other government employee, U.S. civilian, foreign national/military, unknown, and military dependent); service, grade/rank, status (*e.g.,* Active Duty, Reserve, National Guard); location of assignment and incident. Additional victim and alleged perpetrator information, maintained in Unrestricted Reports only, includes: Full name; identification type and number (*e.g.,* DoD Identification number (DoD ID); passport; U.S. Permanent Residence Card; foreign identification; Social Security Number (SSN) to allow for DoD law enforcement entities to update the record with investigatory information); date of birth; and case disposition information; Additional victim information includes: DSAID control number (*i.e.,* system generated unique control number); and relationship to alleged perpetrator. Additional victim information maintained in Unrestricted Reports only includes: Work or personal contact information (*e.g.,* phone number, address, email address); and name of commander. Restricted Reports (reports that do not initiate investigation), may contain personally identifible information from the Victim Reporting Preference Statement or other sources for the victim and/or alleged perpetrator; no information on reports of retaliation is maintained. Other sexual assault data collected to support case and business management includes: Date and type of report (*e.g.,* Unrestricted or Restricted); tracking information on SAFEs performed, and referrals to appropriate resources; information on line of duty determinations; victim safety information; case management meeting information; and information on memoranda of understanding. For Unrestricted Reports, information on expedited transfers and civilian/military protective orders may also be collected. Retaliation reporter and alleged retaliator information includes: Full name; DoD ID; date of birth; gender, race, ethnicity; affiliation (*e.g.,* military, DoD civilian/contractor, other government employee, and military dependent); duty status, pay grade; location of assignment; and case disposition information. Additional retaliation reporter information includes: Other identification type and number (*e.g.,* passport; U.S. Permanent Residence Card; foreign identification; SSN to allow for DoD law enforcement entities to update the record with investigatory information); retaliation control number (*i.e.,* system generated unique control number); Other retaliation data collected to support case and business management includes: DSAID control number, tracking information on actions taken to support reporter of retaliation; nature and findings of the retaliation investigation; relationship between alleged retaliator and retaliation reporter; relationship between alleged retaliator and alleged perpetrator of sexual assault; and phone number; Records maintained for the DSAID File Locker include: Victim Reporting Preference Statement (includes victim full name, SSN, and DoD ID number), Unrestricted Reports are maintained in a searchable format, whereas Restricted Reports are maintained in a non-searchable format and can only be accessed with an encryption key; SAFE; year and month of report, SARC's assigned location, installation name, DSAID control number, and/or SARC affiliation may be maintained as metadata. Last four of the SSN, date of birth, mother's maiden name, and state or country of birth may also be maintained for use as an encryption key to grant access for victims and retaliation reporters to their Restricted Report records.

RECORD SOURCE CATEGORIES:

Individuals, SARCs, Military Service Legal Officers (*i.e.*, attorneys provided access to the system), Army Law Enforcement Reporting and Tracking System (Army), Consolidated Law Enforcement Operations Center (Navy), and Investigative Information Management System (Air Force).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted in accordance with 5 U.S.C. 552a(b), the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To permit the disclosure of records of closed cases of Unrestricted Reports to the DVA for purpose of providing mental health and medical care to former Service members and retirees, to determine the eligibility for or entitlement to benefits, and to facilitate collaborative research activities between the DoD and DVA.

b. To contractors responsible for performing or working on contracts for the DoD when necessary to accomplish an agency function related to this

System of Records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure that apply to DoD officers and employees.

c. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

g. To appropriate agencies, entities, and persons when (1) the DoD suspects or has confirmed that there has been a breach of the System of Records; (2) the DoD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

h. To another Federal agency or Federal entity, when the DoD 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper file folders and electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

For Unrestricted Reports: Victim and retaliation reporter records are retrieved by first name, last name, identification number and type of identification provided, DSAID control number, and/or retaliation control number assigned to the incident. Alleged perpetrator or retaliator records are retrieved by first name, last name, and/or identification number and type of identification provided. For Restricted Reports: Victim Preference Reporting Statements and SAFE Reports are retrieved by year of report, SARC's assigned location, DSAID Control Number, and/or SARC affiliation, as well as victim answers to the encryption key questions (last four of the SSN, date of birth, and mother's maiden name or state/country of birth) for Restricted Reports.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Cutoff cases at the end of the fiscal year and destroy 50 years thereafter.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of guards, identification badges, key cards, and locks. Access to case files in the system is role-based and requires the use of a Common Access Card (CAC) and password. Access rights and permission lists for SARCs are granted by Military Service Sexual Assault Prevention and Response program managers through the assignment of appropriate user roles. Access rights and permission lists for authorized military Service Legal Officer and Program Managers are granted by the DSAID Program Manager through the assignment of appropriate user roles. Periodic security audits are also conducted. Technical safeguards include firewalls, passwords, encryption of data, and use of a virtual private network. Access is further restricted to authorized users on the nonsecure internet protocol router network and with a CAC. In addition, the local drive resides behind a firewall and the direct database cannot be accessed from the outside of it. Victim Preference Statements and SAFE Reports associated with Restricted Reports are also protected by system administrative roles, and by document level encryption, where victims are able to provide encryption key data.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the following as appropriate: The Department of the Army, Sexual Harassment/Assault Response and Prevention (SHARP), 2530 Crystal Drive, 6th Floor, Arlington, VA 22202–3938. Headquarters Marine Corps Sexual Assault Prevention and Response, ATTN: SAPR Program Manager, 3280 Russell Road Quantico, VA 22134. The Department of the Navy, ATTN: SAPR Program Manager, RM 4R140–006, 701 S. Courthouse Road, Arlington, VA 22204. Headquarters United States Air Force/A1Z/R, ATTN: SAPR Program Manager 3NW410A, 7700 Arlington Blvd. Falls Church, VA 22042. The National Guard Bureau, SAPR Office, ATTN: SAPR Program Manager, 111 South George Mason Drive, AH2, Arlington, VA 22204–1373. Signed, written requests should contain the name, identification number and type of identification, indicate whether the individual is a victim, retaliation reporter, alleged perpetrator, or alleged retaliator, and the name and number of this System of Records notice. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this System of Records should address written inquiries to the following as appropriate: The Department of the Army, HRPD, Sexual Harassment/Assault Response and Prevention (SHARP), 2530 Crystal Drive, 6th Floor, Arlington, VA 22202–3938. Headquarters Marine Corps Sexual Assault Prevention and Response, ATTN: SAPR Program

Manager, 3280 Russell Road Quantico, VA 22134. The Department of the Navy, ATTN: Sexual Assault Prevention and Response Program Manager, RM 4R140–006, 701 S. Courthouse Road, Arlington, VA 22204. Headquarters United States Air Force/A1Z, ATTN: Sexual Assault Prevention and Response Program Manager, 1040 Air Force Pentagon, Washington, DC 20330–1040. The National Guard Bureau, Sexual Assault Prevention and Response Office, ATTN: Sexual Assault Prevention and Response Program Manager, 111 South George Mason Drive, AH2, Arlington, VA 22204–1373. Signed, written requests should contain the name, identification number and type of identification, indicate whether the individual is a victim, retaliation reporter, alleged perpetrator, or alleged retaliator, and the name and number of this System of Records Notice. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

November 04, 2015, 80 FR 68302.

[FR Doc. 2019–22078 Filed 10–8–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2019–HQ–0021]

Proposed Collection; Comment Request

AGENCY: The Office of the Secretary of the Navy, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Marine Corps announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Marine Corps Marathon Organization, Attn: Angela Anderson, P.O. Box 188, Quantico, VA 22134, or call Marine Corps Marathon Organization at (703) 432–1159.

SUPPLEMENTARY INFORMATION:

Title; associated form; and OMB number: Marine Corps Marathon Race Applications; OMB Control Number 0703–0053.

Needs and uses: The information collection requirement is necessary to obtain and record the information of runners to conduct the races, for timing purposes and for statistical use.

Affected public: Individuals or households.

Annual burden hours: 5,016.68.

Number of respondents: 60,200.

Responses per respondent: 1.

Annual responses: 60,200.

Average burden per response: 5 minutes.

Frequency: Annually.

Dated: October 4, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–22095 Filed 10–8–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0127]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Request for Designation as an Eligible Institution Under Titles III, V, and VII Programs and Waivers of the Non-Federal Cost Share Reimbursement (1894–0001)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 8, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0127. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jason Cottrell, 202–453–7530.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Request for Designation As An Eligible Institution Under Titles III, V, and VII Programs and Waivers of the Non-Federal Cost Share Reimbursement (1894–0001).

OMB Control Number: 1840–0103.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 200.

Total Estimated Number of Annual Burden Hours: 1,400.

Abstract: This collection of information is necessary in order for the Secretary of Education to designate an institution of higher education eligible to apply for funding under Titles III, V, and VII of the Higher Education Act of 1965, as amended. An institution must apply to the Secretary to be designated as an eligible institution. The programs authorized include the Strengthening Institutions, Alaska Native and Native Hawaiian-Serving Institutions, Asian-American and Native American Pacific Islander-Serving Institutions, Native American Serving Nontribal Institutions, Hispanic-Serving Institutions, Hispanic-Serving Institutions (Science, Technology, Engineering and Math and Articulation), Promoting Postbaccalaureate Opportunities for Hispanic Americans, and Predominantly Black Institutions Programs. These programs award discretionary grants to eligible institutions of higher education so that they might increase their self-sufficiency by improving academic programs, institutional management, and fiscal stability.

This collection of information is gathered electronically by the Department for the purpose of determining an institution's eligibility to participate in the Titles III, V, and VII grant programs based on its enrollment of needy students and low average Core Expenses per full-time equivalent student. This collection also allows an institution to request a waiver of certain non-Federal cost-share requirements under the Federal Work-Study Program, Federal Supplemental Educational Opportunity Grant, Student Support Services Program and the Undergraduate International Studies and Foreign Language Program.

The collection is paired with a computational exercise that results in the simultaneous publication of an Eligibility Matrix, a listing of postsecondary institutions potentially eligible to apply for grants in Institutional Service. Criteria derived from applicable legislation and regulations are applied to enrollment and financial data from Department sources to determine the eligibility of each institution for each program. Only those institutions that either do not meet the financial criteria or do not appear in the eligibility matrix need to go through the application process.

The results of the application process are a determination of eligibility for grant application and waiver, and updated information on institutional eligibility which is added to the EM.

Dated: October 3, 2019.

Kathy Axt,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–22003 Filed 10–8–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Membership of the Performance Review Board

AGENCY: Office of Finance and Operations, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary publishes a list of persons who may be named to serve on the Performance Review Board that oversees the evaluation of performance appraisals for Senior Executive Service members of the Department.

DATES: October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Valarie Barclay, Director, Executive Resources Division, Office of Human Resources, Office of Finance and Operations, U.S. Department of Education, 400 Maryland Avenue SW, Room 210–00, LBJ, Washington, DC 20202–4573. Telephone: (202) 453–5918.

If you use a telecommunications device for the deaf (TDD), or text telephone (TTY), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Membership

Under the Civil Service Reform Act of 1978, Public Law 95–454 (5 U.S.C. 4314(c)(4), we must publish in the **Federal Register** a list of persons who may be named to serve on the Performance Review Board that oversees the evaluation of performance appraisals for Senior Executive Service members of the Department. The following persons may be named to serve on the Performance Review Board:

ASHLEY, CAROL
BAILEY, NATHAN
BATTLE, SANDRA
BRINTON, JED
BRUCE, SANDRA
BYRD-JOHNSON, LINDA
CARR, PEGGY G.
CARTER, DENISE L.
CHANG, LISA
CHAPMAN, CHRISTOPHER
CHAVEZ, ANTHONY
CONATY, JOSEPH C.
CORDES, WILLIAM
CURRELL, DANIEL
DOONE, ALISON
EITEL, ROBERT
ELIADIS, PAMELA D.
ELLIS, KATHRYN A.
FORTELNEY, GREGORY
GOODRIDGE-KEILLER, MARCELLA
GRAY, JASON
HAIRFIELD, JAMES
HARDING, JORDAN
HAYNES, LEONARD
HERNANDEZ, STEVEN
JACKSON, CANDICE
JONES, DIANE
JORDAN, AARON
KARVONIDES, MIA
KEAN, LARRY
KIM, ANN
KOEPPEL, DENNIS P.
MAESTRI, PHILLIP

MAHAFFIE, LYNN B.
MALAWER, HILARY
MANCUSO, ROBERT
MCCAGHREN, CHRISTOPHER
MCDONALD, WALTER
MCLAUGHLIN, MAUREEN A.
MEFFORD, PENNY
METHFESSEL, HARLEY
MILLER, DANIEL
MORRIS, DAVID
PARK, ALBERT
RICHEY, KIMBERLY
RIDDLE, PAUL N.
RINKUS, CHRISTOPHER
ROSENFELT, PHILIP H.
RUBINSTEIN, REED
RYDER, RUTH
SACKS, CASEY
SALO, DONALD
SANTY, ROSS JR.
SASSER, TRACEY L.
SCOTT, JANET
SIMMONS, LEE-DOUGLASS
SIMPSON, DANIEL
SMITH, MARK
ST. PIERRE, TRACEY
STADER, JAMES
STANTON, CRAIG
TALBERT, KENT
TRACHMAN, WILLIAM
VANDERPLOEG, LAURIE
VIANA, AIMEE
VIANA, JOSE
WASHINGTON, MARK
WILLS, RANDOLPH E.
WOOD, GARY H.

Accessible Format: Individuals with disabilities may obtain this document in an alternative format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

Dated: October 4, 2019.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2019–22076 Filed 10–8–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1–000]

Basin Electric Power Cooperative; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Basin Electric Power Cooperative's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 23, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic 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.

Dated: October 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22102 Filed 10–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–501–000]

Texas Eastern Transmission LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bailey East Mine Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Bailey East Mine Project involving construction and operation of facilities by Texas Eastern Transmission LP (Texas Eastern) in Marshall County, West Virginia. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 4, 2019.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable

alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on August 19, 2019, you will need to file those comments in Docket No. CP19–501–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–501–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Texas Eastern proposes excavate and elevate sections of four natural gas transmission pipelines due to longwall mining activities. According to Texas Eastern, its project would allow for safe and efficient operation of Texas Eastern's existing pipeline facilities for the duration of the longwall mining activities planned by CONSOL Energy Inc. in the area beneath Texas Eastern's pipelines. The four mainline segments will remain in-service and be elevated using sandbags and skids for about 2 years until the longwall mining activities have completed and any potential ground subsidence has settled. The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 31.8 acres of land for the excavation and elevation of the pipeline segments. Following construction, Texas Eastern would maintain about 8.7 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. The proposed pipeline excavation and elevation parallels existing pipeline rights-of-way for 100 percent of the project.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary[2] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP19–501). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22100 Filed 10–8–19; 8:45 am]

BILLING CODE 6717–01–P

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

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: RP19–1023–001.
Applicants: MIGC LLC.
Description: Compliance filing NAESB V3.1 (Order No. 587–Y) Compliance 2 to be effective 8/1/2019.
Filed Date: 9/26/19.
Accession Number: 20190926–5035.
Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: RP19–1607–000.
Applicants: Dominion Energy Transmission, Inc., Dominion Energy Cove Point LNG, LP, Dominion Energy Carolina Gas Transmission.
Description: Notice of Unplanned Computer System Outage and Request for Waiver of Dominion Energy Transmission, Inc., et al.
Filed Date: 9/26/19.
Accession Number: 20190926–5165.
Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: RP19–1614–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 9–30–19 to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5014.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP19–1615–000.
Applicants: Southwest Gas Storage Company.
Description: § 4(d) Rate Filing: Fuel Filing on 9–30–19 to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5015.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP19–1616–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Atlantic Bridge—In-Service Non-Conforming Filing to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5016.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP19–1617–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Columbia Gas 860005 Oct 1 releases to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5017.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP19–1618–000.
Applicants: Cadeville Gas Storage LLC.
Description: Compliance filing CGS NAESB STANDARDS to be effective 8/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5020.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP19–1619–000.
Applicants: Monroe Gas Storage Company, LLC.
Description: Compliance filing MGS NAESB STANDARDS to be effective 8/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5025.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP19–1620–000.
Applicants: Perryville Gas Storage LLC.
Description: Compliance filing PGS NAESB STANDARDS to be effective 8/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5031.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP19–1621–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 9–30–19 to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5033.
Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP19–1622–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW

Agreements (Increased Capacity 10/1 to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5047.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1623–000.
Applicants: Northwest Pipeline LLC.
Description: Compliance filing North Seattle Lateral Compliance Filing to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5078.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1624–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: NCF Agreements—contracts 400229 and 400233 to be effective 10/30/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5079.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1625–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agreement Update (SoCal Nov19) to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5080.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1626–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Compliance filing Atlantic Bridge—In-Service NRA Filing to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5084.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1627–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (JERA releases eff 10–1–2019) to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5109.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1628–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46429 to Spotlight 51545) to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5110.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1629–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various shippers eff 10–1–2019) to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5111.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1630–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (JERA 37702 to EDF 38220) to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5113.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1631–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—NSTAR release to BP Energy 799966 to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5115.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1632–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Aethon 37657, 50488 to Scona 51610, 51608) to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5123.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1633–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Neg Rate Agmt—Twin, Shell, Seq, Merc, Columb & Freepoint to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5121.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1634–000.
Applicants: Kinetica Deepwater Express, LLC.
Description: § 4(d) Rate Filing: Section 4 Rate Case to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5146.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1635–000.
Applicants: Dominion Energy Carolina Gas Transmission.
Description: § 4(d) Rate Filing: DECG—2019 FRQ and TDA Report to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5147.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1636–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Neg Rate Agmt—Peninsula and South Jersey to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5148.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1637–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—2019 Annual EPCA to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5152.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1638–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—2019 Annual TCRA to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5153.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1639–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedule LNG—INJ and W/D Rights to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5155.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1640–000.
Applicants: Sabine Pipe Line LLC.
Description: § 4(d) Rate Filing: Normal 2019 Oct to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5172.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1641–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) Rate Filing: Fuel Filing on 9–30–19 to be effective 11/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5175.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1642–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Oct 2019) to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5191.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1643–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Neg Rate 2019–09–30 CIMA Energy to be effective 10/1/2019.
Filed Date: 9/30/19.
Accession Number: 20190930–5194.
Comments Due: 5 p.m. ET 10/15/19.
Docket Numbers: RP19–1644–000.
Applicants: Exelon Generation Company, LLC, Summit Natural Gas of Maine, Boston Gas Company.

Description: Joint Petition for Temporary Waiver of Commission Policies, Capacity Release Regulations and Policies, et al. of Exelon Generation Company, LLC, et al. under RP19–1644.

Filed Date: 9/30/19.

Accession Number: 20190930–5223.

Comments Due: 5 p.m. ET 10/15/19.

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: October 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22099 Filed 10–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–27–000]

Wright Solar Park LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Wright Solar Park LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 23, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic 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.

Dated: October 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22104 Filed 10–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14992–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Pumped Hydro Storage, LLC

On May 8, 2019, Pumped Hydro Storage, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a pumped storage project in Coconino County, Arizona. On August 1, 2019, the applicant filed a revised application for the project to address Commission staff's June 19, 2019 comments. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Navajo Nation Salt Trail Canyon Pumped Storage Project would consist of the following: (1) A new 240-foot-high, 500-foot-long upper dam and reservoir; (2) a new 140-foot-high, 1,000-foot-long lower dam and reservoir; (3) six 250- megawatt, turbine-generator units, for a total installed capacity of 1,500 megawatts; (4) a new 20-mile-long, 500-kilovolt transmission line from the powerhouse to the existing Moenkopi switchyard; and (5) appurtenant facilities. The proposed project would have an average annual generation of 3,300 gigawatt-hours.

Applicant Contact: Steve Irwin, Pumped Hydro Storage, LLC, 6514 S 41st Lane, Phoenix, AZ 85041; phone: (602) 696–3608.

FERC Contact: Tim Konnert; phone: (202) 502–6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14992–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14992) in the docket number field to

access the document. For assistance, contact FERC Online Support.

Dated: October 2, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–22021 Filed 10–8–19; 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: RP19–1590–001.
Applicants: Honeoye Storage Corporation.
Description: Compliance filing Compliance Filing Adoption of NAESB Version 3.1 to be effective 11/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5084.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1601–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: MidAmerican Energy Services—Negotiated Rate Agreement Filing to be effective 11/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5000.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1602–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Tenaska Marketing Ventures—Negotiated Rate Agreement Filing to be effective 11/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5001.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1603–000.
Applicants: Stingray Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Stingray Non-Conforming Agreements to be effective 10/27/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5024.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1604–000.
Applicants: Portland Natural Gas Transmission System.
Description: Compliance filing PXP Phase II Compliance Filing to be effective 11/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5025.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1605–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Compliance filing Penalty Revenue Crediting Report from January through June 2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5030.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1606–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Pipeline Safety and Greenhouse Gas Cost Adjustment Mechanism—2019 to be effective 11/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5041.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1608–000.
Applicants: National Fuel Gas Supply Corporation.
Description: § 4(d) Rate Filing: GT&C Sec 42 Tracker Filing (11/2019) to be effective 11/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5055.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1609–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—Fieldwood 9–27–2019 to be effective 10/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5060.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1610–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—Modifications to GT&C for the Construction of Facilities to be effective 10/28/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5072.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1611–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—MC Global 911524 to Eco-Energy 8959558 eff 10–1–19 to be effective 10/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5088.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1612–000.
Applicants: MoGas Pipeline LLC.
Description: § 4(d) Rate Filing: MoGas Negotiated Rate Tariff Filing to be effective 10/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5142.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: RP19–1613–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) Rate Filing: MNUS FRQ 2019 Filing to be effective 11/1/2019.
Filed Date: 9/27/19.
Accession Number: 20190927–5143.
Comments Due: 5 p.m. ET 10/9/19.

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: October 2, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–22022 Filed 10–8–19; 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 corporate filings:

Docket Numbers: EC20–3–000.
Applicants: Xcel Energy Inc., Mankato Energy Center, LLC, Mankato Energy Center II, LLC.
Description: Joint Application Authorization Under Section 203 of the Federal Power Act, et al. of Xcel Energy Inc., et al.
Filed Date: 10/3/19.
Accession Number: 20191003–5034.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: EC20–4–000.
Applicants: Tenaska Alabama II Partners, L.P., Alabama Power Company.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Tenaska Alabama II Partners, L.P., et al.
Filed Date: 10/2/19.
Accession Number: 20191002–5219.
Comments Due: 5 p.m. ET 10/23/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–1–000.
Applicants: Poseidon Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Poseidon Solar, LLC.
Filed Date: 10/2/19.
Accession Number: 20191002–5117.
Comments Due: 5 p.m. ET 10/23/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–420–002.
Applicants: Mendota Hills, LLC.
Description: Compliance filing: Compliance Filing Under Docket ER19–420 to be effective 2/1/2019.
Filed Date: 10/3/19.
Accession Number: 20191003–5057.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER20–27–000.
Applicants: Wright Solar Park LLC.
Description: Baseline eTariff Filing: Application for MBR, Waivers, Blanket Authority, Confidential & Expedited Action to be effective 12/31/9998.
Filed Date: 10/2/19.
Accession Number: 20191002–5184.
Comments Due: 5 p.m. ET 10/23/19.

Docket Numbers: ER20–28–000.
Applicants: MidAmerican Energy Company.
Description: § 205(d) Rate Filing: Interconnection Agreement—MidAmerican and La Porte City Utilities to be effective 11/1/2019.
Filed Date: 10/3/19.
Accession Number: 20191003–5006.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER20–29–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–03_SA 3355 METC-Isabella Renewables GIA (J717) to be effective 9/19/2019.
Filed Date: 10/3/19.
Accession Number: 20191003–5022.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER20–30–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–03_SA 3356 METC-Isabella Renewables II GIA (J728) to be effective 9/19/2019.
Filed Date: 10/3/19.
Accession Number: 20191003–5025.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER20–31–000.
Applicants: Northern States Power Company, a Minnesota corporation, Mankato Energy Center, LLC, Mankato Energy Center II, LLC.
Description: Request for Authorization of Affiliate Transactions of Northern States Power Company, a Minnesota corporation, et al.
Filed Date: 10/2/19.
Accession Number: 20191002–5223.
Comments Due: 5 p.m. ET 10/23/19.

Docket Numbers: ER20–32–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–LCRA TSC Hayter Ranch FDA to be effective 9/27/2019.
Filed Date: 10/3/19.
Accession Number: 20191003–5077.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER20–33–000.
Applicants: Arizona Public Service Company.
Description: Tariff Cancellation: Service Agreement Nos. 350 and 351 Cancellations to be effective 1/1/2020.
Filed Date: 10/3/19.
Accession Number: 20191003–5109.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER20–34–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the PJM–MISO JOA, Article IX re: Coordinated System Plan Process to be effective 12/3/2019.
Filed Date: 10/3/19.
Accession Number: 20191003–5125.
Comments Due: 5 p.m. ET 10/24/19.

Docket Numbers: ER20–35–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp Dry Gulch Construction Agreement SA1159 to be effective 10/4/2019.
Filed Date: 10/3/19.
Accession Number: 20191003–5126.
Comments Due: 5 p.m. ET 10/24/19.

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: October 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22098 Filed 10–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–1–000]

ANR Pipeline Company; Notice of Application

Take notice that on October 1, 2019, ANR Pipeline Company (ANR), 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, filed in Docket No. CP20–1–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for authorization to acquire certain natural gas storage assets currently leased by ANR from Mid Michigan Gas Storage Company (Mid Michigan) at the Austin, Goodwell, Lincoln-Freeman, Loreed, and Reed City storage fields, all located in central Michigan. Specifically, ANR requests authorization to: (1) Abandon the existing lease agreements with Mid Michigan to remove Mid Michigan as owner and lessor; (2) change ANR from lessee to owner of the subject assets; and (3) establish a new interim lease arrangement with Mid Michigan related to the Mid Michigan-owned based gas in the subject storage fields, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web 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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Sorana Linder, Director, Modernization & Certificates, ANR Pipeline Company, 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, by telephone at (832) 320–5209, or by email at *sorana_linder@tcenergy.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the environmental assessment (EA) for this proposal. The issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and

the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on October 24, 2019.

Dated: October 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22101 Filed 10–8–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–23–000]

DTE Atlantic, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of DTE Atlantic, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 23, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic 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.

Dated: October 3, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22103 Filed 10–8–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10001–03–ORD]

Human Studies Review Board; Notification of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Office of the Science Advisor announces two separate public meetings of the Human Studies Review Board (HSRB) to advise the Agency on

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

the ethical and scientific review of research involving human subjects.

DATES: A virtual public meeting will be held on Wednesday, October 23, 2019 and Thursday, October 24, 2019 from 1:00 p.m. to approximately 5:30 p.m. Eastern Time on both dates. A separate, subsequent teleconference meeting is planned for Tuesday, December 10th, 2019, from 2:00 p.m. to approximately 3:30 p.m. Eastern Time for the HSRB to finalize its Report of the October 23 and 24, 2019 meeting and review other possible topics.

ADDRESSES: All of these meetings will be conducted entirely by telephone and on the internet using Adobe Connect. For detailed access information visit the HSRB website: *http://www2.epa.gov/osa/human-studies-review-board.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact the HSRB Designated Federal Official (DFO), Thomas O'Farrell on telephone number (202) 564–8451; fax number: (202) 564–2070; email address: *ofarrell.thomas@epa.gov;* or mailing address: Environmental Protection Agency, Office of the Science Advisor, Mail code 8105R, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Meeting access: These meetings will be open to the public. The full Agenda and meeting materials will be available at the HSRB website: *http://www2.epa.gov/osa/human-studies-review-board.* For questions on document availability, or if you do not have access to the internet, consult with the DFO, Thomas O'Farrell, listed under **FOR FURTHER INFORMATION CONTACT**.

Special accommodations. For information on access or services for individuals with disabilities, or to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

How may I participate in this meeting?

The HSRB encourages the public's input. You may participate in these meetings by following the instructions in this section.

1. Oral comments. To pre-register to make oral comments, please contact the DFO, Thomas O'Farrell, listed under **FOR FURTHER INFORMATION CONTACT**. Requests to present oral comments during the meeting will be accepted up to Noon Eastern Time on Tuesday, October 15, 2019, for the October 23 and 24, 2019 meeting and up to Noon Eastern Time on Tuesday, December 3, 2019 for the December 10, 2019 meeting. To the extent that time permits, interested persons who have not pre-registered may be permitted by the HSRB Chair to present oral comments during either meeting at the designated time on the agenda. Oral comments before the HSRB are generally limited to five minutes per individual or organization. If additional time is available, further public comments may be possible.

2. Written comments. Submit your written comments prior to the meetings. For the Board to have the best opportunity to review and consider your comments as it deliberates, you should submit your comments via email or Fax by Noon Eastern Time on Tuesday, October 15, 2019, for the October 23 and 24, 2019 meeting and by Noon Eastern Time on Tuesday, December 3, 2019 for the December 10, 2019 meeting. If you submit comments after these dates, those comments will be provided to the HSRB members, but you should recognize that the HSRB members may not have adequate time to consider your comments prior to their discussion. You should submit your comments to the DFO, Thomas O'Farrell listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App.2 § 9. The HSRB provides advice, information, and recommendations on issues related to scientific and ethical aspects of third-party human subjects research that are submitted to the Office of Pesticide Programs (OPP) to be used for regulatory purposes.

Topic for discussion. On October 23, 2019, the Human Studies Review Board will consider a study report submitted by LivFul, Inc. titled ''Field Evaluation of Two Topically Applied Insect Repellent Products Containing IR3535 Against Mosquitoes in Florida''. On October 24, 2019, the Human Studies Review Board will consider a study submitted by the Antimicrobial Exposure Assessment Task Force (AEATF II) titled ''A Study for Measurement of Potential Dermal and Inhalation Exposure During the Application of Paint Containing an Antimicrobial using an Airless Sprayer'' (AEA10).

The Agenda and meeting materials for this topic will be available in advance of the meeting at *http://www2.epa.gov/osa/human-studies-review-board.*

On December 10, 2019, the HSRB will review and finalize their draft Final Report from the October 23 and 24, 2019 meeting, in addition to other topics that may come before the Board. The HSRB may also discuss planning for future HSRB meetings. The agenda and the draft report will be available prior to the meeting at *http://www2.epa.gov/osa/human-studies-review-board.*

Meeting minutes and final reports. Minutes of these meetings, summarizing the matters discussed and recommendations made by the HSRB, will be released within 90 calendar days of the meeting. These minutes will be available at *http://www2.epa.gov/osa/human-studies-review-board.* In addition, information regarding the HSRB's Final Report, will be found at *http://www2.epa.gov/osa/human-studies-review-board* or from Thomas O'Farrell listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 2, 2019.

Jennifer Orme-Zavaleta,

EPA Science Advisor.

[FR Doc. 2019–22107 Filed 10–8–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0547; FRL–10000–86–OECA]

Proposed Information Collection Request; Comment Request; Performance Evaluation Studies on Wastewater Laboratories (Renewal); EPA ICR No. 0234.13, OMB Control No. 2080–0021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Performance Evaluation Studies on Wastewater Laboratories'' (EPA ICR No. 0234.13, OMB Control No. 2080–0021) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2020. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 9, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2013–0547, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Gregory Savitske, Monitoring, Assistance, and Media Programs Division, Office of Compliance, (2227A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2601; fax number: (202) 564–0050; email address: *Savitske.Gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Discharge Monitoring Report-Quality Assurance (DMR–QA) study program participation is mandatory for major and selected minor National Pollutant Discharge Elimination System (NPDES) permit holders in accordance with Clean Water Act Section 308. The DMR–QA study program is designed to evaluate the analytic ability of laboratories that perform chemical, microbiological and whole effluent toxicity (WET) analyses required in NPDES permits for reporting results in the Discharge Monitoring Reports (DMR). Under DMR–QA, the permit holder is responsible for having their in-house and/or contract laboratories analyze proficiency test samples and submit results to proficiency testing (PT) providers for grading. Graded results are transmitted by either the permit holder or PT provider to the appropriate federal or state NPDES permitting authority. Permit holders are responsible for submitting corrective action reports to the appropriate permitting authority.

Form numbers: 6400–01.

Respondents/affected entities: Major and selected minor permit holders under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES).

Respondent's obligation to respond: Major permit holders must participate annually. Minor permit holders must participate if selected by the state or EPA DMR–QA coordinator.

Estimated number of respondents: 5,500 (total).

Frequency of response: Major permit holders must participate annually. Minor permit holders must participate if selected by the state or EPA DMR–QA coordinator.

Total estimated burden: 36,300 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $5,240,070 (per year), includes $3,243,350 annualized capital or operation & maintenance costs.

Changes in estimates: There is a decrease of 1,320 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a slight decrease of NPDES major permit holders over the last three years. Labor costs will be revised upward to account for changes in employee benefit compensation costs and inflation. Non-labor costs for obtaining proficiency test samples will also likely increase.

Dated: October 3, 2019.

Martha Segall,

Acting Director, Monitoring, Assistance, and Media Programs Division, Office of Compliance.

[FR Doc. 2019–22106 Filed 10–8–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0214, 3060–0316, 3060–0750, 3060–1065]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 8, 2019. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents and Responses: 23,984 respondents; 62,839 responses.

Estimated Time per Response: 1–52 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in Sections 151, 152, 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,043,805 hours.

Total Annual Cost: None.

Privacy Impact Assessment: The Commission prepared a system of records notice (SORN), FCC/MB–2, ''Broadcast Station Public Inspection Files,'' that covers the PII contained in the broadcast station public inspection files located on the Commission's website. The Commission will revise appropriate privacy requirements as necessary to include any entities and information added to the online public file in this proceeding.

Nature and Extent of Confidentiality: Most of the documents comprising the public file consist of materials that are not of a confidential nature. Respondents complying with the information collection requirements may request that the information they submit be withheld from disclosure. If confidentiality is requested, such requests will be processed in accordance with the Commission's rules, 47 CFR 0.459.

In addition, the Commission has adopted provisions that permit respondents subject to the information collection requirement for Shared Service Agreements to redact confidential or proprietary information from their disclosures.

Needs and Uses: On July 10, 2019, the Commission adopted a Report and Order in MB Docket Nos. 18–202 and 17–105, FCC 19–67, In the Matter of Children's Television Programming Rules; Modernization of Media Regulation Initiative, which modernizes the children's television programming rules in light of changes to the media landscape that have occurred since the rules were first adopted. The Report and Order revises the following information collection requirements:

Pursuant to 47 CFR 73.3526(e)(11)(ii), commercial TV and Class A TV broadcast stations must maintain records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. Section 303a and 47 CFR 73.670. In the Report and Order, the Commission revises this rule to permit these stations to place such records in their public files annually rather than quarterly and to permit the filing of these records within 30 days after the end of the calendar year. The Commission also revises 47 CFR 73.3526(e)(11)(iii) to require commercial television stations to place in their public files the Children's Television Programming Report (Report) (FCC Form 2100 Schedule H) on an annual rather than quarterly basis, within 30 days after the end of the calendar year and to eliminate the requirement to publicize the existence and location of the Report.

All other information collection requirements contained under 47 CFR 73.1212, 73.3526, 73.3527, 73.1943, and 76.1701 are still a part of the information collection and remain unchanged since last approved by OMB.

OMB Control Number: 3060–0316.

Title: 47 CFR 76.5, Definitions, 76.1700, Records to Be Maintained Locally by Cable System Operators; 76.1702, Equal Employment Opportunity; 76.1703, Commercial Records on Children's Programs; 76.1707, Leased Access; 76.1711, Emergency Alert System (EAS) Tests and Activation.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,000 respondents; 3,000 responses.

Estimated Time per Response: 14 hours.

Frequency of Response: Recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573 of the Communications Act of 1934, as amended.

Total Annual Burden: 42,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On July 10, 2019, the Commission adopted a Report and

Order in MB Docket Nos. 18–202 and 17–105, FCC 19–67, In the Matter of Children's Television Programming Rules; Modernization of Media Regulation Initiative, which modernizes the children's television programming rules in light of changes to the media landscape that have occurred since the rules were first adopted. The Report and Order revises the following information collection requirements:

Pursuant to 47 CFR 76.1703, cable operators that air children's programming must maintain records sufficient to verify compliance with 47 CFR 76.225 and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. Section 503(b)(6)(B). In the Report and Order, the Commission revises the rules to permit cable television operators to file their certifications of compliance with the commercial limits in children's programming annually rather than quarterly and to permit the filing of these certifications within 30 days after the end of the calendar year. All other information collection requirements contained under 47 CFR 76.5, 76.1700, 76.1702, 76.1703, 76.1707, and 76.1711 are still a part of the information collection and remain unchanged since last approved by OMB.

OMB Control Number: 3060–0750.

Title: 47 CFR 73.671, Educational and Informational Programming for Children; 47 CFR 73.673, Public Information Initiatives Regarding Educational and informational Programming for Children.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,770 respondents; 1,125,720 responses.

Estimated Time per Response: 0.017–0.084 hours.

Frequency of Response: Third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 303, and 336 of the Communications Act of 1934, as amended.

Total Annual Burden: 57,560 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On July 10, 2019, the Commission adopted a Report and Order in MB Docket Nos. 18–202 and 17–105, FCC 19–67, In the Matter of Children's Television Programming Rules; Modernization of Media Regulation Initiative, which modernizes the children's television programming rules in light of changes to the media landscape that have occurred since the rules were first adopted. The Report and Order revises the following information collection requirements:

Pursuant to 47 CFR 73.671(c)(5), each commercial television broadcast station must identify programming as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I. This requirement is intended to assist parents in identifying educational and informational programming for their children. Noncommercial television broadcast stations are no longer be required to identify Core Programming by displaying the E/I symbol throughout the program.

Pursuant to 47 CFR 73.671(e), each television broadcast station that preempts an episode of a regularly scheduled weekly Core Program on its primary stream will be permitted to count the episode toward the Core Programming processing guidelines if it reschedules the episode on its primary stream in accordance with the requirements of 47 CFR 73.671(e). Similarly, each television broadcast station that preempts an episode of a regularly scheduled weekly Core Program on a multicast stream will be permitted to count the episode toward the Core Programming processing guidelines if it reschedules the episode on the multicast stream in accordance with the requirements of 47 CFR 73.671(e). Among other requirements, the station must make an on-air notification of the schedule change during the same time slot as the preempted episode. The on-air notification must include the alternate date and time when the program will air. This requirement will help to ensure that parents and children are able to locate the rescheduled program.

Pursuant to 47 CFR 73.673, each commercial television broadcast station licensee must provide information identifying programming specifically designed to educate and inform children to publishers of program guides. This requirement is intended to improve the information available to parents regarding programming specifically designed for children's educational and informational needs. Commercial television broadcast station licensees are no longer be required to provide program guide publishers an indication of the age group for which the programming is intended. The Report and Order finds that very few program guides include this information.

OMB Control Number: 3060–1065.

Title: Section 25.701 of the Commission's Rules, Direct Broadcast Satellite Public Interest Obligations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2 respondents; 2 responses.

Estimated Time per Response: 1–10 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; one time reporting requirement; annual reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers this information collection is contained in Section 335 of the Communications Act of 1934, as amended.

Total Annual Burden: 48 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impacts.

Nature and Extent of Confidentiality: Although the Commission does not believe that any confidential information will need to be disclosed in order to comply with the information collection requirements, applicants are free to request that materials or information submitted to the Commission be withheld from public inspection. (See 47 CFR 0.459).

Needs and Uses: On July 10, 2019, the Commission adopted a Report and Order in MB Docket Nos. 18–202 and 17–105, FCC 19–67, In the Matter of Children's Television Programming Rules; Modernization of Media Regulation Initiative, which modernizes the children's television programming rules in light of changes to the media landscape that have occurred since the rules were first adopted. The Report and Order revises the following information collection requirements:

Pursuant to 47 CFR 25.701(e)(3), DBS providers that air children's programming must maintain records sufficient to verify compliance with this rule and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. Section 503(b)(6)(B). In the Report and Order, the Commission revises the rules to permit DBS operators to file their certifications of

compliance with the commercial limits in children's programming annually rather than quarterly and to permit the filing of these certifications within 30 days after the end of the calendar year.

All other information collection requirements contained under 47 CFR 25.701 are still a part of the information collection and remain unchanged since last approved by OMB.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–22068 Filed 10–8–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. 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 Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 8, 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 listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

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.

OMB Control Number: 3060–XXXX.

Title: FCC Anti-Harassment Intake Form.

Form Number: FCC Form 5632.

Type of Review: New information collection.

Respondents: Individuals or households.

Number of Respondents and Responses: 5 respondents and 5 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for these collections is contained in the *Civil Rights Act of 1964* § 7, as amended, 42 U.S.C. 2000e; *Age Discrimination in Employment act of 1967* (ADEA), 29 U.S.C. 621–634; *Americans with Disabilities Act of 1990* (ADA), as amended, 42 U.S.C. 12101–12213; *Rehabilitation Act of 1973,* as amended, 29. U.S.C. 501 *et seq.*

Total Annual Burden: 18 hours.

Total Annual Cost: $4,050.

Privacy Act Impact Assessment: The FCC is drafting a Privacy Impact Assessment (PIA) to cover the Personally Identifiable Information (PII) that will be collected, used, and stored.

Nature and Extent of Confidentiality: Confidentiality of information will be provided in accordance with the Privacy Act. The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: FCC employees and related individuals may seek a forum through the Anti-Harassment Program for inquiry and resolution of harassment claims by completing FCC Form 5632.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–22067 Filed 10–8–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1226]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 9, 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 contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1226.

Title: Receiving Written Consent for Communication with Base Stations in Canada; Issuing Written Consent to Licensees from Canada for Communication with Base Stations in the U.S.; Description of Interoperable Communications with Licensees from Canada.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, Local, or Tribal government agencies.

Number of Respondents and Responses: 3,224 respondents; 3,224 responses.

Estimated Time per Response: 0.5 hours–1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Written consent from the licensee of a base station repeater is required before first responders from the other country can begin communicating with that base stations repeater. Applicants are advised to include a description of how they intend to interoperate with licensees from Canada when filing applications to operate under any of the scenarios described in Public Notice DA 16–739 in order to ensure that the application is not inadvertently rejected by Canada. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, 535, 1404, 1452, and 1454 of the Communications Act of 1934.

Total Annual Burden: 5,642 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Applicants who include a description of how they intend to interoperate with licensees from Canada need not include any confidential information with their description. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Needs and Uses: This collection will be submitted as an extension of an existing collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The purpose of requiring an agency to issue written consent before allowing first responders from the other country to communicate with its base station repeater ensures to that the licensee of that base stations repeater (host licensee) maintains control and is responsible for its operation at all times. The host licensee can use the written consent to ensure that first responders from the other country understand the proper procedures and protocols before they begin communicating with its base station repeater. Furthermore, when reviewing applications filed by border area licensees, Commission staff will use any description of how an applicant intends to interoperate with licensees from Canada, including copies of any written agreements, in order to coordinate the application with Innovation, Science and Economic Development Canada (ISED) and reduce the risk of an inadvertent rejection by ISED.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–22069 Filed 10–8–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011961–026.

Agreement Name: The Maritime Credit Agreement.

Parties: Maersk Line A/S; COSCO Container Lines Company Limited; Hamburg Sud; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment deletes Wallenius Wilhelmsen Logistics AS as a party to the Agreement.

Proposed Effective Date: 9/30/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/426.

Dated: October 4, 2019.

Rachel Dickon,

Secretary.

[FR Doc. 2019–22064 Filed 10–8–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0199; Docket No. 2019–0003; Sequence No. 28]

Information Collection; Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning prohibition on contracting for certain telecommunications and video surveillance services or equipment. OMB has approved this information collection for use through February 29, 2019. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by December 9, 2019.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection 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, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Instructions: All items submitted must cite Information Collection 9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Camara Francis, Procurement Analyst, at telephone 202–550–0935, or *camara.francis@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 9000–0199; Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for the OMB Control number 9000–0199. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0199; Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment''. Follow the instructions on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0199; Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405–0001. ATTN: Ms. Mandell/IC 9000–0199; Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Instructions: Please submit comments only and cite Information Collection 9000–0199; Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in all correspondence related to this collection. 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).

SUPPLEMENTARY INFORMATION:

A. Purpose

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to, nor be subject to, a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested and OMB authorized emergency processing of an information collection involved in this rule, as OMB Control Number 9000–0199(FAR case 2018–017), from the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services and the clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the Paperwork Reduction Act, in view of the deadline for this provision of the NDAA which was signed into law in August 2018 and requires action before the prohibition goes into effect on August 13, 2019.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government does not purchase prohibited equipment, systems and services, and can respond appropriately if any such purchases are not identified until after delivery or use.

c. The use of normal clearance procedures would prevent the collection of information from contractors, for national security purposes.

This requirement supports implementation of Section 889 of Title VII of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232). This section prohibits agencies from procuring, obtaining, extending or renewing a contract to procure or obtain any equipment, system, or service that uses covered telecommunication equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system on or after August 13, 2019 unless an exception applies.

This requirement is implemented in the Federal Acquisition Regulation (FAR) through the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and the clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

This clearance covers the following requirements:

- FAR 52.204–24 requires an offer or to represent whether they will provide any covered telecommunications equipment or services and if so, describe in more detail the use of the covered telecommunications equipment or services; and
- FAR 52.204–25 requires contractors to report covered telecommunications equipment, systems and services identified during performance of a contract.

DoD, GSA, and NASA request approval of this information collection in order to implement the law. The information will be used by agency personnel to identify and remove prohibited equipment, systems, or services from Government use. Under the Paperwork Reduction Act (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.

A notice was published in the **Federal Register** at 84 FR 40216, on August 13, 2019, as a part of an interim rule under FAR Case 2018–017, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

A. Annual Reporting Burden

52.204–25:

Total number of respondents: 190,446.

Average responses per respondent: 41.25.

Total Responses: 7,855,881.

Average burden hours per response: .105.

Total burden hours: 821,274.

The public reporting burden for this collection of information consists of completing the representation, which is estimated will take an average of 5 minutes (.08333 hours) per response if additional detail is not necessary. If additional detail is necessary, completing the representation is estimated will take an average of three hours per response. The average total burden hours per total responses is estimated to average .105 burden hours per response, including time time to complete the representation and provide the additional detail.

B. Annual Reporting Burden

52.204–25:

Number of Respondents: 4,761.

Responses per Respondent: 5.

Total Responses: 23,805.

Average Burden Hours Per Response: 1.5.

Total Burden Hours: 35,708.

The public reporting burden for this collection of information consists of reports of identified covered telecommunications equipment, systems and services during contract performance as required by 52.204–25. Reports are estimated to average 1.5 hour per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

C. Public Comments

DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in all correspondence.

Dated: October 3, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–22038 Filed 10–8–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–20–0215; Docket No. CDC–2019–0085]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Application Form and Related Forms for the Operation of the National Death Index. The National Death Index (NDI) is designed to allow NCHS to collect mortality data, to support epidemiological research and to furnish mortality information.

DATES: CDC must receive written comments on or before December 9, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0085 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Application Form and Related Forms for the Operation of the National Death Index (NDI) (OMB Control No. 0920–0215, Exp. 12/31/2019)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The National Death Index (NDI) is a national database containing identifying death record information submitted annually to NCHS by all the state vital statistics offices, beginning with deaths in 1979. Searches against the NDI file provide the states and dates of death, and the death certificate numbers of deceased study subjects.

Using the NDI Plus service, researchers have the option of also receiving cause of death information for deceased subjects, thus reducing the need to request copies of death certificates from the states. The NDI Plus option currently provides the International Classification of Disease (ICD) codes for the underlying and multiple causes of death for the years 1979–2018. Health researchers must complete administrative forms in order to apply for NDI services, and submit records of study subjects for computer matching against the NDI file. A three-year revision request is submitted to continue the use of the three administrative forms (the application form, repeat request form, and transmittal form) utilized in the operation of the National Death Index (NDI) program. These forms are submitted by NDI users when applying for use of the NDI and when actually using the service. In addition, this request includes the introduction of electronic versions that will ultimately replace the three paper documents, one of which will include a minor reduction in the number of data collection items. There is no cost to respondents except for their time. The total estimated annual burden hours are 417. While the estimated annual number of application forms has increased from 100 to 120, the revised estimate of the time required to complete the application form results in an overall net decrease by 40 burden hours from the previously approved 457 hours.

ESTIMATES OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Researcher	Application Form—Paper	20	1	3	60
Researcher	Application Form—Electronic	100	1	3	300
Researcher	Repeat Request Form—Paper/Electronic	70	1	18/60	21
Researcher	Transmittal Form—Paper/Electronic	120	1	18/60	36
Total					417

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–22081 Filed 10–8–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–20–0822; Docket No. CDC–2019–0082]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection titled The National Intimate Partner and Sexual Violence Survey

(NISVS). CDC will collect information about individual's experiences of sexual violence, stalking and intimate partner violence and information about the health consequences of these forms of violence. CDC produces national and state level prevalence estimates of these types of violence.

DATES: CDC must receive written comments on or before December 9, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0082 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs

Proposed Project

The National Intimate Partner and Sexual Violence Survey (NISVS) (OMB control No. 0920–0822, Exp. 02/29/2020)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2010, the National Intimate Partner and Sexual Violence Surveillance System (NISVSS) reported that approximately 6.9 million women and 5.6 million men experienced rape, physical violence and/or stalking by an intimate partner within the last year. The health care costs associated with this exceed $5.8 billion each year, nearly $3.9 billion of which is for direct medical and mental health care services. In order to address this important public health problem, CDC implemented, beginning in 2010, the National Intimate Partner and Sexual Violence Surveillance System that produces national and state level estimates of Intimate Partner Violence (IPV), Sexual Violence (SV) and stalking on an annual basis.

CDC seeks OMB approval for a three-year period for this revision. In this revision CDC describes the planned testing of a redesign of the National Intimate Partner and Sexual Violence Survey (NISVS) and the approach for collecting NISVS data using multiple data collection modes and sampling strategies. More specifically, this revision is requesting: (1) Conduct feasibility testing to assess alternative design features including the sample frame, mode of response, and incentive structures that help garner participation and help reduce nonresponse. (2) Conduct experiments that inform the development of a protocol for alternative sampling and weighting methods for multi-modal data collection that will result in the ability to calculate accurate and reliable national and state-level estimates of SV, IPV, and stalking. (3) Conduct a pilot data collection to ensure that the selected optimal alternative sampling methods and multi-modal data collection approaches for NISVS are ready for full-scale implementation.

These data will be used only to inform future NISVS data collections. Results from the feasibility phase experiments may be prepared for publication, as the findings related to optimal data collection modes, sampling frames, and incentive structures are likely to be useful to other federal agencies currently conducting national data collections. No national prevalence estimates will be generated from the data collected during the NISVS redesign project. Data are analyzed using appropriate statistical software to account for the complexity of the survey design to compute weighted counts, percentages, and confidence intervals using national-level data. There are no costs to respondents other than their time. The annual estimated burden hours are 1,085.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Total number of responses per respondent	Average burden per response (in hours)	Total burden hours (in hours)
RDD Non-Participating Household (Screened) Phase 2: Experimentation and Feasibility Testing.	CATI instrument	800	1	3/60	40

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Total number of responses per respondent	Average burden per response (in hours)	Total burden hours (in hours)
RDD Eligible Household (Completes Survey. Phase 2: Experimentation and Feasibility Testing.	CATI instrument	667	1	25/60	278
Non-Participating Household (Screened). Phase 2: Experimentation and Feasibility Testing.	Web/Paper Screener	800	1	3/60	40
Web Eligible Household (Completes Survey. Phase 2: Experimentation and Feasibility Testing.	Web instrument	1,000	1	25/60	417
Paper Eligible Household (Completes Survey. Phase 2: Experimentation and Feasibility Testing.	Paper instrument	667	1	25/60	278
RDD Non-Participating Household (Screened) Phase 3: Pilot Testing.	CATI instrument	27	1	3/60	1
RDD Eligible Household (Completes Survey. Phase 3: Pilot Testing.	CATI instrument	22	1	25/60	9
Non-Participating Household (Screened). Phase 3: Pilot Testing.	Web/Paper Screener	53	1	3/60	3
Web Eligible Household (Completes Survey. Phase 3: Pilot Testing.	Web instrument	23	1	25/60	10
Paper Eligible Household (Completes Survey. Phase 3: Pilot Testing	Paper instrument	22	1	25/60	9
Total					1,085

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–22082 Filed 10–8–19; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–20–0639]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) Special Exposure Cohort to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 5, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) Special Exposure Cohort (OMB Control No. 0920–0639, Exp. 10/31/2019)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384–7385 [1994, supp. 2001] was enacted. The Act established a compensation program to provide a lump sum payment of $150,000 and medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation for certain survivors of these covered employees. This program has been mandated to be in effect until Congress ends the funding.

Among other duties, the Department of Health and Human Services (HHS) was directed to establish and implement procedures for considering petitions by

classes of nuclear weapons workers to be added to the ''Special Exposure Cohort'' (the ''Cohort''). In brief, EEOICPA authorizes HHS to designate such classes of employees for addition to the Cohort when NIOSH lacks sufficient information to estimate with sufficient accuracy the radiation doses of the employees, and if HHS also finds that the health of members of the class may have been endangered by the radiation dose the class potentially incurred. HHS must also obtain the advice of the Advisory Board on Radiation and Worker Health (the ''Board'') in establishing such findings. On May 28, 2004, HHS issued a rule that established procedures for adding such classes to the Cohort (42 CFR part 83). The rule was amended on July 10, 2007.

The HHS rule authorizes a variety of respondents to submit petitions. Petitioners are required to provide the information specified in the rule to qualify their petitions for a complete evaluation by HHS and the Board. HHS has developed two forms to assist the petitioners in providing this required information efficiently and completely. Form A is a one-page form to be used by EEOICPA claimants for whom NIOSH has attempted to conduct dose reconstructions and has determined that available information is not sufficient to complete the dose reconstruction. Form B, accompanied by separate instructions, is intended for all other petitioners. Forms A and B can be submitted electronically as well as in hard copy. Respondent/petitioners should be aware that HHS is not requiring respondents to use the forms. Respondents can choose to submit petitions as letters or in other formats, but petitions must meet the informational requirements stated in the rule. NIOSH expects, however, that all petitioners for whom Form A would be appropriate will actually use the form, since NIOSH will provide it to them upon determining that their dose reconstruction cannot be completed and encourage them to submit the petition. NIOSH expects the large majority of petitioners for whom Form B would be appropriate will also use the form, since it provides a simple, organized format for addressing the informational requirements of a petition.

NIOSH will use the information obtained through the petition for the following purposes: (a) Identify the petitioner(s), obtain their contact information, and establish that the petitioner(s) is qualified and intends to petition HHS; (b) establish an initial definition of the class of employees being proposed to be considered for addition to the Cohort; (c) determine whether there is justification to require HHS to evaluate whether or not to designate the proposed class as an addition to the Cohort (such an evaluation involves potentially extensive data collection, analysis, and related deliberations by NIOSH, the Board, and HHS); and, (d) target an evaluation by HHS to examine relevant potential limitations of radiation monitoring and/or dosimetry-relevant records and to examine the potential for related radiation exposures that might have endangered the health of members of the class.

Finally, under the rule, petitioners may contest the proposed decision of the HHS Secretary to add or deny adding classes of employees to the cohort by submitting evidence that the proposed decision relies on a record of either factual or procedural errors in the implementation of these procedures. NIOSH estimates that the average time to prepare and submit such a challenge is 5 hours. Because of the uniqueness of this submission, NIOSH is not providing a form. The submission will typically be in the form of a letter to the Secretary. There are no changes to the previously approved information collection forms, submission procedures, or burden estimates.

There are no costs to respondents unless a respondent/petitioner chooses to purchase the services of an expert in dose reconstruction, an option provided for under the rule. The total estimated burden hours are 41.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
Petitioners	Form A: 42 CFR 83.9	2	1	3/60
	Form B: 42 CFR 83.9	5	1	5
Petitioners using a submission format other than Form B (as permitted by rule).	42 CFR 83.9	1	1	6
Petitioners Appealing final HHS decision (no specific form is required).	42 CFR 83.18	2	1	5
Claimant authorizing a party to submit petition on his/her behalf.	Authorization Form: 42 CFR 83.7.	3	1	3/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–22079 Filed 10–8–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–20–1083]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Extended Evaluation of the National Tobacco Prevention and Control Public Education Campaign to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on April 23, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the

previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Extended Evaluation of the National Tobacco Prevention and Control Public Education Campaign—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2012, HHS/CDC launched the National Tobacco Prevention and Control Public Education Campaign (*Tips*). The primary objectives of *Tips* are to encourage smokers to quit smoking and to encourage nonsmokers to communicate with smokers about the dangers of smoking. *Tips* airs annually in all U.S. media markets on broadcast and national cable TV as well as other media channels including digital video, online display and banners, radio, billboards, and other formats. *Tips* ads rely on evidence-based paid media advertising that highlights the negative health consequences of smoking. *Tips'* primary target audience is adult smokers; adult nonsmokers constitute the secondary audience. *Tips* paid advertisements are aimed at providing motivation and support to smokers to quit, with information and other resources to increase smokers' chances of success in their attempts to quit smoking. A key objective for the nonsmoker audience is to encourage nonsmokers to communicate with smokers they may know (including family and friends) about the dangers of smoking and to encourage them to quit. *Tips* ads also focus on increasing audience's knowledge of smoking-related diseases, intentions to quit, and other related outcomes.

The goal of the proposed information collection is to evaluate the reach of *Tips* among intended audiences and to examine the effectiveness of these efforts in impacting specific outcomes that are targeted by *Tips,* including quit attempts and intentions to quit among smokers, nonsmokers' communications about the dangers of smoking, and knowledge of smoking-related diseases among both audiences. This will require customized surveys that will capture all unique messages and components of *Tips.* Information will be collected through Web surveys to be self-administered by adults 18 and over on computers in the respondent's home or in another convenient location. Evaluating *Tips'* impact on behavioral outcomes is necessary to determine campaign cost effectiveness and to allow program planning for the most effective campaign outcomes. Because *Tips* content changes, it is necessary to evaluate each yearly implementation of *Tips.*

The proposed information collection will include three survey collections per year (nine surveys in total) generally conducted before, during, and after *Tips* in each year. Using the same methods outlined in the currently-approved information collection (OMB No. 0920–1083, Exp. 2/29/2020), participants will be recruited from two sources: (1) An online longitudinal cohort of adult smokers and nonsmokers, sampled randomly from postal mailing addresses in the United States (address-based sample, or ABS); and (2) the existing GfK/Ipsos (formerly GfK) KnowledgePanel, an established long-term online panel of U.S. adults. All online surveys, regardless of sample source, will be conducted via the GfK/Ipsos KnowledgePanel Web portal for self-administered surveys.

Information will be collected through Web surveys to be self-administered on computers in the respondent's home or in another convenient location. Information will be collected about smokers' and nonsmokers' awareness of and exposure to specific *Tips* advertisements; knowledge, attitudes, beliefs related to smoking and secondhand smoke; and other marketing exposure. The surveys will also measure behaviors related to smoking cessation (among the smokers in the sample) and behaviors related to nonsmokers' encouragement of smokers to quit smoking, recommendations of cessation services, and attitudes about other tobacco and nicotine products.

It is important to evaluate *Tips* in a context that assesses the dynamic nature of tobacco product marketing and uptake of various tobacco products, particularly since these may affect successful cessation rates. Survey instruments may be updated to include new or revised items on relevant topics, including cigars, noncombustible tobacco products, and other emerging trends in tobacco use.

Participation is voluntary and there are no costs to respondents other than their time. The total response burden is estimated at 27,924 hours over 3 years between early fall 2020 and December 2023. The total annualized burden hours during this period thus are estimated at 9,308.

ESTIMATED ANNUALIZED BURDEN HOURS

(Type of) respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General population	Screening & Consent (English)	16,167	1	5/60
	Screening & Consent (Spanish)	500	1	5/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

(Type of) respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adult Smokers, ages 18–54, in the United States.	Smoker Survey Wave A (English)	2,587	1	20/60
	Smoker Survey Wave A (Spanish)	80	1	20/60
	Smoker Survey Wave B (English)	1,617	1	20/60
	Smoker Survey Wave B (Spanish)	50	1	20/60
	Smoker Survey Wave C (English)	1,617	1	20/60
	Smoker Survey Wave C (Spanish)	50	1	20/60
	Smoker Survey Wave D (English)	1,617	1	20/60
	Smoker Survey Wave D (Spanish)	50	1	20/60
	Smoker Survey Wave E (English)	1,617	1	20/60
	Smoker Survey Wave E (Spanish)	50	1	20/60
	Smoker Survey Wave F (English)	1,617	1	20/60
	Smoker Survey Wave F (Spanish)	50	1	20/60
	Smoker Survey Wave G (English)	1,617	1	20/60
	Smoker Survey Wave G (Spanish)	50	1	20/60
	Smoker Survey Wave H (English)	1,617	1	20/60
	Smoker Survey Wave H (Spanish)	50	1	20/60
	Smoker Survey Wave I (English)	1,617	1	20/60
	Smoker Survey Wave I (Spanish)	50	1	20/60
Adult Nonsmokers, ages 18–54, in the United States.	Nonsmoker Survey Wave A (English)	1,000	1	20/60
	Nonsmoker Survey Wave A (Spanish)	100	1	20/60
	Nonsmoker Survey Wave B (English)	808	1	20/60
	Nonsmoker Survey Wave B (Spanish)	25	1	20/60
	Nonsmoker Survey Wave C (English)	808	1	20/60
	Nonsmoker Survey Wave C (Spanish)	25	1	20/60
	Nonsmoker Survey Wave D (English)	808	1	20/60
	Nonsmoker Survey Wave D (Spanish)	25	1	20/60
	Nonsmoker Survey Wave E (English)	808	1	20/60
	Nonsmoker Survey Wave E (Spanish)	25	1	20/60
	Nonsmoker Survey Wave F (English)	808	1	20/60
	Nonsmoker Survey Wave F (Spanish)	25	1	20/60
	Nonsmoker Survey Wave G (English)	808	1	20/60
	Nonsmoker Survey Wave G (Spanish)	25	1	20/60
	Nonsmoker Survey Wave H (English)	808	1	20/60
	Nonsmoker Survey Wave H (Spanish)	25	1	20/60
	Nonsmoker Survey Wave I (English)	808	1	20/60
	Nonsmoker Survey Wave I (Spanish)	25	1	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–22080 Filed 10–8–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Plan for Foster Care and Adoption Assistance—Title IV–E (OMB #0970–0433)

AGENCY: Children's Bureau; Administration for Children and Families; the Department of Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: Public Law 115–123 added two new programs to title IV–E of the Social Security Act: The Prevention Services Program and the Kinship Navigator Program. Title IV–E agencies will be required to report information regarding these programs in title IV–E plans. Therefore, the Administration for Children and Families (ACF) is requesting to revise the existing information collection Plan for Foster Care and Adoption Assistance (OMB #0970–0433) to include two new information collections specific to these two new programs.

DATES: *Comments due within 30 days of publication. Office of Management and Budget (*OMB) is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained 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: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION: Title IV–E of the Social Security Act (the Act) was amended by Public Law 115–123, which included the Family First Prevention Services Act (FFPSA). The FFPSA

authorized new optional title IV–E funding for time-limited (one year) prevention services for mental health/substance abuse and in-home parent skill-based programs for: (1) A child who is a candidate for foster care (as defined in section 475(13) of the Act), (2) pregnant/parenting foster youth, and (3) the parents/kin caregivers of those children and youth (sections 471(e), 474(a)(6), and 475(13) of the Act). Title IV–E prevention services must be rated as promising, supported, or well-supported in accordance with HHS criteria and be approved by HHS (section 471(e)(4)(C) of the Act) as part of the title IV–E Prevention Services Clearinghouse (section 476(d)(2) of the Act). A state or tribal title IV–E agency electing to participate in the program must submit a 5-year title IV–E prevention program plan that meets the statutory requirements. (See Program Instructions ACYF–CB–PI–18–09 and ACYF–CB–PI–18–10 for more information.)

The FFPSA also amended Section 474(a)(7) of the Act to reimburse state and tribal IV–E agencies for a portion of the costs of operating kinship navigator programs that meet certain criteria. To qualify for funding under the title IV–E Kinship Navigator Program, the program must meet the requirements of a kinship navigator program described in section 427(a)(1) of the Act. The Kinship Navigator Program must also meet practice criteria of promising, supported, or well-supported in accordance with HHS criteria and be approved by HHS (section 471(e)(4)(C) of the Act). To begin participation in the title IV–E Kinship Navigator Program, a title IV–E agency must submit an attachment to its title IV–E plan that specifies the kinship navigator model it has chosen to implement and, the date on which the provision of program services began or will begin, and that provides an assurance that the model meets the requirements of section 427(a)(1) of the Act, as well as a brief narrative describing how the program will be operated. (Please see Program Instruction ACYF–CB–PI–18–11 for additional information.)

Respondents: State and tribal title IV–E agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total Number of Respondents	Number of Responses Per Respondent	Average Burden Hours Per Response	Annual Burden Hours
Title IV–E Prevention Services Plan	30	1	5	150
Attachment to Title IV–E plan for Kinship Navigator Program	45	1	1	45

Estimated Total Annual Burden Hours: 195.

Authority: Title IV–E of the Social Security Act as amended by Public Law 115–123 enacted February 9, 2018.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–22072 Filed 10–8–19; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0895]

Issuance of Priority Review Voucher; Material Threat Medical Countermeasure Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a material threat medical countermeasure (MCM) product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the 21st Century Cures Act (Cures Act), authorizes FDA to award priority review vouchers to sponsors of approved material threat MCM product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that JYNNEOS, (Smallpox and Monkeypox Vaccine, Live, Non-replicating), manufactured by Bavarian Nordic A/S, meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Shruti Modi, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a material threat MCM priority review voucher to the sponsor of an approved material threat MCM product application. Under section 565A of the FD&C Act (21 U.S.C. 360bbb–4a), which was added by the Cures Act (Pub. L. 114–255), FDA will award priority review vouchers to sponsors of approved material threat MCM product applications that meet certain criteria upon approval of those applications. FDA has determined that JYNNEOS (Smallpox and Monkeypox Vaccine, Live, Non-replicating), manufactured by Bavarian Nordic A/S, meets the criteria for a material threat MCM priority review voucher because it is intended to prevent smallpox infection and meets the other criteria for a material threat MCM priority review voucher. JYNNEOS is indicated for prevention of smallpox and monkeypox disease in adults 18 years of age and older determined to be at high risk for smallpox or monkeypox infection.

For further information about the material threat MCM Priority Review Voucher Program and for a link to the full text of section 565A of the FD&C Act, go to *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/mcm-related-counterterrorism-legislation.* For further information about JYNNEOS (Smallpox and Monkeypox Vaccine, Live, Non-replicating), go to the Center for Biologics Evaluation and Research Approved Vaccine Products website at *https://www.fda.gov/vaccines-blood-biologics/vaccines/approved-vaccine-products.*

Dated: October 2, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–21984 Filed 10–8–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2256]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization.

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by November 8, 2019, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by November 8, 2019. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2019.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, or by Fax: 301–847–8640.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, or by Fax: 301–847–8640. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, email: *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels: Contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993–0002, 301–796–9005, email: *Kalyani.Bhatt@fda.hhs.gov*.	Bone, Reproductive, and Urological Drugs Advisory Committee; Psychopharmacologic Drugs Advisory Committee.
Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G610, Silver Spring, MD 20993–0002, 301–796–6875, email: *Patricio.Garcia@fda.hhs.gov*.	Clinical Chemistry and Clinical Toxicology Devices Panel; Gastroenterology and Urology Devices Panel; Obstetrics and Gynecology Devices Panel.
Sara Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G616 Silver Spring, MD 20993–0002, 301–796–7047, email: *Sara.Anderson@fda.hhs.gov*.	Dental Products Devices Panel; National Mammography Advisory Committee; Radiological Devices Panel.
Evella Washington, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G640, Silver Spring, MD 20993–0002, 301–796–6683, email: *Evella.Washington@fda.hhs.gov*.	Circulatory Systems Devices Panel.
Joannie Adams-White, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5519, Silver Spring, MD 20993–0002, 301–796–5421, email: *Joannie.Adams-White@fda.hhs.gov*.	Medical Devices Dispute Resolution Panel.
Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G642, Silver Spring, MD 20993–0002, 301–796–0400, email: *Aden.Asefa@fda.hhs.gov*.	Immunology Devices Panel; Microbiology Devices Panel.

SUPPLEMENTARY INFORMATION:

FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Bone, Reproductive, and Urological Drugs Advisory Committee—Knowledgeable in the fields of osteoporosis and metabolic bone disease, obstetrics, gynecology, urology, pediatrics, epidemiology, or statistics and related specialties.	1—Voting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctors of Medicine or Philosophy with experience in clinical chemistry (*e.g.,* cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Gastroenterology and Urology Devices Panel—Gastroenterologists, urologists, and nephrologists.	1—Nonvoting	Immediately.
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electro-surgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	1—Nonvoting	Immediately.
Dental Products Device Panel—Dentists, engineers, and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Nonvoting	October 30, 2019.
National Mammography Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	1—Nonvoting	Immediately.
Circulatory Systems Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Nonvoting	Immediately.
Medical Devices Dispute Resolution—Experts with broad, cross-cutting scientific, clinical, analytical, or mediation skills.	1—Nonvoting	Immediately.
Immunology Devices Panel—Persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	1—Nonvoting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, *e.g.,* pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, *e.g.,* hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Radiology Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging ,and image analysis.	1—Nonvoting	Immediately.

I. Functions and General Description of the Committee Duties

A. Bone, Reproductive, and Urologic Drugs Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of osteoporosis and metabolic bone disease, obstetrics, gynecology, urology, and related specialties.

B. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

C. Certain Panels of the Medical Devices Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises on the classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner of Food and Drugs (the Commissioner) on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The panel makes recommendations on issues that are

lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) Demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES** section of this document), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 3, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–21983 Filed 10–8–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emerging Infectious Disease Research Centers (U01—Clinical Trial Not Allowed).

Date: October 29, 2019.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892–9823 (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G62A, National Institutes of Health, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5081, *ecohen@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emerging Infectious Diseases Research Centers (U01 Clinical Trial Not Allowed).

Date: November 4–5, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815 (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G62A, National Institutes of Health, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5081, *ecohen@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Computational Models of Immunity (U01 Clinical Trial Not Allowed).

Date: November 6–7, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thomas F. Conway, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G51, National Institutes of Health, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, 240–507–9685, *thomas.conway@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special

Emphasis Panel; Development of Sampling Sparing Assays for Monitoring Immune Systems (U24 Clinical Trials not allowed).

Date: November 18–20, 2019.

Time: 9:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Bethesda, MD 20892–9823 (Telephone Conference Call).

Contact Person: Sandip Bhattacharyya, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, *sandip.bhattacharyya@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 2, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21979 Filed 10–8–19; 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: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.

Date: November 1, 2019.

Time: 8:00 a.m. to 5:00 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: Amy Kathleen Wernimont, BS, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, Bethesda, MD 20892, (301) 827–6427, *amy.wernimont@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: November 1, 2019.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: November 4–5, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW, Washington, DC 20037.

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1742, *kaushikbasun@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pulmonary Diseases.

Date: November 5–6, 2019.

Time: 9:00 a.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 21892 (Virtual Meeting).

Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetics of Health and Disease.

Date: November 5, 2019.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, (301) 357–9112, *smirnove@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Motor Function, Speech and Rehabilitation Study Section.

Date: November 5, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–6830, *unja.hayes@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Acute Brain Injury.

Date: November 5, 2019.

Time: 2:00 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: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892–7846, (301) 435–1254, *yakovleva@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: October 3, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21976 Filed 10–8–19; 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 National Library of Medicine Board of Scientific Counselors.

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.

Name of Committee: National Library of Medicine Board of Scientific Counselors.

Date: November 12, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: Review of research and development programs and preparation of reports.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–827–4385, *ksteely@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.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 3, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21975 Filed 10–8–19; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 22–23, 2019.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Cheryl Nordstrom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, Bethesda, MD 20892, 301–827–1499.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: October 3, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21977 Filed 10–8–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0144]

Agency Information Collection Activities; Revision of a Currently Approved Collection: H–1B Registration Tool

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 8, 2019.

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 1615–0144 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 Contact 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 27, 2019, at 84 FR 30757, allowing for a 60-day public comment period. USCIS did receive 50 comment(s) 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–2019–0012 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:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* H–1B Registration Tool.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No agency form number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-

profit. USCIS uses the data collected on this form to determine which employers will be informed that they may submit a USCIS Form I–129, Petition for a Nonimmigrant Worker, to petition for a beneficiary in the H–1B classification.

(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 H–1B Registration Tool is 192,918 and the estimated hour burden per response is .5 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 96,459 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 $0.

Dated: October 3, 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. 2019–21996 Filed 10–8–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0122]

Agency Information Collection Activities; Revision of a Currently Approved Collection: USCIS Identity and Credential Access Management (ICAM)

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 8, 2019.

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 1615–0122 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 Contact 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 27, 2019, at 84 FR 30759, allowing for a 60-day public comment period. USCIS did not receive any comment(s) 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–2011–0015 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:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* USCIS Identity and Credential Access Management (ICAM).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No agency form number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. In order to interact with USCIS electronic systems accessible through the USCIS ICAM portal, a first time user must establish an account. The account creation process requires the user to submit a valid email address; create a password; select their preference for receiving a one-time password (via email, mobile phone, or both); select five password reset questions and responses; and indicate the account type they want to set up (customer or legal representative). The account creation and the account login processes both require the user to receive and submit a one-time password. The one-time password can be provided either as an email to an email address or to a mobile phone via text message. USCIS ICAM currently grants access to myUSCIS and the information collections available for online filing. USCIS ICAM is also be the portal through which accounts to submit H–1B cap registrations would be created and accessed.

(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 ICAM is 2,813,225 and the estimated hour burden per response is 0.167 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 of information is 469,809 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 $0.

Dated: October 3, 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. 2019–22002 Filed 10–8–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0009]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for Nonimmigrant Worker

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 8, 2019.

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 1615–0009 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 Contact 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 27, 2019, at 84 FR 30758, 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–2005–0030 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:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(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–129 is 294,751 and the estimated hour burden per response is 2.34 hours; the estimated total number of respondents for the information collection E–1/E–2 Classification Supplement to Form I–129 is 4,760 and the estimated hour burden per response is 0.67; the estimated total number of respondents for the information collection Trade Agreement Supplement to Form I–129 is 3,057 and the estimated hour burden per response is 0.67; the estimated total number of respondents for the information collection H Classification Supplement to Form I–129 is 96,291 and the estimated hour burden per response is 2; the estimated total number of respondents for the information collection H–1B and H–1B1 Data Collection and Filing Fee Exemption Supplement is 96,291 and the estimated hour burden per response is 1; the estimated total number of respondents for the information collection L Classification Supplement to Form I–129 is 37,831 and the estimated hour burden per response is 1.34; the estimated total number of respondents for the information collection O and P Classifications Supplement to Form I–129 is 22,710 and the estimated hour burden per response is 1; the estimated

total number of respondents for the information collection Q–1 Classification Supplement to Form I–129 is 155 and the estimated hour burden per response is 0.34; the estimated total number of respondents for the information collection R–1 Classification Supplement to Form I–129 is 6,635 and the estimated hour burden per response is 2.34.

(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 1,072,810 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 $70,681,290. The currently-listed value is different than the total of $70,680,550 presented on the 60-day FRN published on June 27, 2019 at 84 FR 30758 and corrects an error in calculation.

Dated: October 3, 2019.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–21997 Filed 10–8–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0068]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Registration for Classification as a Refugee

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 8, 2019.

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 1615–0068 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 Contact 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 25, 2019, at 84 FR 29871, 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–2007–0036 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:* Registration for Classification as a Refugee.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–590; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Form I–590 is the primary document in all refugee case files and becomes part of the applicant's A-file. It is the application form by which a person seeks refugee classification and resettlement in the United States. It documents an applicant's legal testimony (under oath) as to his or her identity and claim to refugee status, as well as other pertinent information including marital status, number of children, military service, organizational memberships, and violations of law. In addition to being the application form submitted by a person seeking refugee classification, Form I–590 is used to document that an applicant was interviewed by United States Citizenship and Immigration Services (USCIS) and record the decision by the USCIS Officer to approve or deny the applicant for classification as a refugee. Regardless of age, each person included in the case must have his or her own Form I–590. Refugees applying to CBP for admission must have a stamped I–590 in their travel packet in order to gain admission as a refugee. They do not have refugee status until they are admitted by CBP.

(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–590 is 50,000 and the estimated hour burden per response is 3.25 hours. The estimated total number of respondents for the information collection of Request for Review is 1,500 and the estimated hour burden per

response is 1 hour. The estimated total number of respondents for the information collection of DNA Evidence is 100 and the estimated hour burden per response is 2 hours. The estimated total number of respondents for the information collection of Biometrics is 51,600 and the estimated hour burden per response is 0.33 hour.

(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 181,228 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 $12,000.

Dated: October 3, 2019.

Jerry L Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–22009 Filed 10–8–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028905; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (USACE, Omaha District) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the USACE Omaha District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the USACE Omaha District at the address in this notice by November 8, 2019.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capital Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil*.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and in the physical custody of the South Dakota State Archaeological Research Center, Rapid City, SD. The human remains and associated funerary objects were removed from sites 39BF0004 and 39BF0205/0206 in Buffalo County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center (SARC) and USACE Omaha District professional staff in consultation with representatives of the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1983, human remains representing, at minimum, six individuals were removed from site 39BF0004 in Buffalo County, SD. The human remains were collected and stored by Larson-Tibesar Associates at the request of the U.S. Army Corps of Engineers. In 1987, the collection was moved to SARC, where they are currently housed. No known individuals were identified. The 39 associated funerary objects are one ceramic rim sherd, four ceramic body sherds, 13 flakes, three pieces of yellow ochre, 16 shell fragments, one faunal (bison) bone fragment, and one shell disk ornament.

In 1975, human remains representing, at minimum, one individual were removed from the vicinity of site 39BF0205/0206 in Buffalo County, SD. The human remains and funerary objects were discovered during a sewage line project and law enforcement was called. Crow Creek Tribal Law Enforcement Office and FBI collected the human remains and associated funerary objects. In 1982, the human remains and associated funerary objects were transferred to Steve Ruple, South Dakota State Historic Preservation Office. Ruple confirmed the human remains and associated funerary objects were from site 39BF0205/0206 on Army Corps of Engineers land and transferred the human remains and associated funerary objects to SARC. In February 2002, a human patella was found within the box of funerary objects at SARC. No known individual was identified. The 140 associated funerary objects are 110 ceramic body sherds, one lot of faunal (bison) bone fragments, two faunal (owl) bone fragments, five faunal (antelope) bone fragments, two faunal (dog) bone fragments, two faunal (deer) bone fragments, one faunal (prairie chicken) bone fragment, eight modified faunal (bison) bone fragments, one faunal bone (scapula) hoe, one lot of unidentified faunal bone fragments, one wedge, two lithic core shatter fragments, two unmodified rocks, one fire cracked rock, and one piece of chalcedony.

Determinations Made by the U.S. Army Corps of Engineers, Omaha District

Officials of the U.S. Army Corps of Engineers, Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context, associated funerary objects, and morphological features of the human remains.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 179 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and

associated funerary objects and any present-day Indian Tribe.

• According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Yankton Sioux Tribe of South Dakota.

• Treaties and Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota and the Yankton Sioux Tribe of South Dakota.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capitol Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by November 8, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The U.S. Army Corps of Engineers, Omaha District is responsible for notifying The Tribes that this notice has been published.

Dated: September 13, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22044 Filed 10–8–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028959; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Georgia Department of Natural Resources, Historic Preservation Division, Atlanta, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Georgia Department of Natural Resources, Historic Preservation Division has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Georgia Department of Natural Resources, Historic Preservation Division. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Georgia Department of Natural Resources, Historic Preservation Division at the address in this notice by November 8, 2019.

ADDRESSES: Rachel Black, Georgia Department of Natural Resources, Historic Preservation Division, 2610 GA Highway 155 SW, Stockbridge, GA 30281, telephone (770) 389–7862, email *Rachel.Black@dnr.ga.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Georgia Department of Natural Resources, Historic Preservation Division, Atlanta, GA. The human remains and associated funerary objects were removed from site 9JK317, Jackson County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Georgia Department of Natural Resources, Historic Preservation Division professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In December 2018, human remains representing, at minimum, one individual were removed from site 9JK317 in Jackson County, GA. A series of 56 rock piles were documented during investigations from 2016 to 2018 conducted by Stratum Unlimited on private property located within the River Glen subdivision. During excavations, human remains were encountered at the base of Rock Pile 01. Work was halted, and Stratum Unlimited contacted the Georgia Department of Natural Resources, Historic Preservation Division. After consultation, no further work was conducted at 9JK317. In January 2019, the human remains and associated funerary objects were transferred to the Georgia Department of Natural Resources, Historic Preservation Division. The human remains consist of 61 small long bone fragments. No age or sex of individual could be identified. No known individuals were identified. The 33 associated funerary objects are three lithic bifaces, seven lithic debitage, 21 lithic flakes, one Wolfskin/Late Lamar ceramic sherd, and one sample of residual soil.

The presence of one Wolfskin/Late Lamar ceramic sherd and the geographic location of the burial within the historically documented territory of The Muscogee (Creek) Nation support a cultural affiliation with The Muscogee (Creek) Nation.

Determinations Made by the Georgia Department of Natural Resources, Historic Preservation Division

Officials of the Georgia Department of Natural Resources, Historic Preservation Division have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 33 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Muscogee (Creek) Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Rachel Black, Georgia Department of Natural Resources, Historic Preservation Division, 2610 GA Highway 155 SW, Stockbridge, GA 30281, telephone (770) 389–7862, email *Rachel.Black@dnr.ga.gov,* by November 8, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Muscogee (Creek) Nation may proceed.

The Georgia Department of Natural Resources, Historic Preservation Division is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: September 20, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22051 Filed 10–8–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028907; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (USACE, Omaha District) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the USACE, Omaha District. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the USACE, Omaha District at the address in this notice by November 8, 2019.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capitol Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and in the physical custody of the South Dakota State Archaeological Research Center, Rapid City, SD. The human remains were removed from an unidentified site in Stanley County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the South Dakota State Archaeological Research Center (SARC) and USACE, Omaha District professional staff in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1979, human remains representing, at minimum, one individual were removed from an unidentified site in Stanley County, SD. The human remains were collected by a fisherman from the Missouri River north of Ft. Pierre, SD, and were turned over to the Stanley County Sheriff Department of Criminal Investigations for examination. The Department determined the human remains were historic, and transferred the human remains to the USACE, Omaha District to be stored at the Oahe Dam. In 1985 or 1986, the human remains were transferred to SARC, as the Oahe Dam could no longer house them. In 1990, the SARC facility transferred the human remains to the University of Tennessee-Knoxville for examination by a physical anthropologist, who concluded that the human remains, consisting of a cranium, belong to a child. The human remains were transferred back to SARC in 1993, where they are currently housed. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the U.S. Army Corps of Engineers, Omaha District

Officials of the U.S. Army Corps of Engineers, Omaha District have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context and morphological features of the human remains.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.

• According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of

the Sioux, who are represented today by The Tribes.

• Treaties indicate that the land from which the Native American human remains were removed is the aboriginal land of the Sioux, who are represented today by The Tribes.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capitol Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by November 8, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The U.S. Army Corps of Engineers, Omaha District is responsible for notifying The Tribes that this notice has been published.

Dated: September 13, 2019

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22046 Filed 10–8–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028962; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Sam Noble Oklahoma Museum of Natural History, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Sam Noble Oklahoma Museum of Natural History at the University of Oklahoma has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Sam Noble Oklahoma Museum of Natural History. If no additional requesters come forward, transfer of control of the associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the request to the Sam Noble Oklahoma Museum of Natural History at the address in this notice by November 8, 2019.

ADDRESSES: Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone (405) 325–1994, email *mlevine@ou.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Sam Noble Oklahoma Museum of Natural History, Norman, OK, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1980, 483 cultural items were removed from the Converse 2 site (34Jn28) in Johnston County, OK, during excavations carried out by the Oklahoma Anthropological Society. The cultural materials were later brought to the Sam Noble Oklahoma Museum of Natural History. The 483 cultural items were found associated with the human remains of an infant that was designated ''burial 3.'' The human remains were either left in situ or were removed and subsequently lost following recovery from the field. The 483 unassociated funerary objects are one chipped stone biface fragment, one modified chipped stone flake, 299 unmodified chipped stone flakes, one chipped stone projectile point, one chipped stone projectile point base, one chipped stone scraper, one faunal bone awl, 150 faunal bone fragments, 25 shell fragments, and three charcoal fragments. The Converse 2 site dates to the Plains Woodland Period (300 B.C.–A.D. 1000). Archeological research, oral history, and post-contact European records support cultural affiliation of these funerary objects with the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Determinations Made by the Sam Noble Oklahoma Museum of Natural History

Officials of the Sam Noble Oklahoma Museum of Natural History have determined that:

• Pursuant to 25 U.S.C. 3001(3)(B), the 483 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Additional Requesters and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone 405–325–1994, email *mlevine@ou.edu,* by November 8, 2019. After that date, if no additional requestors have come forward, transfer of control of the unassociated funerary objects to the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma, may proceed.

The Sam Noble Oklahoma Museum of Natural History is responsible for notifying the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma, that this notice has been published.

Dated: September 20, 2019

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22045 Filed 10–8–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028961; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Colgate University, Longyear Museum of Anthropology, Hamilton, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Longyear Museum of Anthropology, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of a sacred object and an object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Longyear Museum of Anthropology. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Longyear Museum of Anthropology at the address in this notice by November 8, 2019.

ADDRESSES: Kaytlynn Lynch, Longyear Museum of Anthropology, 13 Oak Drive, Hamilton, NY 13346, telephone (315) 228–6643, email *kelynch@colgate.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Longyear Museum of Anthropology, Hamilton, NY, that meets the definition of sacred object and object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

The object is a miniature false face mask or medicine mask. During the early 1900s, Hope Emily Allen (1883–1960) received the mask as a gift from a member of the Oneida Indian Nation, and added it to her own personal collection. This collection was posthumously sold to the Longyear Museum of Anthropology by her sister-in-law, Florence Allen, in 1962.

The evidence from museum records, scholarly publications, and information provided during consultation indicates that false face masks are not only sacred objects used in the performance of medicinal ceremonies, but are also considered objects of cultural patrimony that have ongoing historical, traditional, and cultural significance to the group. Based on provenance, this false face mask is considered to be culturally affiliated to the Oneida Indian Nation (previously listed as the Oneida Nation of New York).

Determinations Made by the Longyear Museum of Anthropology

Officials of the Longyear Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object/object of cultural patrimony and the Oneida Indian Nation (previously listed as the Oneida Nation of New York).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice who wish to claim these cultural items should submit a written request with information in support of the claim to Kaytlynn Lynch, Longyear Museum of Anthropology, 13 Oak Drive, Hamilton, NY 13346, telephone (315) 228–6643, email *kelynch@colgate.edu,* by November 8, 2019. After that date, if no additional claimants have come forward, transfer of control of the sacred object to the Oneida Indian Nation (previously listed as the Oneida Nation of New York) may proceed.

The Longyear Museum of Anthropology is responsible for notifying the Oneida Indian Nation (previously listed as the Oneida Nation of New York) that this notice has been published.

Dated: September 20, 2019

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22049 Filed 10–8–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028909; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Brooklyn Museum, Brooklyn, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Brooklyn Museum, in consultation with the appropriate Indian Tribe, has determined that the cultural items listed in this notice meet the definition of sacred objects and objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe not identified in this notice that wish to claim these cultural items should submit a written request to the Brooklyn Museum. If no additional claimants come forward, transfer of control of the cultural items to the Indian tribe stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Brooklyn Museum at the address in this notice by November 8, 2019.

ADDRESSES: Nancy Rosoff, Andrew W. Mellon Senior Curator, Arts of the Americas, Brooklyn Museum, 200 Eastern Parkway, Brooklyn, NY 11238, phone (718) 501–6283, email *nancy.rosoff@brooklynmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate five cultural items under the control of the Brooklyn Museum, Brooklyn, NY, that meet the definition of sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d) (3). The determinations in this notice are the sole responsibility of the Brooklyn Museum. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The five cultural items described in this notice were accessioned by the Brooklyn Museum between 1901 and 1967. The five objects include three ceramic vessels and two pieces of dance regalia. Information on the ceremonial roles of the objects is based on consultation that took place at the Brooklyn Museum on November 28, 2018, and through later written correspondence.

One ceramic pitcher was collected in 1879 by Colonel James Stevenson at the Pueblo of Tesuque. In 1880, the pitcher entered the collection of the U.S. National Museum. It was transferred to the Brooklyn Museum in 1901. The pitcher is decorated with white, black, and red pigments. Design elements include clouds, rain, corn, and crosshatched geometric patterns. Tesuque representatives stated that the pitcher was used in community ceremonies.

One ceramic storage jar was collected by Captain C. W. Riggs, likely between 1876 and 1891. Riggs' catalog indicates that the jar was collected from the Pueblo of Cochiti. In 1902, the Brooklyn Museum purchased the storage jar along with a selection of other Pueblo pottery collected by Riggs. The jar is decorated with black designs—corn and circular motifs—on white pigment; the lower portion is painted red. While the jar was collected from the Pueblo of Cochiti, it's solid lines (without ceremonial breaks), wide mouth and tapered lower half, lack of human and animal figures, and presence of floral motifs all support a Tesuque origin. Consultants from the Pueblo of Tesuque identified this jar as one that would have been owned and used by Tesuque's Warrior Society.

One buffalo hide robe was purchased by Brooklyn Museum curator Stewart Culin in 1907 from Benham Indian Trading Company in Albuquerque, NM, for $30. The trading company reported that the robe had been collected by Dr. Thomas S. Dozier, who said that it came from Tesuque. The painted design is of the ''box-and-border'' type, which is found throughout the central Plains. Representatives from Tesuque said that this robe was used in the Comanche Dance and was likely purchased from Comanche traders for this purpose.

One headdress made from hide, dyed hair, horn, and fabric was also purchased by Brooklyn Museum curator Stewart Culin in 1907 from Benham Indian Trading Company in Albuquerque, NM. The only information provided by the store was that the headdress was from Tesuque. Representatives said that this headdress, like the buffalo hide robe, was worn for the Comanche Dance.

One seed bowl was purchased by Brooklyn resident J. L. Greason (1868–1967) when he was living in Oregon. The bowl was donated to the Brooklyn Museum by Greason's estate after his death in early 1967. Mrs. A. Gordon, whose relation to Greason is unknown, corresponded with the Museum regarding the donation. The small bowl is covered with beige slip and is decorated with black feather designs around the rim. Tesuque consultants identified this as a ceremonial bowl used to hold seeds.

Determinations Made by the Brooklyn Museum

Officials of the Brooklyn Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the five cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the five cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and objects of cultural patrimony and the Pueblo of Tesuque, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Nancy Rosoff, Andrew W. Mellon Senior Curator, Arts of the Americas, Brooklyn Museum, 200 Eastern Parkway, Brooklyn, NY 11238, phone (718) 501–6283, email *nancy.rosoff@brooklynmuseum.org,* by November 8, 2019. After that date, if no additional claimants have come forward, transfer of control of the sacred objects and objects of cultural patrimony to the Pueblo of Tesuque, New Mexico, may proceed.

The Brooklyn Museum is responsible for notifying the Pueblo of Tesuque, New Mexico, that this notice has been published.

Dated: September 13, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22050 Filed 10–8–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028910; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the TVA at the address in this notice by November 8, 2019.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Tennessee Valley Authority, Knoxville, TN. The human remains were removed from an archeological site in Colbert County, AL.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by TVA professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

Between December 1938 and June 1939, human remains representing, at minimum, one individual were removed from the Little Bear Creek site, 1CT8, in Colbert County, AL, by the Alabama Museum of Natural History (AMNH) at the University of Alabama. TVA acquired the site on August 20, 1936, for the Pickwick Reservoir project. This shell midden site is at the confluence of Little Bear Creek and the Tennessee River. While there are no radiocarbon dates from this site, the excavated artifacts indicate that the major occupations took place during the Late Archaic (4000–1000 B.C.). Ceramics, while not abundant, were found in the upper two-to-three feet. Some of the ceramics suggest minor occupations during the Colbert (300 B.C.–A.D. 100) and McKelvey (A.D. 500–1000) phases. Distinctive shell-tempered vessels associated with some burials indicate a Mississippian Kogers Island phase (A.D. 1200–1500) occupation. The human remains are of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

Human remains and associated funerary objects excavated from site 1CT8 were the subject of a notice published in the **Federal Register** on December 21, 2018. In January 2019, the human remains in this notice were discovered by the AMNH in the course of conducting a curation improvement project.

Determinations Made by the Tennessee Valley Authority

Officials of Tennessee Valley Authority have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American, based on their presence in prehistoric archeological sites and osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- The Treaty of September 20, 1816, indicates that the land from which the Native American human remains were removed is the aboriginal land of The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- The Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma have declined to accept transfer of control of the human remains.
- Pursuant to 43 CFR 10.11(c)(1)(ii), the Tennessee Valley Authority has decided to transfer control of the human remains to The Chickasaw Nation.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by November 8, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Chickasaw Nation may proceed.

The Tennessee Valley Authority is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: September 13, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22043 Filed 10–8–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028908; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (USACE, Omaha District) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the USACE, Omaha District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the USACE, Omaha District at the address in this notice by November 8, 2019.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capital Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory

of human remains and associated funerary objects under the control of the U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and in the physical custody of the South Dakota State Archaeological Research Center, Rapid City, SD. The human remains and associated funerary objects were removed from site 39BR0011 and an unidentified site in Brule County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the South Dakota State Archaeological Research Center (SARC) and USACE, Omaha District professional staff in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

History and Description of the Remains

Sometime in the 1950s or 1960s, human remains representing, at minimum, one individual were removed from site 39BR0011 in Brule County, SD. The site was excavated in 1953, 1954, and 1965 by the Smithsonian Institution, and either during these excavations or shortly thereafter illegal excavations occurred onsite. At that time, a neighbor gifted a box containing human remains and artifacts he had collected from the site to a Mr. Thompson. In May 2000, Mr. Thompson donated the box to the Siouxland Heritage Museum. The Museum then contacted SARC and the U.S. Army Corps of Engineers about the human remains. The U.S. Army Corps of Engineers accepted the human remains and had them transferred to SARC on November 3, 2001. Based on the wide temporal and geographic span represented by the artifacts, it was determined that the artifacts and the human remains (a cranial fragment) in the box were not likely associated. No known individuals were identified.

Sometime prior to 1979, human remains representing, at minimum, one individual were removed from an unidentified site in Brule County, SD. In all, human remains and soil samples from two burials were collected by Robert Gant, and were kept at the W.H. Over Museum until the end of the 1979 field season. The human remains and soil samples were then transferred to the University of Tennessee for analysis, where they remained until 1988, at which time they were transferred back to South Dakota. The human remains were reburied in Stanley County at site 39ST15. The soil samples were sent to SARC in January 1988. In February 2002, one of the soil samples was water screened, and multiple human bone fragments were collected. No known individuals were identified. The two associated funerary objects are two soil samples.

Determinations Made by the U.S. Army Corps of Engineers, Omaha District

Officials of the U.S. Army Corps of Engineers, Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Yankton Sioux Tribe of South Dakota.
- Treaties indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Yankton Sioux Tribe of South Dakota. Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Sioux, represented today by The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capitol Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by November 8, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The U.S. Army Corps of Engineers, Omaha District is responsible for notifying The Tribes that this notice has been published.

Dated: September 13, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22048 Filed 10–8–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028955; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Lassen National Forest, Susanville, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Lassen National Forest has completed an inventory of human remains, in

consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Lassen National Forest. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Lassen National Forest at the address in this notice by November 8, 2019.

ADDRESSES: Deb Bumpus, Forest Supervisor, USDA Forest Service, Lassen National Forest, 2550 Riverside Drive, Susanville, CA 96130, telephone (530) 252–6600, email *deb.bumpus@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of Agriculture, Forest Service, Lassen National Forest, Susanville, CA. The human remains were removed from Payne Cave (CA–TEH–193), Tehama County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Lassen National Forest professional staff in consultation with representatives of the Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias) and the Redding Rancheria, California.

History and Description of the Remains

In 1956, human remains representing, at minimum, two individuals were removed from Payne Cave (CA–TEH–193) in Tehama County, CA. The excavations were authorized by the Lassen National Forest, and were carried out by the University of California Archaeological Survey. Since 2005, the Lassen National Forest has been working with California State University Chico to complete analysis of the faunal and archeological collection from CA–TEH–193 and determine if any additional human remains are present in the collection. This examination, completed in 2018, identified 12 bones representing a minimum of two individuals. No known individuals were identified. No associated funerary objects are present. Based on ethnographic and historical accounts, as well as the geographical location of the cave, these human remains are affiliated with the Yana. The descendants of the Yana people are the Pitt River Tribe, California and the Redding Rancheria, California.

At an unknown date, human remains representing, at minimum, two individuals were removed from Paynes Cave Shelter (CA–THE–193) in Tehama County, CA. In 2018, the University of Idaho identified eight bones representing two individuals among the collection the Phoebe Hearst returned to the Lassen National Forest. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the U.S. Department of Agriculture, Forest Service, Lassen National Forest

Officials of the U.S. Department of Agriculture, Forest Service, Lassen National Forest have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias) and the Redding Rancheria, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Deb Bumpus, Forest Supervisor, USDA Forest Service, Lassen National Forest, 2550 Riverside Drive, Susanville, CA 96130, telephone (530) 252–6600, email *deb.bumpus@usda.gov,* by November 8, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias) and the Redding Rancheria, California may proceed.

The U.S. Department of Agriculture, Forest Service, Lassen National Forest is responsible for notifying the Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias) and the Redding Rancheria, California that this notice has been published.

Dated: September 20, 2019

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–22047 Filed 10–8–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04084000, XXXR4081X1, RN.20350010.REG0000]

Colorado River Basin Salinity Control Advisory Council Notice of Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Reclamation is publishing this notice to announce that a Federal Advisory Committee meeting of the Colorado River Basin Salinity Control Advisory Council (Council) will take place.

DATES: The Council will convene the meeting on Thursday, October 24, 2019, at 1:00 p.m. and adjourn at approximately 5:00 p.m. The Council will reconvene the meeting on Friday, October 25, 2019, at 8:30 a.m. and adjourn the meeting at approximately 12 noon.

ADDRESSES: The meetings will be held in the State Capitol—Executive Tower at 1700 West Washington Street, Phoenix, Arizona. On October 24, 2019, the meeting will be held in Suite 220, and October 25, 2019, in the 3rd floor conference room.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; email at *kjacobson@usbr.gov;* facsimile (801) 524–3847.

SUPPLEMENTARY INFORMATION: The meeting of the Council is being held under the provisions of the Federal Advisory Committee Act of 1972. The Council was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act.

Purpose of the Meeting: The purpose of the meeting is to discuss the accomplishments of Federal agencies and make recommendations on future activities to control salinity.

Agenda: Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities, the contents of the reports, and the Basin States Program created by Public Law 110–246, which amended the Act.

Meeting Accessibility/Special Accommodations: The meeting is open to the public and seating is on a first-come basis. Individuals requiring special accommodations to access the public meeting should contact Mr. Kib Jacobson by email at *kjacobson@usbr.gov,* or by telephone at (801) 524–3753, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: There will be a public comment period on the second day of the meeting during which the Council chairman will allow public presentations of oral comments. In addition, any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To allow full consideration of information by Council members, written notice must be provided to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1147; email at *kjacobson@usbr.gov;* facsimile (801) 524–3847; at least five (5) business days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

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.

Brent C. Esplin,

Regional Director, Upper Colorado Region.

[FR Doc. 2019–22035 Filed 10–8–19; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1098]

Certain Subsea Telecommunication Systems and Components Thereof; Commission Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to find no violation of section 337 of the Tariff Act of 1930, as amended, in the above-referenced investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 26, 2018, based on a complaint, as supplemented, filed on behalf of Neptune Subsea Acquisitions Ltd. of the United Kingdom; Neptune Subsea IP Ltd. of the United Kingdom; and Xtera, Inc. of Allen, Texas (collectively, ''Xtera''). 83 FR 3770 (Jan. 26, 2018). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain subsea telecommunication systems and components thereof by reason of infringement of one or more claims of U.S. Patent Nos.: 8,380,068 (''the '068 patent''); 7,860,403 (''the '403 patent''); 8,971,171 (''the '171 patent''); 8,351,798 (''the '798 patent''); and 8,406,637 (''the '637 patent''). The complaint further alleges that an industry in the United States exists as required by section 337. The notice of investigation, as originally issued, named as respondents Nokia Corporation of Espoo, Finland; Nokia Solutions and Networks B.V. of Hoofddorp, The Netherlands; Nokia Solutions and Networks Oy of Espoo, Finland; Alcatel-Lucent Submarine Networks SAS of Boulogne-Billancourt, France; Nokia Solutions and Networks US LLC of Phoenix, Arizona; NEC Corporation of Tokyo, Japan; NEC Networks & System Integration Corporation of Tokyo, Japan; and NEC Corporation of America of Irving, Texas. The Office of Unfair Import Investigations was also named as a party in this investigation.

On March 19, 2018, the ALJ issued Order No. 9 to (1) correct the corporate name of Alcatel-Lucent Submarine Networks SAS to Alcatel Submarine Networks; and (2) partially terminate the investigation based on withdrawal of the complaint with respect to Respondents Nokia Solutions and Networks B.V.; Nokia Solutions and Networks Oy; and Nokia Solutions and Networks US LLC. 83 FR 17677–678 (Apr. 23, 2018). On July 10, 2018, the ALJ issued Order No. 21 to change the corporate name of Neptune Subsea Acquisitions Ltd. to Xtera Topco Ltd. 83 FR 37516–517 (Aug. 1, 2018). On August 27, 2018, the ALJ issued Order No. 30 to amend the complaint and notice of investigation to add Nokia of America Corporation of New Providence, New Jersey as a respondent in the investigation. 83 FR 47938 (Sep. 21, 2018).

On November 19, 2018, the ALJ issued Order No. 46 granting in part Respondents' motion for summary determination of no violation with respect to the '068 patent based on Xtera's failure to establish the domestic industry requirement with respect to that patent. *See* Order No. 46 (Nov. 19,

2018), *aff'd with modification,* Comm'n Op. (Feb. 14, 2019). The ALJ also granted Xtera's motions to withdraw from the investigation all asserted claims of the '171 and '637 patents and certain asserted claims of the other asserted patents. *See* Order No. 22 (Aug. 8, 2018) (unreviewed); Order No. 47 (Nov. 20, 2018) (unreviewed); Order No. 52 (Dec. 6, 2018) (unreviewed).

An evidentiary hearing was held in this investigation from December 10–14, 2018.

On April 26, 2019, the ALJ issued his final initial determination (''ID'') finding no violation of section 337 with respect to asserted claims 13, 15, and 19 of the '798 patent and claims 8, 9, and 12 of the '403 patent by Respondents Nokia Corporation; Alcatel Submarine Networks; and Nokia of America Corporation (collectively ''Nokia''); and NEC Corporation; NEC Networks & System Integration Corporation; and NEC Corporation of America (collectively ''NEC''). Specifically, with respect to the '798 patent, the ID found that Xtera produced no evidence at the evidentiary hearing to show a violation of section 337 based on infringement of claims 13, 15, and 19. Accordingly, the ID found that Xtera has not established a violation of section 337 based on infringement of the '798 patent. With respect to the '403 patent, the ID found that Respondents do not infringe and Xtera's domestic industry products do not practice claims 8, 9, and 12 of the '403 patent. The ID also found that claims 8, 9, and 12 of the '403 patent are invalid as anticipated by U.S. Patent No. 6,430,336 (''Frankel''). The ID further found that Xtera had not established that its investments and activities satisfied the domestic industry requirement with respect to the articles protected by the '403 patent.

On May 13, 2019, Xtera filed a petition for review of the final ID. On the same day, Respondents filed a contingent petition for review of the final ID. Thereafter, the parties filed responses to the petitions for review and public interest comments pursuant to Commission Rule 210.50(a)(4).

On July 24, 2019, the Commission determined to review in part the final ID and to extend the target date in this investigation to September 30, 2019. 84 FR 36935–937 (Jul. 30, 2019). Specifically, the Commission determined to review the ID's findings with respect to the '403 patent in their entirety, including domestic industry. *Id.* at 36936. The Commission also determined that Xtera had effectively withdrawn its allegations with respect to claim 13 of the '403 patent and the '798 patent. *Id.* The Commission asked the parties to brief certain issues under review. *Id.* The parties filed their respective initial submissions on August 7, 2019, and their respective reply submissions on August 14, 2019.

Of the patent claims that formed the basis for institution of this investigation, only claims 8, 9 and 12 of the '403 patent remain in dispute.

Having reviewed the parties' submissions and the record evidence, the Commission has determined to affirm with modifications the ID's finding of no violation of section 337 with respect to the '403 patent. Specifically, the Commission has determined to modify the ID's construction of the ''means for producing'' limitation in claim 8 of the '403 patent. In particular, the Commission adopts the ID's claimed function for the ''means for producing'' limitation and clarifies that the claimed function does not require the production of ''narrow'' optical pulses, *i.e.,* pulses of a particular bit rate. The Commission finds the specification clearly links or associates pulsed laser light sources (*e.g.,* active mode locked laser 20 in Figure 2), CW lasers modulated to create a periodic series of optical pulses (*e.g.,* CW laser 10 and first modulator 11 in Figure 1), and equivalents thereof to the claimed function. Applying that construction, the Commission affirms with modifications the ID's findings that (i) the accused products do not infringe claims 8, 9 and 12; (ii) the asserted claims are invalid as anticipated by Frankel; and (ii) Xtera has not established the existence of a domestic industry with respect to the '403 patent. The Commission's reasoning in support of its determinations is set forth in its concurrently issued opinion.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 3, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–22033 Filed 10–8–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1179]

Certain Pouch-Type Battery Cells, Battery Modules, and Battery Packs, Components Thereof, and Products Containing the Same; 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 September 3, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of SK Innovation Co., Ltd. of the Republic of Korea and SK Battery America, Inc. of Atlanta, Georgia. 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 pouch-type battery cells, battery modules, and battery packs, components thereof, and products containing the same by reason of infringement of certain U.S. Patent No. 10,121,994 (''the '994 patent''). The complaint further alleges that an industry in the United States is in the process of being established as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the 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:

Authority: 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 October 3, 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 1–36 of the '994 patent; and whether an industry in the United States is in the process of being established 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 ''batteries that provide the electrical power for electric vehicles, *i.e.,* EV battery cells, battery modules, and battery packs, components thereof, and products containing the same'';

(3) 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 complainants are:

SK Innovation Co., Ltd., 26 Jong-Ro, Jongno-Gu Seoul 03188, Republic of Korea.

SK Battery America, Inc., 201 17th Street NW, Suite 1700, Atlanta, GA 30363.

(b) The respondents are the following entities alleged to be in violation of section 337, and is/are the parties upon which the complaint is to be served:

LG Chem, Ltd., 128 Yeoui-daero, Yeongdeungpo-gu Seoul 07336, Republic of Korea.

LG Chem Michigan, Inc., 1 LG Way, Holland, MI 49423.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) 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: October 4, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–22057 Filed 10–8–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1427 (Final)]

Refillable Stainless Steel Kegs from Mexico

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that the establishment of an industry in the United States is materially retarded by reason of imports of refillable stainless steel kegs from Mexico, provided for in subheadings 7310.10 and 7310.29 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2] [3] [4]

Background

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted this investigation effective September 20, 2018, following receipt of a petition filed with the Commission and Commerce by American Keg Company, LLC, Pottstown, Pennsylvania. The Commission scheduled the final phase of the investigation following notification of preliminary determinations by Commerce that imports of refillable stainless steel kegs were being subsidized by the government of China [5] within the meaning of section 703(b) of the Act and that imports of refillable stainless steel kegs from China,[6] Germany,[7] and Mexico [8] were being sold at LTFV within the meaning of section 733(b) of the Act. Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 17, 2019 (84 FR 28070). The hearing was held in Washington, DC, on August 14, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on October 3, 2019. The views of the Commission are contained in USITC Publication 4976 (October 2019), entitled *Refillable Stainless Steel Kegs from Mexico: Investigation No. 731–TA–1427 (Final).*

By order of the Commission.

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[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] 84 FR 42894 (August 19, 2019) (final determination).

[3] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on Mexico.

[4] Commissioners Randolph J. Stayin and Amy A. Karpel did not participate in this investigation.

[5] 84 FR 13634 (April 5, 2019) (preliminary determination and alignment).

[6] 84 FR 25745 (June 4, 2019) (preliminary determination and postponement).

[7] 84 FR 25736 (June 4, 2019) (preliminary determination and postponement).

[8] 84 FR 25738 (June 4, 2019) (preliminary determination).

Issued: October 4, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–22058 Filed 10–8–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1112]

Certain Radio Frequency Micro-Needle Dermatological Treatment Devices and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based on a Settlement Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 45) of the presiding administrative law judge (''ALJ'') terminating the investigation as to the remaining respondents, EndyMed Medical Inc. of New York City, New York and EndyMed Medical Ltd. of Caesarea, Israel (''Endy''), based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 15, 2018, based on a complaint filed on behalf of Syneron Medical Ltd. of Yokneam Illit, Israel; Candela Corporation of Wayland, Massachusetts; and Massachusetts General Hospital of Boston, Massachusetts. 83 FR 22515–16 (May 15, 2018). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio frequency micro-needle dermatological treatment devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,510,899 (''the '899 patent'') and 9,095,357. The Commission's notice of investigation named several respondents including Endy; Invasix, Inc. and Inmode Md, Ltd. of Lake Forest, California; Lumenis Ltd. and Invasix, Ltd. of Yokneam, Israel; Ilooda Co., Ltd. and Lutronic Corp. of Gyeonggi-do, Republic of Korea; Cutera, Inc. of Brisbane, California; Emvera Technologies, LLC of Cedartown, California; Rohrer Aesthetics, LLC of Homewood, Alabama; Lutronic, Inc. of Billerica, Massachusetts; Sung Hwan E&B Co., Ltd. d/b/a SHEnB Co., Ltd. and Jeisys Medical, Inc. of Seoul, Republic of Korea; Aesthetics Biomedical, Inc. of Phoenix, Arizona; Cartessa Aesthetics of Hockessi, Delaware; Perigee Medical Center LLC of Tracy, California; and Pollogen, Ltd. of Tel Aviv-Jaffa, Israel. The Office of Unfair Import Investigations is not participating in the investigation. All other respondents have been terminated from the investigation based on settlement agreement. *See* Order No. 43 (July 23, 2019), *unreviewed by* Comm'n Notice (Aug. 13, 2019); Order No. 23 (April 9, 2019), *unreviewed by* Comm'n Notice (May 7, 2019); Order No. 20 (Mar. 26, 2019), *unreviewed by* Comm'n Notice (Apr. 16, 2019); Order No. 18 (Mar. 20, 2019), *unreviewed by* Comm'n Notice (Apr. 11, 2019); Order No. 16 (Mar. 6, 2019), *unreviewed by* Comm'n Notice (Mar. 27, 2019); Order No. 15 (Feb. 22, 2019), *unreviewed by* Comm'n Notice (Mar. 21, 2019).

On September 4, 2019, Complainants and Endy jointly moved to terminate the investigation based on a settlement agreement.

On September 11, 2019, the ALJ issued the subject ID (Order No. 45), granting the joint motion terminating the investigation in its entirety based on settlement agreement. She found that the motion for termination satisfied Commission Rule 210.21, 19 CFR 210.21, and that termination of the investigation is not contrary to the public interest. No party petitioned for review.

The Commission has determined not to review the subject ID. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 3, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–21981 Filed 10–8–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 010–2019]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Federal Bureau of Investigation (FBI), a component within the United States Department of Justice (DOJ or Department), proposes to modify a system of records notice titled the National Instant Criminal Background Check System (NICS), JUSTICE/FBI–018. The FBI proposes to consolidate and replace the following previous SORNs related to NICS: ''National Instant Criminal Background Check System/FBI–018,'' published at 63 FR 65223 (Nov. 25, 1998), 65 FR 78190 (Dec. 14, 2000), 66 FR 6676 (Jan. 22, 2001), 66 FR 8425 (Jan. 31, 2001), 66 FR 12959 (Mar. 1, 2001), and 82 FR 24147 (May 25, 2017). This notice also updates the ''PURPOSE(S) OF THE SYSTEM,'' ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM,'' ''CATEGORIES OF RECORDS IN THE SYSTEM,'' and ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES'' of the SORN.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public has 30 days in which to comment on the routine uses, described below. Therefore, please submit any comments by November 8, 2019.

ADDRESSES: The public, OMB, and Congress are invited to submit any

comments: By mail to the Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 145 N St. NE, Suite 8W–300, Washington, DC 20530; by facsimile at 202–307–0693; or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Katherine M. Bond, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001; telephone (202) 324–3000.

SUPPLEMENTARY INFORMATION:

The NICS system notice has been amended on several occasions to reflect changes in law and corresponding routine uses. The FBI proposes to consolidate, revise, and update the NICS SORN as required by changes in statutes, regulations, and practice. Proposed changes to the NICS SORN include updating the following sections: ''PURPOSE(S) OF THE SYSTEM,'' ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM,'' ''CATEGORIES OF RECORDS IN THE SYSTEM,'' and ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE''. Due to the number of revisions to this SORN and for ease of reference, the FBI is republishing it here, as revised, in its entirety.

The FBI is revising the ''PURPOSE(S) OF THE SYSTEM'' section of the notice (1) to provide information regarding additional databases that are used during NICS checks of non-U.S. citizens, (2) to clarify that the NICS System also maintains records for appeal purposes, and (3) to explain that the NICS System provides investigative support to law enforcement agencies that investigate, prosecute, and/or enforce violations of criminal or civil laws or regulations that may come to light during the NICS operation.

In addition, the FBI has revised the ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM'' section of the notice by dividing the former Category L into distinct covered categories for subjects of background checks, appellants, and individuals who have opted into the Voluntary Appeal File. The FBI has also added two categories to cover individuals maintained in the NICS System for law enforcement disclosures as set forth in Routine Use C. An additional category of individuals—and corresponding category of records—has been added to reflect the maintenance of records on individuals who have been granted relief from a firearm disability by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Maintaining information on individuals granted relief from a firearm disability allows the NICS more expeditiously to approve firearm transfers to these individuals.

The ''CATEGORIES OF RECORDS IN THE SYSTEM'' section of the notice has been updated to provide more clarity on the types of information the NICS may have on individuals, including the fact that the NICS may contain fingerprints. Fingerprints maintained in the NICS are voluntarily provided by individuals and are used to confirm whether a prospective transferee or appellant matches an individual with a criminal history in the Next Generation Identification (NGI) System. The ''CATEGORIES OF RECORDS IN THE SYSTEM'' section is also being updated to include the Voluntary Appeal File, which contains information about individuals who have provided the FBI with written consent to maintain such information so that NICS will not erroneously deny or extensively delay a future firearm transfer; as well as a table, which contains biographic information about individuals under investigation by a law enforcement agency which investigates, prosecutes, and/or enforces violations of criminal or civil laws or regulations that may come to light during the NICS operation. Maintaining identities of individuals within the table allows the NICS to better fulfill its public safety mission and disseminate information under Routine Use C.

Several routine uses have been updated to provide more clarity on the application of existing routine uses. The ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES'' section has also been consolidated to include all existing routine uses that apply to records in the NICS. Furthermore, three new routine uses have been added. The first new routine use (Routine Use N) permits disclosures to parties during litigation and is an extension of the existing routine use to provide information to courts during litigation.This routine use ensures that individuals challenging NICS action have access to relevant and appropriate information in the NICS. The second new routine use (Routine Use O) permits disclosures as required or allowed by Federal regulation, statute, or treaty. This routine use has been added to reinforce the fact that the FBI discloses information pursuant to Federal law. The third new routine use (Routine Use P) provides greater clarity on the types of agencies and entities the FBI may contact while conducting research to determine whether an individual may be prohibited from receiving a firearm, explosive, or related permit. Information disseminated under Routine Use P is limited to the information necessary to elicit from the receiving entity information to assist the NICS section in finalizing a NICS transaction. The FBI will share information from NICS pursuant to the requirements of the Privacy Act, Brady Act, corresponding federal regulations or statutes, and when the disclosure is compatible with the purpose for which the information was collected.

The FBI is also adding more detail in sections such as the ''SYSTEM LOCATION'' section and the ''RECORD SOURCE CATEGORIES'' section. The ''POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS'' section has been modified to provide the record retention schedule job number as assigned by the National Archives and Record Administration (NARA). By referencing the NARA job numbers, individuals will be able to access the actual record retention schedule, which will provide the most complete and up-to-date record retention schedule for the NICS. The ''RECORD ACCESS PROCEDURES'' and ''CONTESTING RECORD PROCEDURES'' sections have been updated to reflect the current FBI process for accessing and contesting records. References to the NICS Index have been changed to the NICS Indices to reflect an FBI name change to the database. Other stylistic changes have been made to the notice to conform to the new requirements of OMB Circular A–108.

Despite changes to the system as described in this notice, the FBI continues to assert, and is not changing the Privacy Act exemptions for the system set forth in 28 CFR § 16.96(p) and (q). As stated in the regulations, these Privacy Act exemptions apply only to the extent that information in the system is within the scope of 5 U.S.C. 552a(j)(2), (k)(2), or (k)(3), and to the extent it is, the rationale for asserting the exemptions has not changed.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this notice of a modified system of records.

Dated: September 30, 2019.

Peter Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/FBI–018

SYSTEM NAME AND NUMBER:

National Instant Criminal Background Check System (NICS), JUSTICE/FBI–018

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, but may be accessible electronically from any location at which the Federal Bureau of Investigation (FBI) operates or at which FBI operations are supported, including: J. Edgar Hoover Building, 935 Pennsylvania Ave. NW, Washington, DC 20535–0001; FBI Academy and FBI Laboratory, Quantico, Virginia 22135; and FBI field offices, legal attaches, information technology centers, and other components listed on the FBI's internet website, *http://www.fbi.gov.* Some or all system information may also be duplicated at other locations for purposes of system backup, emergency preparedness, and/or continuity of operations. Records may also be maintained in secure cloud computing environments. The cloud computing service provider on the date of this publication is Amazon Web Services, located at 12900 Worldgate Drive, Herndon, VA 20170. Cloud computing service providers may change. For information about the current cloud computing service provider, please contact the Unit Chief, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001; telephone 202–324–3000.

SYSTEM MANAGER(S):

Director, Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 922, as amended by the Brady Handgun Violence Prevention Act (the ''Brady Act'') (Pub. L. 103–159, Nov. 30, 1993, codified in relevant part at 18 U.S.C. 922(t) and 34 U.S.C. 40901); the NICS Improvement Amendments Act of 2007 (Pub. L. 110–180, Jan. 8, 2008); Consolidated Appropriations Act (''Fix NICS Act of 2018'') (Pub. L. 115–141, March 23, 2018, codified in relevant part at 34 U.S.C. 40901); 28 U.S.C. 534, as amended (Pub. L. 103–322, Title IV, 4060(a), Sep. 13, 1994, 105 Stat. 1950); and 28 CFR part 25 Subpart A.

PURPOSE(S) OF THE SYSTEM:

The purpose of the NICS, which was established pursuant to the Brady Act, is to provide the means of checking available information to determine immediately whether a person is disqualified from possessing a firearm under Federal or State law.

Prior to the transfer of a firearm from a Federal Firearms Licensee (FFL), a prospective transferee, who is not licensed under 18 U.S.C. 923, must obtain a firearms transaction form from an FFL and provide the information required by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice. The completed firearms transaction form is returned to the FFL, who is required by the Brady Act to contact the NICS and furnish the name and certain other identifying data provided by the transferee prior to completing the transaction and transferring the firearm. NICS conducts a search which compares the information about the transferee with information in or available to the NICS.

The NICS Section or a Point of Contact (POC)—a State or local law enforcement agency serving as an intermediary between the FFL and the Federal databases checked by NICS—receives inquiries from FFLs; initiates NICS background searches; checks—if needed—available Federal, State, local, tribal, foreign, international, and/or other pertinent databases or sources; determines whether prospective transferee records match any available information; determines whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm under Federal or State law; and responds back to the FFLs.

In addition to a review of the NICS Indices (formerly known as the NICS Index), every NICS search includes a review of the pre-existing, separately-managed FBI databases of the National Crime Information Center (NCIC) (JUSTICE/FBI–001) and the Next Generation Identification (NGI) System (JUSTICE/FBI–009), to the extent such searches are possible with the available information. NCIC and NGI are cooperative Federal-State programs for the exchange of criminal history record and other information among criminal justice agencies. The search conducted of NCIC and NGI, in conjunction with the search of the NICS Indices, is to determine whether information indicating that an individual firearm transferee is identical to an individual in one or more of categories A through J listed below under the heading ''CATEGORIES OF INDIVIDUALS IN THE SYSTEM.''

The Attorney General directed the FBI to work with the Bureau of Immigration and Customs Enforcement (ICE) to check the immigration status of all non-United States citizens who are firearms purchasers. When an FFL contacts the FBI NICS Section, the FFL will be asked whether the prospective buyer is a United States citizen. If the prospective buyer is not a United States citizen, the FBI NICS Section will contact ICE to request a search of ICE databases to determine whether the alien is illegally or unlawfully in the United States or whether the individual is a non-immigrant alien and therefore prohibited from receiving a firearm (unless he or she falls within an exception to the non-immigrant alien prohibition).

In addition to maintaining records to assist with NICS checks of potential firearm and explosives transferees, NICS maintains records to process appeals, to ensure individuals who have prevailed on appeal are not delayed in receiving a permissible firearm, and to provide investigative support to law enforcement agencies which investigate, prosecute, and/or enforce violations of criminal or civil laws or regulations that may come to light during operation of the NICS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system include any person who:

A. Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

B. Is a fugitive from justice;

C. Is an unlawful user of or addicted to any controlled substance;

D. Has been adjudicated as a mental defective or has been committed to a mental institution;

E. Is an alien who is illegally or unlawfully in the United States or who has been admitted to the United States under a non-immigrant visa;

F. Has been discharged from the Armed Forces under dishonorable conditions;

G. Having been a citizen of the United States, has renounced such citizenship;

H. Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner (issued after a hearing of which actual notice was received);

I. Has been convicted in any court of a misdemeanor crime of domestic

violence (involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim);

J. Is otherwise disqualified from possessing a firearm under State law;

K. Is or claims to be a Federal Firearms Licensee (FFL), (*i.e.,* a person licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice, as a manufacturer, dealer, or importer of firearms), or an authorized representative or contact person of an FFL;

L. Has applied for the transfer of a firearm, explosive, or a related permit or license, or has otherwise had his or her name forwarded to the NICS as part of a request for a NICS background check as authorized by 28 CFR part 25 or other Federal law. (Identifying information about this category of individuals is maintained for system administration and security purposes in the ''NICS Audit Log,'' a system transaction log described below under the headings ''CATEGORIES OF RECORDS IN THE SYSTEM'');

M. Has requested the reason for a firearm transfer denial or delay from the FBI, or from a law enforcement agency serving as a POC state, and/or challenged the accuracy or validity of a disqualifying record, or otherwise inquired about a NICS transaction. (Identifying information about this category of individuals may be maintained in appeal files);

N. Has provided the FBI with written consent to maintain information about himself or herself in the Voluntary Appeal File;

O. Has been granted relief from a firearms or explosives-related disability and/or granted a pardon. For example, in order to permit faster evaluation and approval of future transactions, NICS may maintain information on individuals who have been granted relief by ATF from firearms or explosive disabilities, as well as information on individuals who have been granted a Presidential pardon;

P. Is under investigation by a law enforcement agency which investigates, prosecutes, and/or enforces violations of criminal or civil laws or regulations that may come to light during operation of the NICS;

Q. Is employed by a law enforcement agency which investigates, prosecutes, and/or enforces violations of criminal or civil laws or regulations that may come to light during operation of the NICS; or

R. Processes NICS transactions or has access to the NICS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the NICS may include biographic and biometric information about the categories of individuals above under the heading ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM,'' such as name, phone number, address, email address, sex, race, date of birth, state of residence, a unique identifying number (such as a Social Security number, military number, or number assigned by Federal, State, local, or other authorities), other personal descriptive data (such as height, weight, eye and hair color, and place of birth), and fingerprints. The NICS also contains information about individuals collected while researching whether a potential transferee is prohibited by Federal or State law from receiving a firearm, explosive, or related permit. This includes documents received from criminal justice and other agencies or entities (*e.g.* arrest reports, court transcripts, disposition information, involuntary commitments, and court orders).

The ''NICS Indices'' is a database maintained by the FBI that was created specifically for the NICS. The NICS Indices contains records obtained by the Attorney General from Federal, State, local, tribal, foreign, and international agencies/organizations, or other entities on individuals who fall into the categories of individuals listed above under the heading ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM'' A through J. These records may contain an individual's name; sex; race; and other personal descriptive data; complete date of birth; state of residence; sometimes a unique identifying number, such as a Social Security number (but NICS does not require it to be furnished), a military number, or a number assigned by Federal, State, local, or other authorities; and other descriptors and information supporting an entry into the NICS Indices, such as information collected as a result of arrest, conviction, incarceration, or involuntary commitment.

The ''NICS Audit Log'' is a chronological record of system (computer) activities that enables the reconstruction and examination of a sequence of events and/or changes in an event related to the NICS. With regard to a specific NICS transaction, the audit log will include: The name and other identifying information about the prospective transferee; the type of transaction (inquiry or response); transaction code data elements (*e.g.,* line number and header); time; date of inquiry; Originating Agency Identifier and FFL identifier; inquiry/response data, such as an assigned NICS Transaction Number (NTN) (a unique number assigned to each valid background request inquiry); information found by the NICS Section during research; and the reason for a denial, if an individual is denied. Audio recordings of phone calls from FFLs may also be attached to the corresponding NICS transaction and maintained in the audit log until the transaction purges. In cases of allowed transfers, all identifying information submitted by or on behalf of the transferee in the NICS Audit Log, other than the FFL identity, the NTN, purpose code, source, date of notification, and the date and time the NTN was assigned will be destroyed not more than 24 hours after the FFL receives communication of the determination that the transfer may proceed. All other information, except the NTN and the date it was created will be destroyed after not more than 90 days from the date of the inquiry.

In addition, the NICS contains information on entities or persons that are FFLs (or claim to be). This information includes the FFL name, address, phone numbers, ATF number, access code words, email addresses, date of birth, user names, names of authorized representatives and contact persons, and similar information used by the NICS to identify, validate, and communicate with FFLs in the course of NICS operations.

The NICS also contains ''appeals records'' which reflect inquiries by individuals regarding the reason for a delay or denial by the FBI or a POC state, and/or challenges to the accuracy or validity of a disqualifying record, or other types of inquiries made by individuals about a NICS transaction. Appeal records include biographic and biometric records on individuals.

The NICS contains, in the Voluntary Appeal File, record information about individuals who have provided the FBI with written consent to maintain such information so that NICS will not erroneously deny or extensively delay a future firearm transfer. Records in the Voluntary Appeal File may include, but are not limited to, biographic information (*e.g.* name, address, email address, social security number, and date of birth), fingerprint cards, photographs, court documentation, correspondence, and information contained in the applicant's appeal file, if one exists.

The NICS also contains records of individuals who have been granted relief from a firearms or explosive-related disability and/or granted a

pardon. This information may include an individual's name, date of birth, social security number, race, gender, height, weight, and other identification numbers and personal descriptors.

The NICS maintains a table that contains biographic information about individuals described in ''CATEGORY OF INDIVIDUALS'' P above (*e.g.* name, date of birth, social security number, other personal descriptive data) and contact information for individuals described in ''CATEGORY OF INDIVIDUALS'' Q above (such as name and email address).

RECORD SOURCE CATEGORIES:

Information contained in the NICS is obtained from individual persons as well as Federal, State, local, tribal, foreign, and international agencies or organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected.

A. Limited information may be provided by a POC state or the NICS Section to an FFL who has contacted the NICS concerning a prospective firearm transferee. If a matching record found by the NICS provides information demonstrating that the prospective transferee is disqualified from possessing a firearm under Federal or State law, the FFL will be notified only that the application is ''denied,'' with none of the underlying information provided. If additional record analysis is required by the NICS representative (*e.g.,* to confirm that a record relates to the potential transferee or to pursue supplemental information to clarify whether the potential transferee is disqualified from receiving a firearm), the response will read ''delayed'' and will include the NICS-determined date after which the FFL may lawfully transfer the firearm if the FFL has not received a final determination status from NICS. If no disqualifying record is located by the NICS, the FFL will be told that it may ''proceed.'' A unique identification number will be provided to the FFL for all responses received from the NICS, which number shall be recorded on the firearms transaction form. If an FFL is unable to provide the information required to conduct a NICS check or for other reasons (*e.g.,* the NICS detects false entries have been made on the ATF 4473 that are not grounds for a deny response), then the NICS check is discontinued and the FFL will be provided with a ''canceled'' response.

B. Information from the NICS-checked databases may be provided to Federal, State, local, tribal, and territorial criminal justice agencies and organizations, including POC states and contributors of information to the NICS Indices, to enable them to determine whether the transfer of a firearm to any person not licensed under 18 U.S.C. 923 would be in violation of Federal or State law; whether the issuance of a license or permit for the transfer, possession, or sale of a firearm or firearms, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives would be in violation of Federal or State law or regulation; whether appeals should be granted or denied; and whether to add to, delete from, revise, or update information previously provided by the contributor. This includes responding to inquiries by the ATF in connection with civil or criminal enforcement of the Gun Control Act (18 U.S.C. Chapter 44); the National Firearms Act (26 U.S.C. Chapter 53); or 18 U.S.C. Chapter 40 (Importation, Manufacture, Distribution and Storage of Explosive Materials); responding to inquiries from the Nuclear Regulatory Commission (NRC) in connection with the clearance of its licensee and certificate holder security personnel pursuant to the Atomic Energy Act of 1954, as amended, section 161A (42 U.S.C. 2201a); and responding to inquiries from criminal justice agencies regarding the disposition of firearms in their possession.

C. If, during the course of any activity or operation of the system authorized by the regulations governing the system (28 CFR part 25 Subpart A), any record is found by the system which indicates, either on its face or in conjunction with other information, a violation or potential violation of law (whether criminal or civil) and/or regulation, the pertinent record may be disclosed to the appropriate agency/organization/task force (whether Federal, State, local, tribal, or joint) and/or to the appropriate foreign or international agency/organization charged with the responsibility of investigating, prosecuting, and/or enforcing such law or regulation, *e.g.,* disclosure of information from the system to a law enforcement agency with an active warrant for an individual denied a NICS transaction on the basis of that warrant. (This routine use does not apply to the NICS Indices because access to the information in the NICS Indices is limited to the specific purposes set forth in 28 CFR 25.6(j).)

D. System records may be disclosed to contractors, grantees, experts, consultants, students, volunteers, detailees, and other non-FBI employees performing or working on a contract, service, grant, cooperative agreement, job, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records and under requirements (including Privacy Act requirements) specified by the FBI.

E. System records may be disclosed to the news media or members of the general public or to a victim or potential victim in furtherance of a legitimate law enforcement or public safety function, *e.g.,* to assist in locating fugitives; to provide notification of arrests; to provide alerts, assessments, or similar information on potential threats to life, health, or property; or to keep the public appropriately informed of other law enforcement or FBI matters of legitimate public interest where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy. (The availability of information in pending criminal cases will be governed by the provisions of 28 CFR 50.2.) (This routine use does not apply to the NICS Indices because access to the information in the NICS Indices is limited to the specific purposes set forth in 28 CFR 25.6(j).)

F. Where the disclosure of system records has been determined by the FBI to be reasonable and necessary to resolve a matter in litigation or in anticipation thereof, such records may be disclosed to a court or adjudicative body, before which the FBI is authorized to appear, when: (a) The FBI or any FBI employee in his or her official capacity; (b) any FBI employee in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is or could be a party to the litigation, or has an official interest in the litigation. Similar disclosures may be made in analogous situations related to assistance provided to the Federal government by non-FBI employees (see Routine Use D). This routine use would include disclosures in actual and/or anticipated litigation involving POC states in matters relating to NICS operations.

G. System records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on

behalf of and at the written request of the individual who is the subject of the record.

H. System records may be disclosed to the National Archives and Records Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

I. Information pertaining to individuals who are the subject of a denied transaction by the NICS may be disclosed, either electronically or otherwise, to a Federal, State, local, tribal, joint, foreign, international, or other public agency/organization where such disclosure may promote, assist, or otherwise serve law enforcement interests. By way of example and not limitation, such disclosures may, for instance, include posting all NICS denials on a centralized database that would be electronically accessible to law enforcement agencies.

J. Information in the NICS Audit Log (including records of approved, open, and denied transfers) may be disclosed to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in connection with ATF's inspection of FFL records. The information which may be disclosed to the ATF regarding approved and open records is governed by the provisions of 28 CFR part 25.

K. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

L. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOJ (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 the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

M. To another Federal agency or Federal entity, when the Department 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.

N. To an actual or potential party or his or her attorney for the purpose of negotiating or discussing such matters as a settlement of the case or matter, or informal discovery proceedings, in matters in which the FBI has an official interest and in which the FBI determines records in the system to be arguably relevant.

O. To such recipients and under such circumstances and procedures as are required or allowed by Federal regulation, statute, or treaty.

P. To a Federal, State, local, tribal, territorial, or foreign governmental agency when necessary to elicit information from that agency regarding an individual's eligibility to receive a firearm, explosive, or related permit.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Computerized records are stored electronically on hard disk, removable storage devices, in a government approved cloud computing infrastructure (*e.g.,* FedRAMP approved) offered by a cloud service provider (*e.g.* Amazon Web Services), or other digital media. Some information may be retained in hard copy format.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, sex, race, date of birth, state of residence, other personal descriptive data, the NTN, FFL number, and in some instances, unique numeric identifier, *e.g.,* a Social Security number or military identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are maintained and disposed of in accordance with job numbers N1–065–07–003 and N1–065–10–005 of the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the NICS are located in secure government buildings with limited physical access or in a government approved cloud computing infrastructure (*e.g.* FedRAMP approved) offered by a cloud service provider (*e.g.* Amazon Web Services). Computerized data is password protected. All FBI personnel and contractors are required to pass an extensive background investigation. The information is accessed only by authorized FBI personnel or by non-FBI personnel properly authorized access to these records. Access to the results of a NICS record search is further restricted to authorized employees of Federal, State, and local law enforcement agencies. Paper records are temporarily stored in hard copy until they are scanned into electronic format and stored in the system. The paper records are retained and disposed of as authorized by the National Archives and Records Administration.

When a Federal, State, local, or tribal agency places information in the NICS Indices, it uses its agency identifier and a unique agency record identifier for each record provided to the NICS. Federal, State, local, and tribal agencies can modify or cancel only the data that they have provided to the NICS Indices.

RECORD ACCESS PROCEDURES:

The Attorney General has exempted this system of records from the notification, access, amendment, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the FBI in its sole discretion.

All requests for access should follow the guidance provided on the FBI's website at *https://www.fbi.gov/services/records-management/foipa.* A request for access to a record from this system of records must be submitted in writing and comply with 28 CFR, Part 16. Individuals may mail, fax, or electronically submit a request, clearly marked ''Privacy Act Access Request,'' to the FBI, ATTN: FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602–4843; facsimile: 540–868–4995/6/7; electronically: *https://www.fbi.gov/services/records-management/foipa/requesting-fbi-records.* The request should include a general description of the records sought, and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or

submitted under penalty of perjury. While no specific form is required, requesters may obtain a form (Form DOJ–361) for use in certification of identity, which can be located at the above link. In the initial request, the requester may also include any other identifying data that the requester may wish to furnish to assist the FBI in making a reasonable search. The request should include a return address for use by the FBI in responding; requesters are also encouraged to include a telephone number to facilitate FBI contacts related to processing the request. A determination of whether a record may be accessed will be made after a request is received.

Alternative procedures are available to a person who has been denied the transfer of, or permit for, a firearm because of information in the NICS. The procedures provide for an appeal of a denial and a method to seek correction of erroneous data searched by or maintained in the system. The alternative procedures can be found at 28 CFR part 25 Subpart A.

CONTESTING RECORD PROCEDURES:

The Attorney General has exempted this system of records from the notification, access, amendment, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the DOJ in its sole discretion.

Individuals desiring to contest or amend information maintained in the system should direct their requests according to the ''RECORD ACCESS PROCEDURES'' paragraph above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked ''Privacy Act Amendment Request.'' All requests must state clearly and concisely what record is being contested, the reason for contesting it, and the proposed amendment to the record. Some information may be exempt from the amendment provisions as described in the ''EXEMPTIONS PROMULGATED FOR THE SYSTEM'' paragraph, below. An individual who is the subject of a record in this system of records may contest or amend those records that are not exempt. A determination of whether a record is exempt from the amendment provisions will be made after a request is received.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, ''Requests for Amendment or Correction of Records.''

In addition, as described above under the ''RECORD ACCESS PROCEDURES'' section, an alternative procedure is available to a person who has been denied the transfer of, or permit for, a firearm because of information in the NICS, by which the individual may seek the correction of erroneous data in the system. The procedures are further described at 28 CFR part 25 Subpart A.

NOTIFICATION PROCEDURES:

This system of records has been exempted from the notification procedures of subsections (d) and (e)(4)(G), to the extent permitted by subsections (j)(2), (k)(2), and (k)(3) of the Privacy Act. Requests for notification should be addressed to the Systems Manager. Requirements for a request are the same as set forth in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), and (3); (e)(4)(G) and (H); (e)(5) and (8); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). In addition, the Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), and (e)(4)(G) and (H) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register**. See 28 CFR 16.96(p) and (q).

HISTORY:

National Instant Criminal Background Check System (NICS), JUSTICE/FBI–018, 63 FR 65223 (Nov. 25, 1998), as amended by 65 FR 78190 (Dec. 14, 2000), 66 FR 6676 (Jan. 22, 2001), 66 FR 8425 (Jan. 31, 2001), 66 FR 12959 (Mar. 1, 2001), and 82 FR 24147 (May 25, 2017).

[FR Doc. 2019–21583 Filed 10–8–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On August 27, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas in the lawsuit entitled *United States and State of Texas* v. *City of Houston, Texas,* Civil Action No. 4:18–cv–03368.

The United States and the State of Texas filed a joint Complaint against the City, pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d) and provisions of the Texas Water Code. The Complaint seeks, inter alia, injunctive relief to address and eliminate (a) illegal discharges, namely sanitary sewer overflows, occurring from the City's wastewater collection and transmission system and (b) discharges of pollutants from wastewater treatment plants that exceed effluent limits established in state-issued permits. Under the proposed Consent Decree, the City will implement comprehensive injunctive relief measures to eliminate both SSOs and effluent violations, as well as measures to prevent such violations. The City will pay a civil penalty of $4.4 million, which amount will be shared equally by the United States and the State.

The publication of this notice extends the public comment period on the Consent Decree through November 8, 2019. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Texas* v. *City of Houston, Texas,* D.J. Ref. No. 90–5–1–1–08687/1. All comments must be submitted no later than November 8, 2019. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the 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 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 $39.25 (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 $20.50.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–22083 Filed 10–8–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Thomas J. Byrd, Jr.,* Civil Action No. 19–cv–18601, was lodged with the United States District Court for the District of New Jersey on Wednesday, October 2, 2019.

This proposed Consent Decree concerns a complaint filed by the United States against Thomas J. Byrd, Jr., pursuant to Section 301 of the Clean Water Act, 33 U.S.C. 1311, and Section 10 of the Rivers and Harbors Act, 33 U.S.C. 403, to obtain injunctive relief from and impose civil penalties against the Defendant for conducting earthmoving activities that resulted in the unauthorized discharge of dredged or fill material into waters of the United States. The proposed Consent Decree resolves these allegations against the Defendant by requiring the Defendant to conduct specific restoration activities, under the supervision of the United States Army Corps of Engineers.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Allan Urgent, Senior Litigation Counsel, United States Attorney's Office, District of New Jersey, 970 Broad Street, Suite 700, Newark, NJ 07102 and refer to *United States* v. *Thomas J. Byrd, Jr.,* 19–cv–18601 (DJ #90–5–1–1–20812).

The proposed Consent Decree may be examined at the Clerk's Office at the United States District Court for the District of New Jersey, 50 Walnut Street, Newark, NJ 07102. For other locational information, please visit *https://www.njd.uscourts.gov/.* In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2019–22054 Filed 10–8–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 009–2019]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Federal Bureau of Investigation (FBI), a component within the United States Department of Justice (DOJ or Department), proposes to modify an existing system of records notice titled The Next Generation Identification (NGI) System, JUSTICE/FBI–009. The FBI proposes to add iris images as another biometric in NGI, include fingerprints voluntarily submitted to NGI by individuals appealing firearms denials or seeking a review of their NGI identity records, include the testing environments of NGI, and clarify the biographic records in NGI.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public has 30 days in which to comment on the routine uses, described below. Please submit any comments by November 8, 2019.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 145 N St. NE, Suite 8W–300, Washington, DC 20530; by facsimile at 202–307–0693; or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Roxane M. Panarella, Privacy Attorney, Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Road, Clarksburg, WV 26306; telephone (202) 324–3000.

SUPPLEMENTARY INFORMATION: The NGI SORN is being republished due to several changes since its last publication in May of 2016. The following updates are being made: (1) The inclusion of iris images as a biometric; (2) the inclusion of individuals who voluntarily provide fingerprints and associated information in order to appeal firearm denials; (3) the inclusion of individuals who voluntarily provide fingerprints and associated information in order to obtain their own identity history records; (4) the inclusion of data in the testing environments of NGI; and (5) the clarification that some identity records contain only biographic information.

Iris images: As described in the previously published NGI SORN, one of the significant changes from the FBI's predecessor system, the Integrated Automated Fingerprint Identification System (IAFIS), was the implementation of NGI's additional biometric services. While IAFIS had been primarily a fingerprint system, NGI now offers the retention and searching of additional biometrics, such as facial images and palm prints. NGI continues to rely on ten-print fingerprints for positive identification but its identity records may contain multi-modal biometrics to augment those fingerprints and associated biographic information. For the past few years, the FBI has conducted a pilot to determine if iris images would be an appropriate and useful addition to the NGI operational environment. The FBI has coordinated with criminal justice and scientific partners to determine the efficacy of using iris images for biometric identification purposes. Based on the pilot findings, the FBI has determined that iris matching is highly accurate; therefore, the addition of iris images in the NGI operational environment would be of great value. The FBI plans to permit authorized users of NGI to enroll and search iris images in the near future. Although the May 2016 NGI SORN used the terms ''biometrics'' and ''biometric images'' which would include iris images, in the interest of clarity, the FBI has decided to specifically add ''iris images'' to all appropriate categories of individuals and categories of records in this SORN.

Firearms denials: In accordance with the Brady Handgun Violence Prevention Act of 1993, the FBI uses the National Instant Criminal Background Check System (NICS) to conduct background checks on potential buyers of firearms. If the FBI denies the transfer of the firearm based on federal or state prohibiting criteria, the individual has a right, per federal statute, to request the reason for the denial and to appeal that denial. An individual may voluntarily provide fingerprints to the FBI in support of the appeal. The FBI has been conducting NICS background checks for decades; however, with the passage of the Fix NICS Act in 2018, it sought ways to expedite the appeal process. If an individual submits fingerprints, the FBI now conducts electronic searches of the fingerprints and associated biographic information in NGI to locate relevant criminal history. The fingerprints and other personally identifiable

information are not retained, and are permanently deleted from NGI, after the search is conducted. The FBI is updating the categories of individuals and categories of records in this SORN to include fingerprints voluntarily submitted to NGI for firearms appeals.

Identity History Records: Pursuant to 28 CFR 16.30–16.34, issued in 1973, an individual may seek a copy of his or her identification record, or the lack thereof, for the purposes of access and amendment. The relevant federal regulations require that an individual provide fingerprints and specific biographic information to the FBI in order to ensure positive identification and accurate record retrieval. The fingerprints and associated personal information are retained in NGI for a period of three years. In addition, 28 CFR 50.12 provides that individuals have a right to appeal the accuracy of their identification records. For the past several decades, the FBI has processed millions of these requests and appeals. In so doing, the FBI has offered a valuable service to the public, affording individuals the opportunity to review, correct, or update criminal history records or receive confirmation of the absence of criminal history records. The May 2016 SORN included this population within Routine Use X; however, the FBI finds that this population is more appropriately placed within categories of individuals and categories of records. Therefore, the text has been removed from the Routine Uses and the appropriate updates are being made to the other sections of this SORN.

Testing Environments: NGI permits its users to test its various services prior to participation in the NGI operational system. This allows users to prepare for technical changes, system upgrades, and new requirements. NGI has both operational and non-operational testing environments that ensure ongoing data and system security, access, and integrity. The ''operational testing environments'' use live data to test functions of the NGI system in limited access environments disconnected from the rest of the environments. This data is largely duplicative of the data in the NGI operational system. The ''non-operational testing environments'' use simulated data to test functions of the NGI system in limited access environments disconnected from the rest of the environments. Testing data in both operational and non-operational environments consists of the same types of biometric and biographic information contained in the NGI operational system. This SORN adds the NGI testing environments and the data contained within as part of the NGI system.

Biographic Records: Although NGI is primarily a biometric system, in rare instances, the FBI may be unable to obtain fingerprints or other biometrics associated with an individual. This situation may occur with identities collected pursuant to the FBI's criminal and national security investigative missions, as well as some limited instances of identities submitted for background checks or clearances. In all instances, the FBI ensures that the biographic information is as accurate, complete, and up-to-date as reasonably possible and seeks to obtain fingerprints for the record. In the interest of transparency, the FBI is clarifying the presence of biographic-only records in this SORN.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated: September 30, 2019.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/FBI–009

SYSTEM NAME AND NUMBER:

The Next Generation Identification (NGI) System, JUSTICE/FBI–009.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records described in this notice are maintained at the Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), Clarksburg, WV. Some or all system information may be duplicated at other locations, including at FBI facilities, for purposes of system backup, emergency preparedness, and continuity of operations. Records may also be maintained in secure cloud computing environments. Cloud computing service providers may change. The cloud computing service provider on the date of this publication is the Amazon Web Services Commercial Cloud. For information about the current cloud computing service provider, please contact the Unit Chief, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001; telephone 202–324–3000.

SYSTEM MANAGER(S):

Assistant Director, Criminal Justice Information Services Division, Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, WV 26306.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authorities for the maintenance of these records include 28 U.S.C. 534; 34 U.S.C. 41101; 28 CFR 0.85(b) & (j), and Part 20.

PURPOSE(S) OF THE SYSTEM:

The purposes for maintaining the NGI system include identification and criminal history information functions in order to perform non-criminal justice background checks, to enforce criminal laws, to further national security, and to assist with humanitarian efforts. The NGI system maintains and disseminates relevant records to local, state, tribal, federal, foreign, and international criminal justice agencies, as well as non-criminal justice agencies and other entities where authorized by federal statute, state statute pursuant to 34 U.S.C. 41101, Presidential executive order, or regulation of the Attorney General of the United States. In addition, identification assistance is provided in disasters and for other humanitarian purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals fingerprinted as a result of a criminal inquiry, a lawful detention, an arrest, incarceration, or immigration or other civil law violation;

B. Individuals fingerprinted for the purposes of employment, licensing, military service, or volunteer service;

C. Individuals fingerprinted for the purposes of security clearances, suitability determinations, or other background checks;

D. Individuals fingerprinted for the purposes of immigration benefits, alien registration and naturalization, or other governmental benefits;

E. Individuals whose fingerprints or biographic information have been obtained pursuant to the FBI's authority to identify and investigate federal crimes and threats to the national security;

F. Individuals whose fingerprints or other biometrics have been received from foreign countries or international organizations pursuant to sharing agreements;

G. Individuals whose biometrics (*e.g.* palm prints, facial images, iris images) have been obtained as a result of a criminal inquiry, a lawful detention, an arrest, incarceration, or immigration or other civil law violation;

H. Individuals who have provided biometrics (*e.g.* palm prints, facial images, iris images) for the purposes of employment, licensing, military service, or volunteer service;

I. Individuals who have provided biometrics (*e.g.* palm prints, facial

images, iris images) for the purposes of security clearances, suitability determinations, or other background checks;

J. Individuals who have provided biometrics (*e.g.* palm prints, facial images, iris images) for the purposes of immigration benefits, alien registration and naturalization, or other governmental benefits;

K. Individuals whose biometrics (*e.g.* palm prints, facial images, iris images) have been obtained pursuant to the FBI's authority to identify and investigate federal crimes and threats to the national security;

L. Individuals whose fingerprints or other biometrics have been retrieved from locations, property, or persons associated with criminal or national security investigations;

M. Missing persons, unidentified persons, or others whose fingerprints or other biometrics have been submitted in support of disaster response, humanitarian efforts, or similar purposes;

N. Individuals whose fingerprints or other biometrics have been retained at their request or consent for personal identification purposes;

O. Individuals whose biographic and/or biometric information may be retained due to their official duties associated with the processing of system records (*e.g.* system administrators, fingerprint collectors) or in their roles as authorized users of the system;

P. Individuals who have provided fingerprints or biographic and/or supplementary information to request the reason for a firearm transfer denial or delay, appeal/challenge a denial of a firearm transfer, or otherwise inquire about a National Instant Criminal Background Check System transaction;

Q. Individuals who have provided fingerprints and associated biographic and/or supplementary information to obtain identity history record information for access, amendment, or appeal;

R. Individuals who have submitted biographic information for the purposes of federal employment, contract employment, security clearances, suitability determinations, or background checks;

S. Individuals who have provided fingerprints, biometrics, and/or biographic information to the testing environments of the NGI system.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Criminal fingerprint images with related biographic, biometric, and criminal justice information;

B. Civil fingerprint images with related biographic, biometric, and noncriminal justice information;

C. Fingerprint images with related biographic, biometric, and event information maintained for the purposes of national security (*e.g.* known or appropriately suspected terrorists);

D. Fingerprint images with related biographic, biometric, and event information received from federal government agencies pursuant to the FBI's authority to identify and investigate federal crimes and threats to the national security;

E. Fingerprint images with related biographic, biometric, and event information received from foreign countries or international organizations pursuant to sharing agreements;

F. Identity History Summary records that contain the criminal justice information associated with criminal fingerprints (*i.e.* ''rap sheets'') and/or the noncriminal justice information associated with civil fingerprints;

G. A name index pertaining to all individuals whose criminal fingerprint images are maintained in the system (*i.e.* the Interstate Identification Index);

H. Biometric images (*e.g.* palm prints, facial images, iris images) maintained for criminal, civil, and/or national security purposes;

I. Latent fingerprints and palm prints and/or other latent biometric images maintained for criminal and/or national security purposes;

J. Unknown facial images, iris images, and palm prints and/or other unknown biometric images maintained for criminal and/or national security purposes;

K. Fingerprint images and/or other biometric images maintained in support of disaster response, humanitarian efforts, or similar purposes;

L. Fingerprint images with related biographic, biometric, and event information maintained pursuant to an individual's request or consent;

M. Fingerprint images or biographic and/or supplementary information submitted to request the reason for a firearm transfer denial or delay, appeal/challenge a denial of a firearm transfer, or otherwise inquire about a National Instant Criminal Background Check System transaction;

N. Fingerprint images with associated biographic and/or supplementary information submitted to obtain identity history record information for access, amendment, or appeal;

O. Identity records maintained for the purposes of federal employment, contract employment, security clearances, suitability determinations, and background checks;

P. Identity records maintained pursuant to the FBI's authority to identify and investigate federal crimes and threats to the national security;

Q. Identity records maintained for the purpose of operating the testing environments of the NGI system.

RECORD SOURCE CATEGORIES:

Federal, state, local, tribal, foreign, and international agencies, and persons who voluntarily submit records for purposes such as firearms appeals, access and amendment, and humanitarian assistance.

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), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. To local, state, tribal, or federal law enforcement or criminal justice agencies (to include the police, prosecution, penal, probation, parole, and the judiciary) or other authorized federal agencies where such disclosure: (a) May assist the recipient in the performance of its law enforcement, criminal justice, or national security functions, to include the screening of employees or applicants for employment (b) may assist the FBI in performing a law enforcement or national security function (c) may promote, assist, or otherwise serve the mutual efforts of the law enforcement, criminal justice, and national security communities, such as site security screening of visitors to criminal justice facilities and military installations; or (d) may serve a compatible civil law enforcement purpose;

B. To state or local agencies for the purpose of background investigations of applicants for noncriminal justice employment or licensing purposes, or other entities, if authorized by a federal statute (*e.g.* The National Child Protection Act of 1993, Volunteers for Children Act, Adam Walsh Child Protection and Safety Act of 2006) or a state statute pursuant to Public Law 92–544. Examples include: Those caring for or in contact with vulnerable populations (children, the elderly, the disabled); nursing and home healthcare professionals; non-profit volunteers; foster/adoptive parents; private security officers; providers of medical services/

supplies; employees of federal chartered/insured banking institutions; mortgage loan originators; pari-mutuel wagering/racing licensees; and firearms or explosives permits/licenses;

C. To authorized police departments of railroads and of private colleges and universities performing the administration of criminal justice;

D. To officials of tribal agencies for the purpose of Indian childcare, Indian gaming, or pursuant to a Public Law 92–544 state statute;

E. To officials of civil or criminal courts for use in domestic violence or stalking cases;

F. To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies;

G. To private contractors for the purpose of providing services for the administration of criminal justice pursuant to a specific agreement (which must incorporate a Security Addendum approved by the Attorney General of the United States) with a criminal justice agency or a noncriminal justice governmental agency performing criminal justice dispatching functions or data processing/information services for criminal justice agencies;

H. To private contractors pursuant to specific outsourcing agreements with noncriminal justice agencies to provide noncriminal justice administrative functions such as electronic fingerprint submission and response; tracking missing dispositions; and archival, storage, or destruction of criminal history record information;

I. To authorized foreign governments or international agencies where such disclosure: (a) May assist the recipient in the performance of its law enforcement, criminal justice, or national security functions (b) may assist the FBI in performing a law enforcement or national security function (c) may promote, assist, or otherwise serve the mutual efforts of the international community or (d) may serve a compatible civil law enforcement purpose;

J. To the Department of Defense, Department of State, Department of Transportation, Office of Personnel Management, Central Intelligence Agency, or other statutorily authorized federal agency for the purpose of determining the eligibility of a person for access to classified information or assignment to or retention in sensitive national security positions, the Armed Forces, or positions of public trust or other critical or sensitive positions, or other suitability determinations;

K. To federal agencies for use in background investigations of present and prospective federal employees and contractors;

L. To federal agencies for any official duty required by their agency rules, regulations, Executive Order, or statute;

M. To regulatory agencies authorized by federal statute (*e.g.* the Securities and Exchange Commission, the Nuclear Regulatory Commission, the Commodity Futures Trading Commission);

N. To the Department of State for the purpose of determining the eligibility of visa applicants;

O. To the Department of Health and Human Services and Department of Agriculture for the purpose of conducting security risk assessments of individuals handling biological agents or toxins;

P. To the Department of Homeland Security and its components for use in background investigations of individuals with access to secure areas of airports, aircraft, ports, and vessels; commercial drivers of hazardous materials; applicants for aircraft training; those responsible for screening airport passengers and property; those with security functions related to baggage and cargo; and other statutorily authorized populations;

Q. To the National Center for Missing and Exploited Children when acting within its statutory duty to support law enforcement agencies and to governmental social service agencies when acting within their duties to investigate or respond to reports of child abuse, neglect, or exploitation or other legally mandated duties;

R. To public housing authorities for the purpose of conducting background checks of applicants for, or tenants of, public housing and to Indian Tribes or Tribally Designated Housing Entities for the purpose of conducting background checks of adult applicants for employment or housing;

S. To authorized local, state, and federal agencies for the purposes of emergency child placement or emergency disaster response;

T. To authorized local, state, tribal, federal, foreign, or international agencies for humanitarian purposes;

U. To a designated point of contact at a criminal justice agency for the purpose of background checks under the National Instant Criminal Background Check System (NICS);

V. To local, state, or federal law enforcement agencies for the investigation of and issuance of firearms and explosives permits;

W. To government employees, contractors, grantees, experts, consultant, students, or others for research conducted or training performed in accordance with statutory and regulatory requirements, including parts 22 and 46 of title 28 of the Code of Federal Regulations;

X. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

Y. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOJ (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 the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

Z. To another Federal agency or Federal entity, when the Department 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored in paper and/or electronic format.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are typically retrieved by fingerprints, biometrics, individual name, and other identifying data, including unique identifying numbers assigned by the FBI or other government agencies. Positive identification is effected only by comparison of fingerprint impressions submitted for search against the fingerprints maintained within the

system. Another means of retrieval is through name indices, which contain names of the individuals, their birth data, other physical descriptors, and unique identifying numbers, if such have been assigned.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system will be retained and disposed of in accordance with the records schedule approved by the National Archives and Records Administration. In general, fingerprints and associated biometric and biographic information will be destroyed when the subjects attain 110 years of age or 7 years after notification of death with biometric confirmation. Criminal history records and transaction logs are to be permanently retained.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All records are maintained in a secure government facility with access limited to only authorized personnel or authorized and escorted visitors. Disclosure of information from the system is made only to authorized recipients upon authentication and verification of the right to access the system by such persons and agencies. The physical security and maintenance of information within the system is provided by FBI rules, regulations, and procedures.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be addressed to the FBI, Record/Information Dissemination Section, Attn: FOIPA Request, 170 Marcel Drive, Winchester, VA 22602–4843. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from the access provisions as described in the ''EXEMPTIONS PROMULGATED FOR THE SYSTEM'' paragraph, below. An individual who is the subject of a record in this system of records may access those records that are not exempt from access. A determination whether a record may be accessed will be made at the time a request is received.

Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice website at *https://www.justice.gov/oip/oip-request.html.*

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR part 16 Subpart D, ''Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the ''RECORD ACCESS PROCEDURES'' paragraph, above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked ''Privacy Act Amendment Request.'' All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record. Some information may be exempt from the amendment provisions as described in the ''EXEMPTIONS PROMULGATED FOR THE SYSTEM'' paragraph, below. An individual who is the subject of a record in this system of records may contest or amend those records that are not exempt. A determination of whether a record is exempt from the amendment provisions will be made after a request is received.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, ''Requests for Amendment or Correction of Records.''

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and/or (k) subsections. The exemptions will be applied only to the extent that the information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k) subsections. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e), and have been published in the **Federal Register**.

HISTORY:

Next Generation Identification System, 81 FR 27284 (May 5, 2016); 82 FR 24151, 156 (May 25, 2017).

[FR Doc. 2019–21585 Filed 10–8–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the annual Labor Surplus Area (LSA) list for Fiscal Year (FY) 2020.

DATES: The annual LSA list is effective October 1, 2019, for all states, the District of Columbia, and Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Samuel Wright, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Avenue NW, Room C–4514, Washington, DC 20210. Telephone: (202) 693–2870 (This is not a toll-free number) or email *wright.samuel.e@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subpart A. These regulations require the Employment and Training Administration (ETA) to classify jurisdictions as LSAs pursuant to the criteria specified in the regulations, and to publish annually a list of LSAs. Pursuant to those regulations, ETA is hereby publishing the annual LSA list. In addition, the regulations provide exceptional circumstance criteria for classifying LSAs when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Eligible Labor Surplus Areas

A LSA is a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during

the same 24-month reference period. ETA uses only official unemployment estimates provided by the Bureau of Labor Statistics in making these classifications. The average unemployment rate for all states includes data for the Commonwealth of Puerto Rico. The LSA classification criteria stipulate a civil jurisdiction must have a ''floor unemployment rate'' of 6 percent or higher to be classified a LSA. Any civil jurisdiction that has a ''ceiling unemployment rate'' of 10 percent or higher is classified a LSA.

Civil jurisdictions are defined as follows:

1. A city of at least 25,000 population on the basis of the most recently available estimates from the Bureau of the Census; or

2. A town or township in the States of Michigan, New Jersey, New York, or Pennsylvania of 25,000 or more population and which possess powers and functions similar to those of cities; or

3. All counties, except for those counties which contain any type of civil jurisdictions defined in ''1'' or ''2'' above; or

4. A ''balance of county'' consisting of a county less any component cities and townships identified in ''1'' or ''2'' above; or

5. A county equivalent which is a town in the States of Connecticut, Massachusetts, and Rhode Island, or a municipio in the Commonwealth of Puerto Rico.

Procedures for Classifying Labor Surplus Areas

The Department of Labor (DOL) issues the LSA list on a fiscal year basis. The list becomes effective each October 1, and remains in effect through the following September 30. The reference period used in preparing the current list was January 2017 through December 2018. The national average unemployment rate (including Puerto Rico) during this period is rounded to 4.34 percent. Twenty percent higher than the national unemployment rate during this period is rounded to 5.21 percent. Since the calculated unemployment rate plus 20 percent (5.21 percent) is below the ''floor'' LSA unemployment rate of 6 percent, a civil jurisdiction must have a two-year unemployment rate of 6 percent or higher in order to be classified a LSA. To ensure that all areas classified as labor surplus meet the requirements, when a city is part of a county and meets the unemployment qualifier as a LSA, that city is identified in the LSA list, the balance of county, not the entire county, will be identified as a LSA if the balance of county also meets the LSA unemployment criteria. The FY 2019 LSA list, statistical data on the current and previous years' LSAs are available at *http://www.doleta.gov/programs/lsa.cfm.*

Petition for Exceptional Circumstance Consideration

The classification procedures also provide criteria for the designation of LSAs under exceptional circumstances criteria. These procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment which is not temporary or seasonal and which was not reflected in the data for the 2-year reference period. Under the program's exceptional circumstance procedures, LSA classifications can be made for civil jurisdictions, Metropolitan Statistical Areas or Combined Statistical Areas, as defined by the U.S. Office of Management and Budget. In order for an area to be classified as a LSA under the exceptional circumstance criteria, the state workforce agency must submit a petition requesting such classification to the Department of Labor's ETA. The current criteria for an exceptional circumstance classification are:

1. An area's unemployment rate is at least 6 percent for each of the three most recent months;

2. A projected unemployment rate of at least 6 percent for each of the next 12 months because of an event; and

3. Documentation that the exceptional circumstance event has occurred. The state workforce agency may file petitions on behalf of civil jurisdictions, Metropolitan Statistical Areas, or Micropolitan Statistical Areas.

State Workforce Agencies may submit petitions in electronic format to *wright.samuel.e@dol.gov*, or in hard copy to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue NW, Room C–4514, Washington, DC 20210, Attention Samuel Wright. Data collection for the petition is approved under OMB 1205–0207, expiration date July 31, 2020.

Signed at Washington, DC,

John Pallasch,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 2019–22084 Filed 10–8–19; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 198th Meeting

AGENCY: National Endowment for the Arts.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held. Open to the public on a space available basis.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting time and date. The meeting is Eastern time and the ending time is approximate.

ADDRESSES: The Phillips Collection Museum, 1600 21st Street NW, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Victoria Hutter, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the September 10, 2019 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, to Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact Beth Bienvenu, Office of Accessibility, National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

The upcoming meeting is:

National Council on the Arts 198th Meeting

This meeting will be open.

Date and time: October 25, 2019; 9:30 a.m. to 12:00 p.m.

There will be opening remarks and voting on recommendations for grant funding and rejection, followed by

updates from the NEA Chairman and guest presentations.

Dated: October 3, 2019.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2019–22008 Filed 10–8–19; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–18 and 50–183; NRC–2019–0082]

GE Hitachi Nuclear Energy; Vallecitos Nuclear Center, Vallecitos Boiling Water Reactor and Empire State Atomic Development Agency; Vallecitos Experimental Superheat Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) regarding a partial site release for license Nos. DPR–1 (Vallecitos Boiling Water Reactor) and DR–10 (Empire State Atomic Development Agency Vallecitos Experimental Superheat Reactor), issued to GE Hitachi Nuclear Energy at the Vallecitos Nuclear Center in Sunol, California.

DATES: The EA and FONSI set forth in this document is available on October 9, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0082 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0082. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jack Parrott, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–00001; telephone: 301–415–6634; email: *Jack.Parrott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received, by letter dated December 14, 2018 (ADAMS Accession No. ML18348A425), a request from GE Hitachi Nuclear Energy (GEH or licensee) to approve a partial site release of a non-impacted portion of its Vallecitos Nuclear Center (VNC) site located at 6705 Vallecitos Road, Sunol, California. The December 14, 2018 letter transmitted a report, entitled ''Evaluation for Unconditional Release of Route 84 Frontage of VNC Site,'' prepared by GEH evaluating the proposed release. The information in the request letter was supplemented by information provided in a letter dated February 26, 2019 (ADAMS Accession No. ML19057A466).

The VNC site contains two shutdown power reactor units licensed under part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of title 10 of the *Code of Federal Regulations* (10 CFR). These two units are the Vallecitos Boiling Water Reactor (VBWR), NRC License DPR–1, Docket 50–18, and the Empire State Atomic Development Agency Vallecitos Experimental Superheat Reactor (EVESR), NRC License DR–10, Docket 50–183. In accordance with 10 CFR 50.4(b)(8)–(9), the licensee has certified, pursuant to 10 CFR 50.82(a)(1), that both units have permanently ceased operation and that all nuclear fuel has been removed from the respective reactor vessels of both units. These units are presently in ''SAFSTOR'' [1] status awaiting the termination of the power reactor licenses.

In accordance with 10 CFR 50.83, ''Release of Part of a Power Reactor Facility or Site for Unrestricted Use,'' the licensee requested release from the NRC licenses, for unrestricted use, an approximately 2.8-hectare (7-acre) irregularly shaped parcel along the southern edge of the VNC site. The licensee is declaring the parcel as a ''non-impacted area,'' which is defined in 10 CFR 50.2 to mean an area ''with no reasonable potential for residual radioactivity in excess of natural background or fallout levels.'' If approved, the 2.8-hectare (7-acre) parcel will no longer be considered part of the licensed site and thus, no longer under NRC jurisdiction. Once released, the 2.8-hectare (7-acre) parcel will be available for unrestricted use. In this regard, GEH intends to make this irregularly shaped parcel a construction easement along State Route 84 (Vallecitos Road) available to Alameda County Transportation Commission (ACTC) to support road development and widening of Vallecitos Road.

The NRC is considering approval of the requested partial site release for the VBWR and EVESR licenses at the VNC site. Therefore, in compliance with the National Environmental Policy Act, as amended, 42 U.S.C. 4321 *et seq.* (NEPA), and its NEPA implementing regulations in 10 CFR part 51, the NRC has prepared this environmental assessment (EA). In accordance with 10 CFR 50.83(b)(5), if an environmental impact statement (EIS) had been previously prepared, then the licensee would have been required to discuss whether the environmental impacts associated with the proposed partial site release were bounded by a previous EIS. If those impacts were bounded, then the preparation of an EA would not be necessary. However, because the VNC site was licensed prior to the enactment of NEPA, no EIS was prepared when the VNC site was first licensed, and there is no other appropriate EIS that could bound these impacts. Therefore, the NRC has prepared an EA for this proposed action. Based on the results of the EA that follows, the NRC has determined not to prepare an EIS for the partial site release and is issuing a finding of no significant impact (FONSI).

II. Environmental Assessment

Description of the Proposed Action

The proposed action would approve the release of a 2.8-hectare (7-acre), non-impacted parcel, located along the southern boundary of the VNC site, for

[1] SAFSTOR is the decommissioning method in which a nuclear facility is placed and maintained in a condition that allows the safe storage of radioactive components of the nuclear plant and subsequent decontamination to levels that permit license termination.

unrestricted use. Once released, the 2.8-hectare (7-acre) parcel would no longer be part of the licensed site and thus, no longer under NRC jurisdiction.[2] Under the applicable NRC regulation, 10 CFR 50.83(b), a licensee may submit a written request for the release of non-impacted land if a license amendment is not otherwise required. Pursuant to 10 CFR 50.83(c), upon determining that the licensee's submittal is adequate, the NRC shall inform the licensee in writing that a partial release of non-impacted land for unrestricted use is approved.

Need for the Proposed Action

The licensee has requested the release of the 2.8-hectare (7-acre), non-impacted parcel as the VNC property is entirely on the north side of Vallecitos Road which is a two to four-lane paved highway currently being improved and widened under a California Department of Transportation project in cooperation with the ACTC. According to the licensee, the property proposed to be released is an area that has never been used for licensed activity. The land is undeveloped grassland serving as road frontage with a small area landscaped to provide an aesthetic entrance to VNC. The licensee plans to release this property as soon as approval is received from the NRC. The property will then be expediently afforded to the ACTC.

VNC Site

VNC is located near the center of the Pleasanton quadrangle of Alameda County, California. The site is east of San Francisco Bay, approximately 56 air kilometers (35 air miles) east-southeast of San Francisco and 32 air kilometers (20 air miles) north of San Jose. The properties surrounding the site are primarily used for agriculture and cattle raising, with some residences, which are mostly to the west of the property. The nearest sizeable towns are Pleasanton located 6.6 kilometers (4.1 miles) to the north-northwest and Livermore located 10 kilometers (6.2 miles) to the northeast.

The VNC site is on the north side of Vallecitos Road, which is a two and four-lane paved highway. A Union Pacific railroad line lies about three kilometers (2 miles) west of the site. There is light industrial activity within a 16-kilometer (10-mile) radius of the plant. San Jose (32 kilometers (20 miles) south), Oakland (48 kilometers (30 miles) northwest) and San Francisco (56 kilometers (35 miles) northwest) are major industrial centers. The property boundary, which has not changed since the original property purchase in 1956, is fenced and posted ''No Trespassing.'' A security gate at the entrance to the developed area of the VNC provides access control to the active area of the site. The GEH provided evaluation reports provide additional information about the site (ADAMS Accession Nos. ML18348A425 and ML19057A466).

Safety Evaluation of the Proposed Action

The NRC staff evaluated the safety impacts of the proposed action and concludes that the requirements of 10 CFR 50.83, 10 CFR 50.59, and other applicable NRC regulations have been met (ADAMS Accession No. ML19249C554).

Environmental Impacts of the Proposed Action

The NRC staff evaluated the environmental impacts of the proposed action and concludes that the release of the 2.8-hectare (7-acre) parcel will not have any adverse environmental impacts. The 2.8-hectare (7-acre) parcel is along the southern boundary of the site. This parcel is mostly undeveloped grassland road frontage with a small area landscaped to provide an aesthetic entrance to the VNC. There is no evidence of pre-existing industrial structures indicative of radiological work. The power reactors at the site have permanently ceased operations and are being maintained in a possession-only SAFSTOR status. The release of the 2.8-hectare (7-acre) parcel will not impact the shutdown reactors.

The licensee notes that the 2.8-hectare (7-acre) parcel has never been used for licensed activity. The licensee conducted an evaluation of the parcel based on guidance for doing historical site assessments in NUREG–1575, ''Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)'' (NUREG–1575, Revision 1) *https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1575/r1/#pub-info* and relied on visual inspection, historical records, process knowledge, and the results of sentinel measurements to conclude that the parcel is non-impacted. None of the reviews indicate that radioactive material was ever used in VNC property fronting Vallecitos Road or that the area was contaminated with radioactive material because of NRC licensed activities. The area is characterized as non-impacted per NUREG–1575.

A Hazardous Materials Soil Investigation was conducted by Baseline Environmental Consulting for this area (ADAMS Accession No. ML19057A466). Baseline Environmental Consulting collected soil samples from 16 locations along Vallecitos Road at depths between 0 and 15 centimeters (0 and 6 inches) and analyzed them for gross alpha and gross beta activity. These locations were selected because they are local low points where contamination might be expected to consolidate.

Based on the results of this investigation the licensee concluded that the soils in the parcel do not appear to be affected by radiological materials associated with operation of the GEH facility and would not be expected to pose a health risk to construction workers or the environment and that there is no evidence of any radiological impact on the 2.8-hectare (7-acre) parcel.

The NRC verified that the area to be released was not radiologically impacted by licensed site activities through an independent confirmatory survey by the Oak Ridge Institute for Science and Education (ORISE). ORISE performed independent assessment activities during the period of February 5–6, 2019. The results of the ORISE independent assessment is in a report to NRC dated August 13, 2019 (ADAMS Accession No. ML19239A118). Confirmatory survey activities included gamma walkover scanning, gamma direct measurements, and soil sampling in the applicable land area. Elevated direct gamma radiation levels above background were identified in the landscaped area near the road leading into the site. The elevated counts were attributed to naturally occurring radioactive material in the lava rocks used in the landscaping. A total of 20 soil samples were collected throughout the land area: 13 random samples, one judgmental sample, and six additional confirmatory samples. Comparison of naturally occurring radionuclide concentrations showed that the Vallecitos Road frontage soils results were consistent with the non-impacted determination.

The NRC staff reviewed the request and concluded that the environmental impacts associated with this request remain bounded by the environmental impacts evaluated in the previously issued ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,'' NUREG–0586, Supplement 1, Volume 1 (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0586/s1/v1/*

[2] Under the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (AEA), the NRC's jurisdiction is limited to matters of radiological health and safety, for both members of the public and occupational workers, and of physical security for NRC licensed facilities and radioactive materials possessed by NRC licensees. The NRC holds no property interest in licensee owned or controlled lands nor does the NRC have any land or natural resources management authority.

index.html). NUREG–0586 evaluated the environmental impacts of the decommissioning of entire power reactor sites and facilities that have been impacted by operations. The release of a part of a power reactor site that has been demonstrated to not have been impacted by operations is within the scope of the evaluation performed in NUREG–0586. The NRC staff concludes that the proposed release of the 2.8-hectare (7-acre) parcel is bounded by NUREG–0586.

The NRC has determined that the proposed release of the 2.8-hectare (7-acre) parcel is wholly procedural and administrative in nature, that the parcel is radiologically non-impacted, and that the licensee has no safety, physical security, or emergency preparedness need to retain the parcel. The environmental impacts associated with the shutdown power reactors will not change as a result of the proposed release of the 2.8-hectare (7-acre) parcel. The proposed release will not result in public or environmental exposure to radioactive contamination. There are no known records of any spills, leaks, or uncontrolled release of radioactive material on the 2.8-hectare (7-acre parcel). The 2.8-hectare (7-acre) parcel was not used for any activities that could have contaminated the property. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed release of the 2.8-hectare (7-acre) parcel from NRC jurisdiction does not involve or authorize any construction activities, renovation of buildings or structures, ground disturbing activities or other alteration to land. The proposed release of the 2.8-hectare (7-acre) parcel will not result in any change to current licensed activities on that portion of the site that will remain under NRC jurisdiction and therefore, will not result in any changes to the workforce or vehicular traffic on the licensed portion of the site. Furthermore, as the NRC has determined that the proposed release of the 2.8-hectare (7-acre) parcel is an administrative action, it is not a type of activity that has the potential to cause effects on historic properties or cultural resources, including traditional cultural properties and will have no effect on listed species or critical habitat. In addition, the proposed release of the 2.8-hectare (7-acre) parcel will not result in any change to non-radiological plant effluents and thus, will have no impact on either air or water quality. Therefore, there are no significant non-radiological environmental impacts associated with the proposed release of the 2.8-hectare (7-acre) parcel.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Connected Action

The California Department of Transportation and the ACTC determined that the California State Route 84 Expressway Widening Project would have no significant impact on the human environment. The Final Environmental Impact Report/Environmental Assessment with Finding of No Significant Impact, dated April 2018, is available at (*https://dot.ca.gov/caltrans-near-me/district-4*).

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed release of the 2.8-hectare (7-acre) parcel (*i.e.,* the ''no-action'' alternative). Denial of the request would result in the 2.8-hectare (7-acre) parcel remaining part of the licensed site and subject to NRC jurisdiction. As the licensee has no need for the parcel, its current use as undeveloped grassland and for site entrance landscaping would most likely continue. As there is no policy or regulatory reason for the NRC to require a licensee to retain land that is not radiologically impacted and for which the licensee has no further operational need, the no-action alternative is not further considered.

Conclusion

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

Agencies and Persons Consulted

A public meeting to obtain comments on the release approval request was announced on the NRC public meeting website on March 18, 2019 (ADAMS Accession No. ML19077A149). A notice of GEH's request to release the 2.8-hectare (7-acre) parcel and the public meeting, including a request for comment, was also published in ''The Independent,'' Livermore, CA on March 21, 2019. The NRC staff published a notice of the receipt of GEH's request, including a request for comment, in the **Federal Register** on March 27, 2019 (84 FR 11578). The NRC staff conducted the public meeting in Dublin, CA on March 28, 2019. A summary of the public meeting, which includes copies of the presentations made and a copy of the transcript of the meeting, is available in ADAMS at Accession No. ML19239A043. No comments were made on the Federal Rulemaking website, or were received by mail or email, and all questions asked at the meeting were answered in the meeting.

The NRC contacted the California Department of Public Health on September 4, 2019 (ADAMS Accession No. ML19275D493) concerning this request. There were no comments, concerns or objections from the State official

III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of EIS is not warranted. Accordingly, the NRC has determined that a FONSI is appropriate. In accordance with 10 CFR 51.32(a)(4), this FONSI incorporates the EA set forth in this notice by reference.

Dated at Rockville, Maryland, this 3rd day of October, 2019.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–21982 Filed 10–8–19; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87210; File No. SR–CBOE–2019–068]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Move the Rules in Chapter XVII, Which Governs Exchange Disciplinary Procedures, of the Current Rulebook to Proposed Chapter 13 of the Shell Rulebook

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to move the Rules in Chapter XVII, which governs Exchange disciplinary procedures, of the currently effective Rulebook (''current Rulebook'') to proposed Chapter 13 of the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to relocate current Chapter XVII which governs Exchange disciplinary procedures, to proposed Chapter 13 in the shell Rulebook. The Exchange notes that in addition to relocating the disciplinary rules to proposed shell Chapter 13, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change relocates the rules as follows:

Shell rule	Current rule
13.1 Disciplinary Jurisdiction	17.1 Disciplinary Jurisdiction.
13.2 Compliant and Investigation	17.2 Compliant and Investigation.
13.3 Expedited Proceeding	17.3 Expedited Proceeding.
13.4 Charges	17.4 Charges.
13.5 Answer	17.5 Answer.
13.6 Hearing	17.6 Hearing.
13.7 Summary Proceedings	17.7 Summary Proceedings.
13.8 Offers of Settlement	17.8 Offers of Settlement.
13.9 Decision	17.9 Decision.
13.10 Review	17.10 Review.
13.11 Judgment and Sanction	17.11 Judgment and Sanction.
13.12 Service of Notice	17.12 Service of Notice
13.13 Extension of Time Limits	17.13 Extension of Time Limits.
13.14 Reporting to Central Registration Depository	17.14 Reporting to Central Registration Depository.
13.15 Imposition of Fines for Minor Rule Violations	17.50 Imposition of Fines for Minor Rule Violations.
13.16 *Ex Parte* Communications	17.15 *Ex Parte* Communications.

The proposed changes are of a non-substantive nature and will not amend the relocated rules other than to update their numbers, conform paragraph structure and number/lettering format to that of the shell Rulebook, and make cross-reference changes to shell rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As stated, the proposed rule change makes no substantive changes to the rules. The proposed rule change is merely intended to relocate the Exchange's rules to the shell Rulebook and update their numbers, paragraph structure, including number and lettering format, and cross-references to conform to the shell Rulebook as a whole in anticipation of the technology migration on October 7, 2019. As such, the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the way the Exchange's Rulebook is organized, making it easier to read, and, particularly, helping market participants better understand the rules of the Exchange, which will also result in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive change, but rather, seeks to make non-substantive rule changes in relocating the rules and updating cross-references to shell rules in anticipation of the October 7, 2019 technology migration. The Exchange also does not believe that the proposed rule change will impose any undue burden on competition because the relocated rule text is exactly the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the five day prefiling requirement and the 30-day operative delay so that it may implement the proposed rule change in connection with the technology migration on October 7, 2019. According to the Exchange, waiver of the prefiling requirement and the operative delay will help to avoid any potential confusion by providing investors with a complete Exchange Rulebook upon the completion of migration. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change raises no new or novel issues as it does not substantively amend the relocated rules. Therefore, the Commission hereby waives the prefiling requirement and the operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–068 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–CBOE-2019–068. 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–CBOE–2019–068 and should be submitted on or before October 30, 2019.

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Because this proposal does not make any substantive changes to the rules but only moves them into the shell Rulebook, the Commission designates a shorter time under Rule 19b–4(f)(6)(iii) by waiving the five business prefiling period for this proposal.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the five day prefiling requirement and the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22011 Filed 10–8–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87212; File No. SR–NYSE–2019–44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Add Certain Rules to the List of Minor Rule Violations in Rule 9217, Delete Obsolete Rules, and Increase the Maximum Fine for Minor Rule Violations

October 3, 2019.

I. Introduction

On August 8, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''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 (1) add certain rules to the list of minor rule violations in Rule 9217; (2) delete obsolete rules from Rule 9217; and (3) increase the maximum fine for minor rule violations to $5,000 in order to more closely align the Exchange's minor rule plan with that of its affiliates. The proposed rule change was published for comment in the **Federal Register** on August 22, 2019.[3] On September 13, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comment letters on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal, as Modified by Amendment No. 1

Rule 9217 sets forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as described in proposed Rule 9216(b). The Exchange proposes to add the following introductory paragraph to Rule 9217: ''Nothing in this Rule shall require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan. If the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 9000 Series rather than under this Rule.'' This language is based on NYSE Arca Rule 10.9217(d).

The Exchange proposes to add the following rules to the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b):

- Rule 7.30 (Authorized Traders)
- Rule 76 (''Crossing'' Orders)
- Rule 103(a)(i) (Registration and Capital Requirements of DMM Units)
- Rule 1210 (Registration Requirements)
- Rule 3110(a) and (b)(1) (Supervision)

The Exchange also proposes that all of the registration and other requirements set forth in Rule 345 be eligible for a minor rule fine.

Rule 7.30 establishes requirements for member organizations relating to Authorized Traders. The rule is based on NYSE Arca Rule 7.30–E (Authorized Traders), which is eligible for NYSE Arca's Minor Rule Plan.[5]

Rule 76 is substantially similar to NYSE American Rule 934NY(a)(1) (Crossing) and NYSE Arca Rule 6.47–O(a)(1) (''Crossing'' Orders—OX), which govern manual crosses on those respective exchanges' options trading Floors. NYSE American Rule 934NY(a)(1) is eligible for NYSE American's Minor Rule Plan, and NYSE Arca Rule 6.47–O(a)(1) is eligible for NYSE Arca's Minor Rule Plan.[6]

Rule 103(a)(1) provides that no member organization shall act as a Designated Market Maker (''DMM'') unit in any security unless such member organization is registered as a DMM unit in such security with the Exchange and unless the Exchange has approved of the member organization acting as a DMM unit and not withdrawn such approval. The rule is substantially similar to NYSE Arca Rule 7.20–E(a) (Registration of Market Makers) and NYSE National Rule 7.20 (Registration of Market Makers), which similarly require that market makers on those exchanges be registered in a security and that the registration has not been suspended or cancelled. Both NYSE Arca Rule 7.20–E(a) and NYSE National Rule 7.20 are eligible for minor rule fines.[7]

Similarly, Rule 1210, which was adopted in October 2018,[8] sets forth the requirements for persons engaged in the investment banking or securities business of a member organization to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 1220. The Exchange proposes to add Rule 1210 to the list of minor rules in Rule 9217. The Exchange states that having the ability to issue a minor rule fine for failing to comply with the registration requirements of Rule 1210 would be consistent with and complement the Exchange's current ability to issue minor rule fines for other registration violations (*e.g.,* Rule 345).

Rule 3110 is the Exchange's supervision rule. The Exchange proposes to add subsections (a) and (b)(1) of Rule 3110, governing failure of a member organization to establish and maintain a supervisory system and failure to establish, maintain, and enforce written supervisory procedures, respectively, to Rule 9217. Failure to supervise individuals and accounts is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.[9]

Finally, Rule 345 sets forth certain employee registration, approval and other exchange requirements, including the requirements pertaining to the registration of a securities lending representative, Securities Trader or direct supervisor thereof. Currently, the only violation of Rule 345 that is eligible for a minor rule fine is failure of a member organization to have individuals responsible and qualified for the position of Securities Lending Supervisor. The Exchange proposes that all of registration and other requirements set forth in Rule 345 be

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86696 (August 16, 2019), 84 FR 43836.

[4] In Amendment No. 1, the Exchange: (1) Clarified that fines exceeding $2,500 would not be eligible for quarterly reporting under Commission Rule 19d–1(c) and (2) made technical and conforming changes. Because the changes in Amendment No. 1 do not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 replaced and supercedes the original filing in its entirety and is available at *https://www.sec.gov/comments/sr-nyse-2019-44/srnyse201944-6120985-192149.pdf.*

[5] *See* Securities Exchange Act Release No. 81225 (July 27, 2017), 82 FR 36033, 36035 (August 2, 2017) (SR–NYSE–2017–35). *See also* NYSE Arca Rule 10.12(i)(4) (NYSE Arca Rule 7.30–E); NYSE Arca Rule 10.9217(f)(4). NYSE Arca Rule 10.12 is NYSE Arca's legacy minor rule plan and applies only to matters for which a written statement was served under Rule 10.12 prior to May 27, 2019; thereafter, Rules 10.9216(b) and 10.9217 apply. *See generally* NYSE Arca Rules 10.0 (preamble) and 10.9001.

[6] *See* NYSE American Rule 9217 (Rule 934NY); NYSE Arca Rules 10.12(h)(3) and 10.9217(e)(3). *See* note 5, *supra.*

[7] *See* NYSE Arca Rules 10.12(i)(5) and 10.9217(f)(5); NYSE National Rule 10.9217(d).

[8] *See* Securities Exchange Act Release No. 84336 (October 2, 2018), 83 FR 50727 (October 9, 2018) (SR–NYSE–2018–44).

[9] *See* NYSE Arca Rules 11.18 (Supervision), 10.12(j)(8) and 10.9217(g)(8).

eligible for a minor rule fine. The proposed change would be consistent with the practice on the Exchange's affiliates whose comparable rule is eligible for a minor rule fine.[10]

The Exchange proposes to delete the following rules from Rule 9217 as they are obsolete:

- Rule 706, which was deleted in 2014.[11]
- Rule 312(h), which is marked ''Reserved'' in the Exchange's rules and was deleted in 2010.[12]
- Rule 382(a). Rule 382 is also marked ''Reserved'' and was deleted in 2011.[13]
- Rule 791(c), which was also deleted in 2014.[14]
- Rules 352(b) and (c). Rule 352 is marked ''Reserved'' and was deleted in 2009.[15]
- Rule 392, which is also marked ''Reserved'' and was deleted in 2009.[16]
- Rule 410A, which was deleted in 2013.[17]
- Rule 445(4), which is marked ''Reserved'' and was deleted in 2009.[18]

The Exchange also proposes to correct a typographical error in Rule 9217. Rule 9217 refers to Rule 3010(a). The correct reference should be to Rule 3110(a), the Exchange's supervision rule, which was added to Rule 9217 in 2014.[19]

Eligible Fine Amounts

The maximum fine for minor rule violations under Rule 9216(b) is currently $2,500. The maximum fine under the Exchange's legacy minor rule plan set forth in Rule 476A previously was $5,000. In adopting its current disciplinary rules in 2013, the Exchange stated that it was appropriate to lower the maximum fine amount to achieve harmony with the rules of the Financial Industry Regulatory Authority (''FINRA'').[20] The Exchange's affiliates NYSE American, NYSE National and NYSE Arca, however, have since harmonized their disciplinary rules with the Exchange and adopted or retained a $5,000 maximum fine for minor rule violations.[21] The Exchange accordingly proposes to adopt the same maximum fine amount in order to harmonize the maximum fine level with its affiliated exchanges. The Exchange also proposes to adopt the same 24-month rolling period to calculate second and subsequent fines as that used by its affiliated exchanges.

To effectuate this change, the Exchange proposes to add the following fine chart contained in Rule 476A, the Exchange's legacy rule governing the imposition of minor rule fines, to Rule 9217:[22]

Fine Amount	Individual
First Time Fined	$1,000
Second Time Fined **	2,500
Subsequent Fines **	5,000
Fine Amount	**Member Organization**
First Time Fined	$2,500
Subsequent Fines **	5,000

** Within a ''rolling'' 24-month period.

As noted, rather than the 12-month rolling period in Rule 476A, the Exchange proposes a 24-month ''rolling'' period from the date of the violation in order to harmonize with its affiliates.[23]

In order to add clarity to the Exchange's rules, the Exchange also proposes to add a paragraph immediately before the proposed chart based on NYSE Arca Rule 10.9217(h) that sets forth how the beginning and end of the 24-month rolling period is to be determined. Except for references that reflect the Exchange's membership and use of the phrase ''minor rule violation plan letter'' rather than ''Notice of Minor Rule Plan Fine,'' the paragraph is substantially the same as NYSE Arca Rule 10.9217(h).[24]

In order to further harmonize the Exchange's rules with those if its affiliates, and because a fine of $5,000 would exceed the maximum amount in Rule 19d–1(c)(2) under the Act for a minor rule plan,[25] the Exchange proposes to change the titles of Rules 9216 and 9217. Specifically, the phrase ''Plan Pursuant to SEA Rule 19d–1(c)(2)'' would be replaced with ''Procedure for Imposition of Fines for Minor Violation(s) of Rules'' in the title of Rule 9216. The same phrase in Rule 9217 would be replaced with ''Rule 9216(b).'' The titles of both rules would thereby be the same as the titles of NYSE Arca Rules 10.9216 and 10.9217 and NYSE National Rules 10.9216 and 10.9217, respectively. The Exchange proposes to make similar conforming changes to Rule 9216(b)(1) by removing references to ''SEA Rule 19d–1(c)(2)'' and the maximum fine level of $2,500, and by adding language specifying that the Exchange may impose a fine in accordance with the fine amounts and fine levels set forth in Rule 9217.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the

[10] *See, e.g.,* NYSE Arca Rules 2.24 (Registration—Employees of ETP Holders), 10.12(j)(11) and 10.9217(g)(11). *See also* NYSE National Rules 2.2 (Obligations of ETP Holders and the Exchange) and 10.9217(e).

[11] *See* Securities Exchange Act Release No. 72916 (August 26, 2014), 79 FR 52094 (September 2, 2014) (SR–NYSE–2014–44).

[12] *See* Securities Exchange Act Release No. 61557 (February 22, 2010), 75 FR 9472 (March 2, 2010) (SR–NYSE–2010–10). NYSE Rule 4110(c)(2), based on the comparable FINRA rule, incorporates Rule 312(h) in part. The Exchange is not proposing to add Rule 4110(c)(2) to Rule 9217.

[13] *See* Securities Exchange Act Release No. 64888 (July 14, 2011), 76 FR 43368 (July 20, 2011) (SR–NYSE–2011–33). NYSE Rule 4311, based on the comparable FINRA rule, was based in part on NYSE Rule 382. The Exchange is not proposing to add Rule 4311 to Rule 9217.

[14] *See* Release No. 72916, *supra* note 11, at 52094.

[15] *See* Securities Exchange Act Release No. 61158 (December 11, 2009), 74 FR 67942 (December 21, 2009) (SR–NYSE–2009–123). Rule 352 was replaced by Rule 2150. Violations of Rule 2150(b) and (c) are currently eligible for a minor rule fine under Rule 9217.

[16] *See* Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR–NYSE–2009–25).

[17] *See* Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (Notice); *see also* Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (Approval Order). Rule 410A was replaced by Rule 8211. Both rules were initially retained in Rule 9217, but there is no longer any reason to retain Rule 410A in Rule 9217.

[18] *See* Securities Exchange Act Release No. 61273 (December 31, 2009), 75 FR 1091 (January 8, 2010) (SR–NYSE–2009–134).

[19] *See* Securities Exchange Act Release No. 73554 (November 6, 2014), 79 FR 67508 (November 13, 2014) (SR–NYSE–2014–56).

[20] *See* Release No. 68678, *supra* note 17, at 5226.

[21] For instance, the maximum fine for minor rule violations under NYSE Arca's legacy Minor Rule Plan set forth in Rule 10.12 is $5,000. NYSE Arca retained the $5,000 maximum when it adopted its new disciplinary rules. *See* NYSE Arca Rule 10.9217(a). *See also* NYSE American Rule 9217 and NYSE National Rule 10.9217.

[22] When the Exchange adopted Rule 9217 as part of its adoption of FINRA's disciplinary rules, the Exchange retained the list of rules set forth in Rule 476A. *See* Release No. 69045, *supra* note 17, at 15396. The Exchange did not retain the chart in Rule 476A because, as noted above, the maximum fine under Rule 476A previously was $5,000.

[23] *See* NYSE Arca Rule 10.9217 (violations applied in a rolling 24-month period); NYSE American Rule 9217 (same).

[24] As discussed above, the Exchange is not required to impose a fine for a violation under its Minor Rule Plan. Instead, the Exchange may, at its discretion, bring formal disciplinary action against a member or associated person that has violated its rules.

[25] 17 CFR 240.19d–1(c)(2). The Exchange recognizes that fines exceeding $2,500 would not be eligible for quarterly reporting under Commission Rule 19d–1(c). Fines that do not exceed $2,500 would continue to be reported quarterly in compliance with Commission Rule 19d–1(c).

[26] In approving this proposed rule change, the Commission has considered the proposed rule's

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[27] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission further believes that the proposed amendments to Rule 9217 are consistent with Section 6(b)(6) of the Act,[28] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Commission believes that Rule 9216(b) is an effective way to discipline a member for a minor violation of a rule. The Commission finds that the Exchange's proposal to add rules to Rule 9217 is consistent with the Act because it may help the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings may not be warranted. The Commission also believes that the Exchange's proposal to delete obsolete rules is also consistent with the Act because it will clarify the Exchange's rule book. Finally, the Commission believes that the Exchange's proposed fine schedule is appropriate. The Commission notes that the proposed fine schedule aligns with the fine schedules of the Exchange's affiliates.

In approving the propose rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rule 9216(b). The Commission believes that a violation of any self regulatory organzation's rules, as well as Commission rules, is a serious matter. However, Rule 9216(b) provides a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rule 9216(b) or whether a violation requires formal disciplinary action.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSE–2019–044), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22013 Filed 10–8–19; 8:45 am]

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impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(6).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87221; File No. SR–LTSE–2019–02]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Make the Exchange a Display-Only Market by Removing References to Non-Displayed and Reserve Orders

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2019, Long-Term Stock Exchange, Inc. (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

LTSE proposes to operate as a display-only market, and in furtherance thereof, proposes to delete references to non-displayed and reserve orders, and make other conforming changes. The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 10, 2019, the Commission granted the Exchange's application for registration as a national securities exchange under Section 6 of the Act,[3] including approval of rules applicable to trading of securities on the Exchange.

LTSE is being built primarily to serve companies and investors who focus long-term. To date, LTSE has differentiated itself from other exchanges primarily by promoting long-term policies and governing practices for listed companies.[4] LTSE seeks to further differentiate itself by offering a trading model that appeals to the interests and needs of long-term investors.

In particular, LTSE believes that long-term investors are seeking a simplified trading model that emphasizes displayed liquidity; that is, trading on LTSE will occur exclusively at prices displayed to all participants. The Exchange describes this model as a Very Simple Market (''VSM''). In the proposed VSM:

(i) All orders resting on LTSE would be fully displayed;[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019).

[4] *See* Securities Exchange Act Release No. 86722 (August 21, 2019), 84 FR 44952 (August 27, 2019) (SR–LTSE–2019–01) (Order Approving Proposed Rule Change To Adopt Rule 14.425, Which Would Require Companies Listed on the Exchange To Develop and Publish Certain Long-Term Policies).

[5] Certain order types, such as market orders, Immediate-or-Cancel (''IOC''), and Inter-market Sweep Orders (''ISO''), are by their very terms never displayable, and the proposed rule change would not eliminate these order types. The description of

Continued

(ii) There would be no hidden or reserve orders; and

(iii) All trades would occur at displayed prices.

Because all orders would be fully displayed and all trades would occur at displayed prices, the VSM would dispense with both the need for midpoint executions (*e.g.,* traders accessing non-displayed prices) and complex order types (*e.g.,* orders that aim primarily to advance trading strategies).

LTSE believes that the VSM also would appeal to market makers who, by virtue of the simple nature of the market, would be able to effectively manage their quoting behavior.

LTSE's existing rulebook closely resembles the desired state of the VSM, with the exception of certain provisions referencing or permitting non-displayed and reserve orders.[6] Accordingly, LTSE is making the following amendments:[7]

Rule 11.151 (Market Maker Obligations)

For each security in which a Member is registered as a Market Maker, the Member shall on a continuous basis during regular market hours meet a Two-Sided Quote Obligation, which requires a displayed quotation size of at least one normal unit of trading. Insofar as all quotations will be displayed, the reference to a ''displayed'' quotation size in paragraph (a)(1) of the rule is redundant and is proposed to be deleted. Likewise, in the discussion of a Market Maker's firm quote obligations, the reference to a Market Maker's ''non-displayed'' size in paragraph (b)(1) would be deleted. Additionally, the discussion of locked and crossed markets in paragraph (e)(1) has a provision that contrasts how ''displayed orders'' are handled, which will be unnecessary and, therefore, is proposed to be deleted.

Rule 11.190 (Orders and Modifiers)

This rule establishes the allowable order types and attributes. The Exchange proposes to add an introductory statement to the first paragraph providing that ''All orders resting on the Order Book shall be displayable; this requirement shall not preclude the use of market orders, Immediate-or-Cancel Orders, or Inter-market Sweep Orders which, by their terms, are ineligible to rest on the Order Book.''

Consistent with foregoing, references to non-displayed, partially-displayed, and reserve orders are proposed to be deleted. In particular, the descriptions of a ''Non-Displayed Order'' in paragraph (b)(3), and ''Reserve Order'' in paragraph (b)(2), would be deleted. Similarly, the description of a ''Displayed Order'' in paragraph (b)(1) would be deleted because it will be redundant of the General Order Types in paragraph (a).

As originally adopted, odd lot orders, and the odd lot portion of mixed lot orders, were treated as non-displayed orders. To accommodate LTSE's transition to a fully-displayed market as described above, provisions in paragraph (b)(4) treating odd lot orders as non-displayed orders would be deleted. Similarly, provisions in paragraph (b)(5) explaining that mixed lot orders that are decremented to an odd lot size are converted to non-displayed orders would be deleted. Additionally, the provisions in paragraph (b)(5) explaining how old lot portions of mixed lot orders must be marked for display to be eligible to be a Protected Quotation would be deleted as all portions of a mixed lot order will be displayed. In addition, the Minimum Quantity Order (''MQTY'') designation in paragraph (b)(11) would be changed to no longer be limited to non-displayed orders. The supplementary material .01 describing the priority of non-display portions of reserve orders also would be deleted. Conforming amendments to the rule text are proposed in paragraph (c)(1) to delete references to the fact that IOC orders are non-displayable orders, and in paragraph (f)(1) to remove references to ''displayed and non-displayed portions'' of orders.

The provisions in paragraph (f)(4) addressing One-Sided Markets also would be revised to account for the fact that the Exchange would be a display-only market as described above, by deleting the provisions describing how non-displayed interest is handled. Relatedly, the provisions describing how displayed interest in One-Sided Markets is handled would be modified to replace references to ''displayable interest'' with the phrase ''limit order'' marked LTSE Only, as previously used elsewhere in paragraph (f)(4). Finally, there are proposed technical and stylistic amendments to improve the readability of the rule in view the changes described above.

Additionally, the provisions in paragraph (f)(5) pertaining to Zero Markets, defined as a condition which neither a Protected Bid nor Protected Offer exists, are proposed to be deleted. The Zero Market provisions address the condition where resting, non-displayed interest is unavailable to trade. Because LTSE will be a fully-displayed market as described above, provisions addressing how non-displayed orders in a Zero Market will post when a Two-Sided Market returns would be unnecessary.[8]

In what is purely a change in nomenclature, the Exchange's price sliding process will now use the term ''price sliding'' in lieu of ''display—price sliding.'' The phrase ''order eligible for display by the Exchange'' in paragraph (g)(1)(A) would be deleted. Additionally, paragraph (g)(2) pertaining to ''non-displayed price sliding'' would be deleted. The sections of the rule in paragraph (g)(3) addressing locked and crossed markets contain redundant references to display orders, which along with obsolete references to non-displayed or partially displayed orders, such as in paragraphs (a)(1)(G), (b)(1)(H), (b)(2), (b)(3)–(5), (b)(11), (f)(1), (f)(4)(A)(i)–(iii), (f)(5)(A), (g)(1)(C)(ii), and (g)(2) and in the Supplementary Material, are proposed to be deleted. Conforming changes are also proposed to the section addressing short sale price sliding in paragraph (g)(4).

Rule 11.220 (Priority of Orders)

As originally adopted, the rules of LTSE established a Price—Display—Time priority. In becoming a fully-displayed market as described above, the Exchange would operate with a Price—Time priority. Accordingly, this rule would be changed in paragraphs (a)(1) and (2) to reflect this new priority scheme, and throughout the rule to eliminate redundant or inaccurate references to displayed or non-displayed orders. Notably, because odd lot orders and the odd lot portion of mixed lot orders would be displayed, the provisions in paragraph (a)(1)(C)(vii), which would have given a new time stamp to an order that is decremented to an odd lot size are proposed to be deleted. Conforming changes to paragraph (a)(3) also are proposed to reflect the deletion of paragraph (a)(1)(C)(vii). References to displayed portions of reserve orders and displayable orders are also proposed to be deleted from paragraph (a)(6) and (b), respectively.

Rule 11.230 (Order Execution)

This rule describes how orders are matched for execution against the LTSE

LTSE as a ''fully-displayed'' exchange in the proposed rule change refers to the fact there will be no hidden resting orders.

[6] In some instances, use of the term ''display'' or ''displayed'' will remain in the rulebook as the term refers to the operation of the Exchange in displaying orders, rather than as an order attribute.

[7] Capitalized terms have the meaning as defined in LTSE Rule 1.160.

[8] References to Zero Markets are also proposed to be deleted in Rule 11.231, below.

Book. The provisions in paragraph (a)(4)(C) related to how non-displayed orders are posted to the Order Book would be deleted. The ''Reserved.'' provision in paragraph (a)(4)(D) would also be deleted.

Rule 11.231 (Regular Market Session Opening Process for Non-LTSE-Listed Securities)

The description of the Opening Process for non-LTSE-listed securities contemplates ranking non-displayed orders and non-displayed portions of reserve orders. These provisions, found in paragraph (a)(1)(E), would be deleted. Additionally, the reference to ''displayed'' limit orders would be deleted from paragraph (a)(1)(F). Elsewhere, provisions in paragraph (b)(1) addressing execution priority are proposed to be changed to reflect that LTSE would have a Price—Time priority. The reference to Zero Market in paragraph (c)(3) also would be deleted.

Rule 11.240 (Trade Execution, Reporting, and Dissemination of Quotations)

LTSE will operate as an ''automated market center,'' and in furtherance thereof, will display ''automated quotations'' within the meaning of Regulation NMS. Accordingly, the aggregate of the best-ranked order(s) will be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS. A reference in paragraph (c)(1) to the fact that only displayable orders will be disseminated is proposed to be deleted because all ranked orders on the Exchange will be displayed and retaining the rule text could suggest otherwise.

Rule 11.280 (Limit Up-Limit Down Plan and Trading Halts)

This rule incorporates the elements of the NMS Plan to Address Extraordinary Market Volatility, to establish for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. Minor edits are proposed to the section on Re-pricing and Cancellation of Interest in paragraphs (e)(5)(B) and (E) to reflect the fact that LTSE will not have non-displayed orders.

Rule 11.330 (Data Products)

Among the data products offered by LTSE free of charge is the LTSE Web Platform, a data feed made available through the Exchange's public website. In view of the fact that LTSE would be a fully-displayed market, references to ''displayed'' orders in paragraph (a)(1) are redundant and are proposed to be deleted.

Rule 11.350 (Auctions)

The rules governing the auction processes are extensive and reference order types which allow for a user instructed display quantity, such as Limit-On-Close, Limit-On-Open, Market-On-Close, and Market-On-Open. Because the user instructed display quantity would no longer be permitted, this attribute is proposed to be deleted from these order types as provided in paragraphs (a)(20), (a)(21), (a)(24) and (a)(25), respectively. There are also references throughout the rule to displayable and non-displayable interest, which are proposed to be deleted. Additionally, because the Continuous Book would have only displayed interest, the term ''Auction Ineligible Orders,'' defined in paragraph (a)(3), and whose only operative provisions address ''non-displayed interest,'' would no longer be relevant, and would be deleted in paragraph (a)(3) and elsewhere as referenced throughout the rule. Other conforming changes are proposed to paragraphs (b) through (f) to reflect, as discussed above, that LTSE would have a Price—Time priority. Finally, periods would be added after ''Reserved'' in paragraphs (a)(3)(C)(i) and (a)(3)(D)(i), and the duplicative numeric heading in (c)(1) would be deleted.

Rule 11.410 (Use of Market Data Feeds and Calculations of Necessary Price Reference Points)

The LTSE Top of Book is the aggregate of the best priced resting, displayed orders for which it publishes a protected quotation. Because all orders would be displayed, the term ''displayed'' is proposed to be deleted from the description of Top of Book in paragraph (a)(4). Additionally, to account for the fact that odd lot orders would be displayed interest, but are not a protected quotation (unless aggregated with other odd lot orders at the same or better prices to make a round lot), the rule would state that the ''LTSE proprietary market data feeds will provide information about odd lot-sized orders, including when such orders are at prices better than the LTSE Top of Book.'' [9]

[9] Including such orders in an LTSE proprietary market data feed is necessary because odd-lot sized quotes, unless aggregated as part of a round lot at the BBO, would not be displayed in the market data feeds distributed by the Securities Information Processors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The proposed rule change is a series of substantive and conforming amendments to LTSE's rules to reflect LTSE's objective to operate as a fully-displayed market as described above. The Commission or its staff has on many occasions considered the benefits of displayed liquidity to the national market system.[12] The proposed rule change, which promotes the use of displayed liquidity, is consistent with the protection of investors and the public interest because it further the goals of transparency and price discovery. In addition, the trading model proposed by LTSE would not impair the mechanism of a free and open market and a national market system insofar as it would not eliminate the ability of market participants to access or offer non-displayed liquidity on other trading venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act. The Exchange believes that removing the non-display functionality from its trading rules will, if anything, burden LTSE as it will offer less functionality

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See, e.g.,* Concept Release on Equity Market Structure, 75 FR 3593 (January 21, 2010), *https://www.sec.gov/rules/concept/2010/34-61358.pdf* (soliciting comment and noting concerns about market structure often have related to high frequency trading and various types of undisplayed liquidity); Equity Market Structure 2019: Looking Back & Moving Forward, speech by Jay Clayton, Chairman, SEC, and Brett Redfearn, Director, Division of Trading and Markets (March 8, 2019), *https://www.sec.gov/news/speech/clayton-redfearn-equity-market-structure-2019* (discussing the importance of displayed trading interest for thinly-traded securities); Memorandum on Rule 611 of Regulation NMS to SEC Market Structure Advisory Committee, from SEC Division of Trading and Markets (April 30, 2015), *https://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf* (explaining that one of the objectives of Rule 611 was to promote the use of displayed ''non-marketable'' limit orders, which would improve the price discovery process and contribute to increased liquidity and depth).

than other exchanges. As a result of the proposed rule change, LTSE will be unable to compete for order flow from market participants seeking to post or trade against non-displayed interest, though it will continue to accept market orders, IOC orders and ISOs. It will, however, provide a venue in which market participants have full visibility into the order book.

The Exchange also believes that the effects of the proposed rule change will not burden competition because there are many other exchanges that offer the opportunity to post or trade against non-displayed interest. Finally, the Exchange believes that removing the non-display functionality as described above from its trading rules will not burden competition in that the proposed rule change will not impact LTSE's ability to comply with Regulation NMS or the ability of other exchanges to access its quotes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings under Section 19(b)(2)(B) [16] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LTSE–2019–02 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–LTSE–2019–02. 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–LTSE–2019–02 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

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[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87219; File No. SR–NASDAQ–2019–081]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Constitutional Documents

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Second Amended Limited Liability Company Agreement (''LLC Agreement'') and By-Laws (''By-Laws''), as further discussed below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its LLC Agreement and By-Laws to (i) harmonize certain provisions related to the regulatory independence of the Exchange with those of the Exchange's affiliates, Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), and Nasdaq MRX, LLC (''MRX''), (ii) modify Director categorizations, (iii) update compositional requirements of the Regulatory Oversight Committee (''ROC''), and (iv) make additional, non-substantive edits. Each change is discussed below.[3]

LLC Agreement

The Exchange proposes to modify a number of provisions in its LLC Agreement related to the regulatory independence of the Exchange. As discussed below, the Exchange believes that the proposed changes will make these provisions more robust and will serve to align the Exchange's LLC Agreement with the LLC Agreements of its affiliates, ISE, GEMX, and MRX.

• *Distributions:* The Exchange currently has distribution provisions in Section 15 of the LLC Agreement that prohibits the Exchange from making distributions to its sole member (*i.e.,* Nasdaq, Inc.), using Regulatory Funds.[4] The Exchange now proposes to amend this provision to substantively conform to Section 15 in the ISE, GEMX, and MRX LLC Agreements by specifying that Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange. The Exchange believes these are minor changes that make the distribution provisions more robust by specifying how Regulatory Funds may be used. Lastly, the Exchange proposes to add that it would not be required to make a distribution to the sole member if such distribution would otherwise be required to fulfill the regulatory functions or responsibilities of the Exchange.

• *Books and Records:* Section 16 of the LLC Agreement presently sets forth certain information relating to general administrative matters with respect to the books and records of the Exchange, including requirements as to the maintenance of the Exchange's books and records, and inspection rights, among other provisions. The Exchange proposes to amend Section 16 to provide that the books and records of the Exchange must be maintained in the United States, which will harmonize this provision with Section 16 in the ISE, GEMX, and MRX LLC Agreements. The Exchange further proposes to substantially conform to ISE, GEMX, and MRX in Section 16 by providing that all confidential information relating to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) Not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof, (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange, and (iii) must not be used for any non-regulatory purpose. Furthermore, the Exchange proposes to add, similar to the ISE, GEMX, and MRX LLC Agreements, that nothing in the LLC Agreement shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission. The Exchange believes that the proposed changes will add more specificity as to who may access the Exchange's books and records, especially relating to confidential information on the self-regulatory function of the Exchange, and the use of such information.

• *Assignments:* Section 20 of the LLC Agreement currently prohibits the Exchange's sole member from transferring or assigning in whole or in part its limited liability company interest in the Exchange, except to an affiliate of the sole member. The Exchange now proposes to provide in Section 20 that any transfer or assignment by the sole member of its equity ownership interest in the Exchange is prohibited unless it is filed and approved by the Commission pursuant to a rule filing, and to delete the member affiliate exception to the general prohibition on transfers and assignments. This will align Section 20 of the Exchange's LLC Agreement with Section 20 in the LLC Agreements of ISE, GEMX, and MRX.

By-Law Article I

Currently, the Exchange's Board compositional requirements require at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).[5] As set forth in Article I, Section (y), a ''Public Director'' is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. ''Issuer representative'' is not defined specifically in the Exchange's By-Laws, but is implicitly defined in the term Non-Industry Director as ''an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Company.''[6] The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on the national securities exchange operated by the Exchange shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.[7] Of course, such issuer

[3] All references herein and in the Exhibit 5 to ''the Company'' mean the Exchange. Company is defined in the LLC Agreement and the By-Laws to mean The Nasdaq Stock Market LLC.

[4] ''Regulatory Funds'' means fees, fines, or penalties derived from the regulatory operations of the Exchange. ''Regulatory Funds'' shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange. *See* LLC Agreement, Schedule A. The definition of Regulatory Funds is not changing under this proposal.

[5] *See* By-Law Article III, Section 2(a).

[6] In addition, the term ''Non-Industry Director'' encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. *See* By-Law Article I, Section (v).

[7] This is consistent with the longstanding best practice of the Exchange's parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board's Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered ''independent directors'' as defined in

Continued

representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives. In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a ''Public member'' of a committee.[8]

The Exchange does not seek to amend the Board's qualification requirements in the By-Laws other than the proposed changes to the definition of Public Director. With the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and issuer representatives), Industry Directors,[9] and Member Representative Directors.[10] Accordingly, current Board qualification requirements such as the number of Non-Industry Directors, including at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives), equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.[11]

By-Law Article III, Section 5(c)

Currently, By-Law Article III, Section 5(c) requires that the ROC be comprised of three members, each of whom shall be a Public Director and an ''independent director'' as defined in Nasdaq Rule 4200. The Exchange proposes to amend Section 5(c) to provide that the ROC shall be comprised of *at least* three members, as is currently set forth in the ROC Charter.[12] All members of the ROC will continue to be Public Directors and ''independent directors.'' Lastly, the Exchange also proposes to make technical changes in Section 5(c) to correct a typographical error and to update the reference to Nasdaq Rule 4200 to Rule 5605.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,[14] in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

LLC Agreement

The Exchange believes that the proposed changes to the LLC Agreement provisions on distributions, books and records, and assignments are consistent with the Act. As discussed above, the Exchange believes that its proposal will bring greater specificity and detail to provisions related to the regulatory independence of the Exchange. The Exchange believes that the proposed changes will make clear the independence of the Exchange's regulatory function and facilitate the ability of the Exchange to carry out its responsibility and operate in a manner consistent with the Act. Furthermore, the proposed amendments will have the additional benefit of bringing the Exchange's LLC Agreement into greater conformity with those of ISE, GEMX, and MRX, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.[15]

By-Law Article I

The Exchange believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on the national securities exchange operated by the Exchange, and are consistent with current corporate governance practices.[16] Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one issuer representative, or at least two issuer representatives if the Board consists of ten or more Directors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.[17] Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act.

By-Law Article III, Section 5(c)

The Exchange believes that the proposed rule change in By-Law Article III, Section 5(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act

Nasdaq Rule 5605. *See* By-Law Article III, Section 5(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

[8] *See* By-Law Article I, Section (z).

[9] The term ''Industry Director'' means a Director (excluding any two officers of the Company, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the ''Staff Directors'')), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. *See* By-Law Article I, Section (l).

[10] The term ''Member Representative Director'' means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Nasdaq Member pursuant to the Exchange's By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of a Nasdaq Member. *See* By-Law Article I, Section (q). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the ''rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs . . .''

[11] *See* By-Law Article III, Section 2(a). In addition, the Board qualification requirement that at least 20% of the Directors be Member Representative Directors will continue to apply. *See* LLC Agreement Section 9(a).

[12] The ROC Charter is available at: *http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(1), (b)(3), and (b)(5).

[15] *See* ISE, GEMX, and MRX LLC Agreements, Sections 15, 16, and 20.

[16] *See supra* note 7.

[17] *See supra* notes 10 and 11, with accompanying text.

because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and ''independent directors'' as defined in Nasdaq's Rules will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical changes in Section 5(c) to correct a typographical error and to update the reference to Nasdaq Rule 4200 to Rule 5605 will bring greater clarity to the Exchange's rules, which will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its LLC Agreement and By-Laws, which would provide more specificity and would better align provisions in the Exchange's LLC Agreement with those in the LLC Agreements of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–081 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–081. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–081 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

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[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87222; File No. SR–MRX–2019–21]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX's Rulebook and By-Laws

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2019, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the compositional requirements of the Exchange's board (''Board'') and Regulatory Oversight Committee (''ROC''), and (iv) make additional, non-substantive edits.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the Board and ROC compositional requirements, and (iv) make additional, non-substantive edits. Each change is discussed below.[3]

Rules 200–203

Chapter 2 of the Exchange's Rulebook presently contains a number of rules relating to the organization and administration of committees of the Exchange. In particular, Rules 200–203 set forth provisions for the establishment of committees, removal of committee members, committee procedures and the general duties and powers of committees, all of which have been in place since the Exchange's inception. The Exchange has since amended its committee structure and related rules to align with those of its affiliates.[4] Accordingly, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange's Limited Liability Company Agreement (''LLC Agreement'') and its By-Laws.

Historically, Rules 200 and 201 authorized the Chief Executive Officer and President of the Exchange to establish committees not comprised of directors pursuant to delegated authority by the Board, and to appoint or remove any such committee members with Board approval.[5] With the changes in SR–MRX–2017–18 and SR–MRX–2018–23, these rules have been superseded by By-Law provisions that specify the committees composed solely of Directors and committees not composed solely of Directors, including the appointment and removal of such committee members.[6] In this respect, the Exchange notes that it is following the approach of its affiliates, BX, Nasdaq, and Phlx, which similarly have provisions in their respective By-Laws, instead of their rulebooks, pertaining to committees composed solely of Directors and committees not composed solely of Directors.[7] The Exchange further seeks to delete Rules 202 and 203 given that similar provisions governing committee procedures and general duties and powers are now set forth in Section 9(g) of the LLC Agreement and in By-Law Article III and Article VI.

By-Law Article I

Currently, the definition of ''Non-Industry Director'' in the Exchange By-Laws refers to, among other individuals, an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.[8] Because only Nasdaq currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange *or one of its affiliates.* The Exchange believes that the proposed changes will bring greater clarity to the Exchange's rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange's Board are contemplated by this rule change. Today, a Non-Industry Director who is not designated by the Exchange as a Public Director[9] under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (*i.e.,* ''an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange'') would still fall under (iii) an individual who would not be an Industry Director.[10] With the proposed

[3] All references herein and in the Exhibit 5 to ''the Company'' mean the Exchange. Company is defined in the By-Laws to mean Nasdaq MRX, LLC.

[4] *See* Securities Exchange Act Release No. 82101 (November 16, 2017), 82 FR 55679 (November 22, 2017) (SR–MRX–2017–18) (establishing, among other changes, a Board and committee structure substantially similar to The Nasdaq Stock Market LLC's structure); and Securities Exchange Act Release No. 83705 (July 25, 2018), 83 FR 37020 (July 31, 2018) (SR–MRX–2018–23) (establishing, among other changes, an Exchange Review Council substantially similar to Exchange Review Council of Nasdaq BX, Inc. to replace the Business Conduct Committee). As a result of these changes, Exchange's board and committee structure is generally harmonized with its affiliates, Nasdaq BX, Inc. (''BX''), The Nasdaq Stock Market LLC (''Nasdaq''), and Nasdaq PHLX LLC (''Phlx'').

[5] For example, the Exchange's former Business Conduct Committee (''BCC'') was established by the Chief Executive Officer and President pursuant to delegated authority. As noted above, the BCC was recently replaced by the Exchange Review Council in SR–MRX–2018–23. *See* Securities Exchange Act Release No. 83705 (July 25, 2018), 83 FR 37020 (July 31, 2018) (SR–MRX–2018–23).

[6] *See* By-Law Article III, Sections 4–6. In addition, the provisions governing the Exchange Review Council are specified in By-Law, Article VI.

[7] *See* BX By-Law Article IV, Sections 4.12–4.14 and Article VII; Nasdaq By-Law Article III, Sections 4–6 and Article VI; and Phlx By-Law Article V.

[8] In addition, the term ''Non-Industry Director'' encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. *See* By-Law Article I, Section (w).

[9] The term ''Public Director'' means a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. *See* By-Law Article I, Section (z).

[10] The term ''Industry Director'' means a Director (excluding any two officers of the Company, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the ''Staff Directors'')), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the

changes, these Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange's affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming changes to the definition of a ''Non-Industry member'' of a committee.[11]

Currently, the Exchange's Board compositional requirements require at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).[12] As set forth in Article I, Section (z), a ''Public Director'' is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. ''Issuer representative'' is not defined specifically in the Exchange's By-Laws, but is implicitly defined in the term Non-Industry Director as ''an officer, director, or employee or an issuer of securities listed on the national securities exchange operated by the Exchange.'' [13] The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.[14] Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives. In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a ''Public member'' of a committee.[15]

The Exchange notes that with the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and issuer representatives), Industry Directors, and Member Representative Directors.[16] Accordingly, current Board qualification requirements such as the number of Non-Industry Directors equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.[17]

By-Law Article III, Section 2(a)

The Exchange proposes to amend By-Law Article III, Section 2(a) to revise the qualifications for any position on the Board required to be representative of issuers. As discussed above, Article III, Section 2(a) requires that the Board be composed of at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).[18] The Exchange adopted this provision when it conformed its By-Laws to those of Nasdaq as part of its effort to harmonize corporate governance processes with its affiliated exchanges.[19] As noted above, unlike Nasdaq, the Exchange does not currently operate an equities listing market and therefore believes it is more appropriate to align its Board composition requirements on this point with the By-Laws of BX and Phlx, which both currently require only one Director representative of issuers and investors, regardless of Board size.[20] The Exchange's proposal would also change the Board composition requirement to more closely track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be ''representative of issuers and investors.''

By-Law Article III, Section 5(c)

Currently, By-Law Article III, Section 5(c) requires that the Regulatory Oversight Committee (''ROC'') be comprised of three members, each of whom shall be a Public Director and an ''independent director'' as defined in Nasdaq Rule 5605. The Exchange proposes to amend Section 5(c) to provide that the ROC shall be comprised of *at least* three members, as is currently set forth in the ROC Charter.[21] All members of the ROC will continue to be Public Directors and ''independent directors'' as defined in Nasdaq Rule 5605. Lastly, the Exchange also

broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. *See* By-Law Article I, Section (m).

[11] *See* By-Law Article I, Section (x).

[12] *See* By-Law Article III, Section 2(a).

[13] *See* By-Law Article I, Section (w). As discussed above, the Exchange will amend this provision to refer to ''an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates.''

[14] This is consistent with the longstanding best practice of the Exchange's ultimate parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board's Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered ''independent directors'' as defined in Nasdaq Rule 5605. *See* By-Law Article III, Section 5(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

[15] *See* By-Law Article I, Section (aa).

[16] The term ''Member Representative Director'' means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the Exchange's By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. *See* By-Law Article I, Section (r). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the ''rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs . . .''

[17] *See* By-Law Article III, Section 2(a). In addition, the Board qualification requirement that at least 20% of the Directors be Member Representative Directors will continue to apply. *See* LLC Agreement Section 9(a).

[18] By-Law Article III, Section 2(a) also requires that the number of Non-Industry Directors (which includes Public Directors and issuer representatives) shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. Furthermore, Section 9(a) of the LLC Agreement requires that at least 20% of the Directors be Member Representative Directors. These Board qualifications are not being amended.

[19] *See* Securities Exchange Act Release No. 82101 (November 16, 2017), 82 FR 55679 (November 22, 2017) (SR–MRX–2017–18).

[20] *See* BX By-Law Article IV, Section 4.3; and Phlx By-Law Article III, Section 3–2(a). Similar to the Exchange, BX and Phlx do not currently operate equities listing markets.

[21] The ROC Charter is available at: *http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25.*

proposes to make technical changes in Section 5(c) to update Nasdaq's name.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,[23] in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Rules 200–203

As discussed above, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange's LLC Agreement and By-Laws. The Exchange believes that deleting rules that no longer apply to the Exchange's current committee structure will more clearly identify currently applicable rules, which will remove impediments to and perfect the mechanism of a free and open market. The Exchange further believes that the proposed rule change will eliminate potential confusion regarding which rules apply to the organization and administration of committees, which ultimately protects investors and the public interest.

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange's affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance practices.[24] Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.[25] Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act.

By-Law Article III, Section 2(a)

The Exchange believes that its proposal to expand the Board qualifications from an issuer representative to a representative of issuers and investors, and eliminate the requirement that the Board have two such representatives if the Board consists of ten or more Directors is consistent with the Act. The Exchange notes that the proposed changes track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be ''representative of issuers and investors.'' The Exchange also notes that the elimination of the requirement to have at least two Director positions representative of issuers if the Board consists of ten or more Directors is consistent with Section 6(b)(3) of the Act, which only requires the Board to have one such representative. Furthermore, the Exchange will continue to require the Board composition to reflect a balance among Non-Industry Directors (including Public Directors and Director representatives of issuers and investors), Industry Directors, and Member Representative Directors (with the latter continuing to constitute 20% of the Board).[26] Accordingly, the Exchange believes that the changes to the Board qualifications proposed herein will more accurately reflect current Exchange operations while continuing to meet the statutory requirements under Section 6(b)(3) of the Act. In addition, the proposed amendments will have the additional benefit of bringing the Exchange's Board qualifications on this point into greater conformity with those of BX and Phlx, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.[27]

By-Law Article III, Section 5(c)

The Exchange believes that the proposed rule change in By-Law Article III, Section 5(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and ''independent directors'' as defined in Nasdaq Rule 5605 will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical changes in Section 5(c) to update Nasdaq's name will bring greater clarity to the Exchange's rules, which protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(1), (b)(3), and (b)(5).

[24] *See supra* note 14.

[25] *See supra* notes 16 and 17, with accompanying text.

[26] *See supra* note 18.

[27] *See supra* note 20.

[28] 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(6) of Rule 19b–4 thereunder.[29]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[30] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[31] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its Rulebook and By-Laws, which would eliminate obsolete provisions in the Exchange's Rulebook and better align provisions in the Exchange's By-Laws with those in the By-Laws of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2019–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2019–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2019–21 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22020 Filed 10–8–19; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87209; File No. SR–PEARL–2019–26]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to establish Application Programming Interface (''API'') Testing and Certification fees.

The Exchange previously filed to establish API Testing and Certification fees on June 28, 2019 (SR–PEARL–2019–22).[3] That filing was withdrawn on August 27, 2019. It is replaced with the current filing (SR–PEARL–2019–26).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86363 (July 12, 2019), 84 FR 34445 (July 18, 2019) (SR–PEARL–2019–22) (the ''Second Proposed Rule Change'').

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to establish API Testing and Certification fees for Members [4] and non-Members. MIAX PEARL commenced operations as a national securities exchange registered under Section 6 of the Act [5] on February 6, 2017.[6] The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR–PEARL–2017–10.[7] In that filing, the Exchange expressly waived API Testing and Certification fees for Members and non-Members to provide an incentive to prospective Members and non-Members to engage in early API testing and certification to be able to utilize the services of MIAX PEARL as soon as possible. At that time, the Exchange waived API Testing and Certification fees for the Waiver Period [8] and stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period.

On March 14, 2019, the Exchange issued a Regulatory Circular which announced that the Exchange would terminate the Waiver Period for API Testing and Certification fees, among other non-transaction fees, beginning on April 1, 2019.[9] The Exchange initially filed the proposal to adopt API Testing and Certification fees, certain other non-transaction fees, and to terminate the three-month New Member Non-Transaction Fee Waiver [10] on March 27, 2019, designating the proposed fees effective April 1, 2019.[11] The First Proposed Rule Change was published for comment in the **Federal Register** on April 12, 2019.[12] The proposed fees remained in effect until the Exchange withdrew the First Proposed Rule Change on May 20, 2019.[13]

The Exchange refiled the proposal on June 28, 2019, designating the proposed fees effective July 1, 2019.[14] The Second Proposed Rule Change was published for comment in the **Federal Register** on July 18, 2019.[15] The proposed fee changes remained in effect until the Exchange withdrew the Second Proposed Rule Change on August 27, 2019.[16]

The Exchange is now re-filing the proposal to establish API Testing and Certification fees for Members and non-Members. The Exchange will file separate proposals to establish certain other non-transaction fees and to terminate the New Member Non-Transaction Fee Waiver and remove the definitions for the Waiver Period and New Member Non-Transaction Fee Waiver from the Fee Schedule.

API Testing and Certification Fees for Members

The Exchange proposes to adopt an API Testing and Certification fee for Members. An API makes it possible for Member software to communicate with MIAX PEARL software applications, and is subject to Member testing with, and certification by, MIAX PEARL. API testing and certification includes, for Electronic Exchange Members [17] (''EEMs''), testing all available order types, new order entry, order management, order throughput and mass order cancellation. For Market Makers,[18] API testing and certification also includes testing of all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines.

The API Testing and Certification fees for Members are based upon the type of interface that the Member has been credentialed to use. The Exchange proposes to adopt an API testing and certification fee for Members (i) initially per API for FIX,[19] MEO,[20] FXD [21] and CTD [22] in the month the Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Member initiates a change to its system that requires testing and certification. The Exchange also proposes that API Testing and Certification fees will not be assessed in situations where the

[4] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] 15 U.S.C. 78f.

[6] *See* Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (File No. 10–227) (order approving application of MIAX PEARL, LLC for registration as a national securities exchange).

[7] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

[8] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX PEARL Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

[9] *See* MIAX PEARL Regulatory Circular 2019–09 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_PEARL_RC_2019_09.pdf.*

[10] ''New Member Non-Transaction Fee Waiver'' means the waiver of certain non-transaction fees, as explicitly set forth in specific sections of the Fee Schedule, for a new Member of the Exchange, for the waiver period. For purposes of this definition, the waiver period consists of the calendar month the new Member is credentialed to use the System in the production environment following approval as a new Member of the Exchange and the two (2) subsequent calendar months thereafter. For purposes of this definition, a new Member shall mean any Member who has not previously been approved as a Member of the Exchange. *See* the Definitions Section of the Fee Schedule.

[11] *See* Securities Exchange Act Release No. 85541 (April 8, 2019), 84 FR 14983 (April 12, 2019) (SR–PEARL–2019–12) (the ''First Proposed Rule Change'').

[12] *See id.*

[13] *See* Letter from Gregory P. Ziegler, AVP and Senior Associate Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated May 17, 2019.

[14] *See supra* note 3.

[15] *See id.*

[16] *See* Letter from Joseph Ferraro, SVP and Deputy General Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated August 26, 2019.

[17] ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100. *See* the Definitions Section of the Fee Schedule.

[18] ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* Exchange Rule 100. *See* the Definitions Section of the Fee Schedule.

[19] ''FIX Interface'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. *See* Exchange Rule 100. *See* the Definitions Section of the Fee Schedule.

[20] ''MEO Interface'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX PEARL System. *See* Exchange Rule 100. *See* the Definitions Section of the Fee Schedule.

[21] ''FXD Interface'' or ''FIX Drop Copy Port'' means a messaging interface that provides a copy of real-time trade execution, trade correction and trade cancellation information to FIX Drop Copy Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. *See* the Definitions Section of the Fee Schedule.

[22] ''CTD Port'' or ''Clearing Trade Drop Port'' provides an Exchange Member with a real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. *See* the Definitions Section of the Fee Schedule.

Exchange initiates a mandatory change to the Exchange's System [23] that requires testing and certification.

Any Member can select any type of interface (FIX Interface, MEO Interface, FXD Interface, and/or the CTD Port) to test and certify. The Exchange proposes the following fees: Each Member who uses the FIX Interface to connect to the System will be assessed an API Testing and Certification fee of $1,000; each Member who uses the MEO Interface to connect to the System will be assessed an API Testing and Certification fee of $1,500; each Member who uses the FXD Interface to connect to the system will be assessed an API Testing and Certification fee of $500; and each Member who uses the CTD Port to connect to the system will be assessed an API Testing and Certification fee of $500.

Below is the proposed fee table for API Testing and Certification fees for Members:

Type of interface	API testing and certification fee
FIX	$1,000.00
MEO	1,500.00
FXD	500.00
CTD	500.00

API Testing and Certification Fees will be assessed (i) initially per API for FIX, MEO, FXD and CTD in the month the Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Member initiates a change to its system that requires testing and certification. API Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification.

API Testing and Certification Fee for Non-Members

The Exchange proposes to adopt an API Testing and Certification fee for Third Party Vendors,[24] Service Bureaus [25] and other non-Members (such as clearing firms) (i) initially per API for FIX, MEO, FXD, and CTD in the month the non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau, or other non-Member initiates a change to its system that requires testing and certification. The Exchange also proposes that API Testing and Certification fees will not be assessed to non-Members in situations where the Exchange initiates a mandatory change to the Exchange's System that requires testing and certification.

The Exchange proposes to adopt API Testing and Certification fees for non-Members based upon the type of interface used by the non-Member to connect to the Exchange—the FIX Interface, the MEO Interface, the FXD Interface, and/or the CTD Port. Any non-Member can select any type of interface (FIX Interface, MEO Interface, FXD Interface, and/or the CTD Port) to test and certify. As with Members, an API makes it possible for Third Party Vendors' and Service Bureaus' software to communicate with MIAX PEARL's software applications, and is subject to testing with, and certification by, MIAX PEARL. The higher proposed fee charged to non-Members reflects the greater amount of time spent by MIAX PEARL employees testing and certifying non-Members. It has been MIAX PEARL's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges, resulting in generally fewer questions and issues arising during the testing and certification process. Also, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.

The Exchange proposes the following fees: each non-Member who uses the FIX Interface to connect to the System will be assessed an API Testing and Certification fee of $1,200; each non-Member who uses the MEO Interface to connect to the System will be assessed an API Testing and Certification fee of $2,000; each non-Member who uses the FXD Interface to connect to the system will be assessed an API Testing and Certification fee of $600; and each non-Member who uses the CTD Port to connect to the system will be assessed an API Testing and Certification fee of $600.

Below is the proposed fee table for API Testing and Certification fees for non-Members:

Type of interface	API testing and certification fee
FIX	$1,200.00
MEO	2,000.00
FXD	600.00
CTD	600.00

API Testing and Certification Fees for Third Party Vendors, Service Bureaus and other non-Members will be assessed (i) initially per API for FIX, MEO, FXD, and CTD in the month the non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau, or other non-Member initiates a change to its system that requires testing and certification. API Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification.

The Exchange believes it is necessary to charge an API Testing and Certification fee to Members and non-Members because of the time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any System malfunction. Further, the Exchange believes the price differential in API Testing and Certification fees for Members and non-Members is not unfairly discriminatory because, in the Exchange's experience, Member testing takes less time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [26]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more

[23] The term "System" means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[24] Third party vendors are subscribers of MIAX PEARL's market and other data feeds, which they in turn use for redistribution purposes. Third party vendors do not provide connectivity and therefore are not subject to Network testing and certification. *See* the Definitions Section of the Fee Schedule.

[25] "Service Bureau" means a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. *See* the Definitions Section of the Fee Schedule.

[26] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

than approximately 16% market share.[27] Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had an approximately 5.30% market share of executed volume of multiply-listed equity and exchange traded fund (''ETF'') options.[28] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).[29] The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange's market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL's, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Further, as there are currently 16 registered options exchanges competing for order flow with no single exchange accounting for more than approximately 16% of market share,[30] the Exchange cannot predict with certainty whether any market participant is planning to utilize any of the services of the Exchange such that API testing and certification would be required, in which the Member or non-Member would be subject to the proposed API Testing and Certification fees established herein.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[31] in general, and furthers the objectives of Section 6(b)(4) of the Act[32] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal to adopt API Testing and Certification fees provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. First, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[33] There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and ETF options.[34] Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had approximately a 5.30% market share of executed volume of multiply-listed equity and ETF options.[35]

The Exchange also believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).[36] The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange's market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL's, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Second, the Exchange believes its proposal to adopt API Testing and Certification fees for Member and non-Members is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act[37] because of the time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any System malfunction. Further, the Exchange believes the price differential in API Testing and Certification fees for Members and non-Members is not unfairly discriminatory because, in the Exchange's experience, Member testing utilizes less Exchange resources and employee time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Also, with respect to API testing and certification, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for Members.

Accordingly, the Exchange no longer believes it is necessary to waive API Testing and Certification fees to attract market participants to the MIAX PEARL market since this market is now established and MIAX PEARL no longer needs to rely on such waivers to attract market participants. The Exchange believes its proposed API Testing and Certification fees are reasonable and well within the range of non-transaction fees assessed among other exchanges, including the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX).[38]

[27] The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

[28] *See id.*

[29] *See* Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR–PEARL–2018–21).

[30] *See supra* note 27.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(4) and (5).

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[34] The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

[35] *See id.*

[36] *See* Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR–PEARL–2018–21).

[37] 15 U.S.C. 78f(b)(4).

[38] *See* the MIAX Options Fee Schedule, Section (4)a and (4)b.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. Unilateral action by MIAX PEARL in the assessment of certain non-transaction fees for services provided to its Members and others using its facilities will not have an impact on competition. As a more recent entrant in the already highly competitive environment for equity options trading, MIAX PEARL does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. MIAX PEARL's proposed API Testing and Certification fee levels, as described herein, are comparable to fee levels charged by other options exchanges for the same or similar services, including those fees assessed by the Exchange's affiliate, MIAX.[39]

The Exchange believes that the proposed API Testing and Certification fees do not place certain market participants at a relative disadvantage to other market participants because the fees do not apply unequally to different size market participants, but instead would allow the Exchange charge for the time and resource necessary for API testing and certification for Members and non-Members to ensure proper functioning of all available order types, new order entry, order management, order throughput and mass order cancellation (as well as, for Market Makers, all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines). Accordingly, the proposed API Testing and Certification fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Inter-Market Competition

The Exchange believes the proposed API Testing and Certification fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing options venues if they deem fee levels at a particular venue to be excessive.[40] Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. As of September 9, 2019, the Exchange had an approximately 5.30% market share[41] and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[42] and Rule 19b–4(f)(2)[43] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–PEARL–2019–26 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–PEARL–2019–26. 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–PEARL–2019–26 and should be submitted on or before October 30, 2019.

[39] *See* the MIAX Options Fee Schedule.

[40] *See supra* note 34.

[41] *Id.*

[42] 15 U.S.C. 78s(b)(3)(A)(ii).

[43] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22010 Filed 10–8–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87211; File No. SR–Phlx–2019–38]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's Second Amended Limited Liability Company Agreement and By-Laws

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Second Amended Limited Liability Company Agreement (''LLC Agreement'') and By-Laws (''By-Laws''), as further discussed below

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its LLC Agreement and By-Laws to (i) harmonize certain provisions related to the regulatory independence of the Exchange with those of the Exchange's affiliates, Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), and Nasdaq MRX, LLC (''MRX''), (ii) modify Director categorizations, (iii) update compositional requirements of the Regulatory Oversight Committee (''ROC''), and (iv) make additional, non-substantive edits. Each change is discussed below.

LLC Agreement

The Exchange proposes to modify a number of provisions in its LLC Agreement related to the regulatory independence of the Exchange. As discussed below, the Exchange believes that the proposed changes will make these provisions more robust and will serve to align the Exchange's LLC Agreement with the LLC Agreements of its affiliates, ISE, GEMX, and MRX.

• *Distributions:* The Exchange currently has distribution provisions in Section 14 of the LLC Agreement that prohibits the Exchange from making distributions to its stockholder (*i.e.,* Nasdaq, Inc.), using Regulatory Funds.[3] The Exchange now proposes to amend this provision to substantively conform to Section 15 in the ISE, GEMX, and MRX LLC Agreements by specifying that Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange. The Exchange believes these are minor changes that make the distribution provisions more robust by specifying how Regulatory Funds may be used. Lastly, the Exchange proposes to add that it would not be required to make a distribution to the stockholder if such distribution would otherwise be required to fulfill the regulatory functions or responsibilities of the Exchange.

• *Books and Records:* Section 15 of the LLC Agreement presently sets forth certain information relating to general administrative matters with respect to the books and records of the Exchange, including requirements as to where the Exchange's books and records are kept, the maintenance of such books and records, and inspection rights, among other provisions. The Exchange proposes to amend Section 15 to add substantively conforming language as set forth in Section 16 of the LLC Agreements of ISE, GEMX, and MRX by providing that all confidential information relating to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) Not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof, (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange, and (iii) must not be used for any non-regulatory purpose. Furthermore, the Exchange proposes to add, similar to the ISE, GEMX, and MRX LLC Agreements, that nothing in the LLC Agreement shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission. The Exchange believes that the proposed changes will add more specificity as to who may access the Exchange's books and records, especially relating to confidential information on the self-regulatory function of the Exchange, and the use of such information.

• *Assignments:* Section 20 of the LLC Agreement currently prohibits the Exchange's stockholder from transferring or assigning in whole or in part its limited liability company interest in the Exchange, except to an affiliate of the stockholder. The Exchange now proposes to provide in Section 20 that any transfer or assignment by the stockholder of its equity ownership interest in the Exchange is prohibited unless it is filed and approved by the Commission pursuant to a rule filing, and to delete the stockholder affiliate exception to the general prohibition on transfers and

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Regulatory Funds'' means fees, fines, or penalties derived from the regulatory operations of the Exchange. ''Regulatory Funds'' shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange. *See* By-Law Article I, Section (ii). The definition of Regulatory Funds is not changing under this proposal.

assignments. This will align Section 20 of the Exchange's LLC Agreement with Section 20 in the LLC Agreements of ISE, GEMX, and MRX.

By-Law Article I

Currently, the definition of ''Non-Industry Director'' in the Exchange By-Laws refers to, among other individuals, an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.[4] Because only its affiliate, The Nasdaq Stock Market LLC (''Nasdaq''), currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer, director or employee of an issuer of securities listed on a national securities exchange operated by the Exchange *or one of its affiliates.* The Exchange believes that the proposed changes will bring greater clarity to the Exchange's rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange's Board are contemplated by this rule change. Today, a Non-Industry Director who is not designated by the Exchange as a Public Director[5] under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (*i.e.,* ''an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange'') would still fall under (iii) an individual who would not be an Industry Director.[6] With the proposed changes, these Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange's affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming changes to the definition of a ''Non-Industry member'' of a committee.[7] The Exchange further proposes a non-substantive change to delete the reference to ''director'' contained in (ii) of the definition of Non-Industry member in order to align with its affiliated exchanges.[8]

Currently, the Exchange's Board compositional requirements require at least one Public Director and at least one Director representative of issuers and investors.[9] As set forth in Article I, Section (gg), a ''Public Director'' is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. ''Director representative of issuers and investors'' is not defined specifically in the Exchange's By-Laws, but is implicitly defined in the term Non-Industry Director as ''an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.'' [10] The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.[11] Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives.

The Exchange does not seek to amend the Board's qualification requirements in the By-Laws other than the proposed changes to the definitions of Non-Industry Director and Public Director. With the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and Directors representative of issuers and investors), Industry Directors, and Member Representative Directors.[12] Accordingly, current Board qualification requirements such as the number of Non-Industry Directors, including at least one Public Director and at least one Director representative of issuers and investors, equaling or exceeding the sum of the number of Industry Directors and Member

[4] In addition, the term ''Non-Industry Director'' encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. *See* By-Law Article I, Section (bb).

[5] The term ''Public Director'' shall mean a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. *See* By-Law Article I, Section (gg).

[6] The term ''Industry Director'' means a Director (excluding any two officers of the Exchange, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the ''Staff Directors'')), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. *See* By-Law Article I, Section (p).

[7] *See* By-Law Article I, Section (cc).

[8] In particular, the definitions of Non-Industry member on Nasdaq BX, Inc. (''BX''), Nasdaq, ISE, GEMX, and MRX all refer to, among other individuals, ''. . . an officer or employee of an issuer of securities . . .'' *See* BX By-Law Article I, Section (cc); Nasdaq By-Law Article I, Section (w); ISE By-Law Article I, Section (x); GEMX By-Law Article I, Section (x); and MRX By-Law Article I, Section (x).

[9] *See* By-Law Article III, Section 3–2(a).

[10] *See* By-Law Article I, Section (bb). As discussed above, the Exchange will amend this provision to refer to ''an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange *or one of its affiliates.*''

[11] This is consistent with the longstanding best practice of the Exchange's parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board's Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered ''independent directors'' as defined in Nasdaq Rule 5605. *See* By-Law Article V, Section 5–2(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

[12] The term ''Member Representative Director'' shall mean a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Member pursuant to the Exchange's By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of a Member. *See* By-Law Article I, Section (w). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the ''rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs . . .''

Representative Directors would continue to apply.[13]

In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a ''Public member'' of a committee.[14] Lastly, the Exchange proposes to add that a Public member means a committee member that has no material business relationship with FINRA (in addition to a broker or dealer, or the Exchange and its affiliates, as currently provided). This proposed change would align the Exchange's definition of ''Public member'' to its affiliated exchanges.[15]

By-Law Article V, Section 5–2(c)

Currently, By-Law Article V, Section 5–2(c) requires that the ROC be comprised of three members, each of whom shall be a Public Director and an ''independent director'' as defined in Nasdaq Rule 4200. The Exchange proposes to amend Section 5(c) to provide that the ROC shall be comprised of *at least* three members, as is currently set forth in the ROC Charter.[16] All members of the ROC will continue to be Public Directors and ''independent directors.'' Lastly, the Exchange also proposes to make technical changes in Section 5–2(c) to update the reference to Nasdaq Rule 4200 to Rule 5605.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,[18] in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

LLC Agreement

The Exchange believes that the proposed changes to the LLC Agreement provisions on distributions, books and records, and assignments are consistent with the Act. As discussed above, the Exchange believes that its proposal will bring greater specificity and detail to provisions related to the regulatory independence of the Exchange. The Exchange believes that the proposed changes will make clear the independence of the Exchange's regulatory function and facilitate the ability of the Exchange to carry out its responsibility and operate in a manner consistent with the Act. Furthermore, the proposed amendments will have the additional benefit of bringing the Exchange's LLC Agreement into greater conformity with those of ISE, GEMX, and MRX, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.[19]

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange's affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance practices.[20] Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.[21] Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act. Lastly, the proposed changes in ''Non-Industry member'' and ''Public member'' as discussed above will bring these definitions in greater conformity with the Exchange's affiliated exchanges, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.

By-Law Article V, Section 5–2(c)

The Exchange believes that the proposed rule change in By-Law Article V, Section 5–2(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and ''independent directors'' as defined in Nasdaq's Rules will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical change to update the reference to Nasdaq Rule 4200 to Rule 5605 will bring greater clarity to the Exchange's rules, which will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on

[13] *See* By-Law Article III, Section 3–2(a). In addition, the Board qualification requirement that at least 20% of the Directors be Member Representative Directors will continue to apply. *See* LLC Agreement Section 8(a).

[14] *See* By-Law Article I, Section (hh).

[15] *See* BX By-Law Article I, Section (hh); Nasdaq By-Law Article I, Section (z); ISE By-Law Article I, Section (aa); GEMX By-Law Article I, Section (aa); and MRX By-Law Article I, Section (aa).

[16] The ROC Charter is available at: *http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25*.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(1), (b)(3), and (b)(5).

[19] *See* ISE, GEMX, and MRX LLC Agreements, Sections 15, 16, and 20.

[20] *See supra* note 11.

[21] *See supra* notes 12 and 13, with accompanying text.

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [24] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [25] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its LLC Agreement and By-Laws, which would provide more specificity and would better align provisions in the Exchange's LLC Agreement with those in the LLC Agreements of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–38 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–Phlx–2019–38. 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–Phlx–2019–38 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22012 Filed 10–8–19; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87208; File No. SR–BX–2019–034]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 4121

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2019, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 4121.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 4121 provides a methodology for determining when to halt trading in all stocks due to extraordinary market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

volatility (*i.e.,* market-wide circuit breakers). The market-wide circuit breaker (''MWCB'') mechanism under Rule 4121 was approved by the Commission to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[3] including any extensions to the pilot period for the LULD Plan.[4] The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[5] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 4121 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[6]

The Exchange now proposes to amend Rule 4121 to extend the pilot to the close of business on October 18, 2020. This filing does not propose any substantive or additional changes to Rule 4121. The Exchange will use the extension period to develop with the other SROs rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The market-wide circuit breaker under Rule 4121 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[7] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 4121, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading until the primary listing market opens the next trading day.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 4121 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 4121 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism. Furthermore, as noted above, the extension will permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[3] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[4] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BX–2011–068) (Approval Order); and 68815 (February 1, 2013), 78 FR 9752 (February 11, 2013) (SR–BX–2013–009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of a Rule Change to Exchange Rule 4121).

[5] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[6] *See* Securities Exchange Act Release No. 85585 (April 10, 2019), 84 FR 15643 (April 16, 2019) (SR–BX–2019–008).

[7] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(iii) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot to halt trading across the U.S. markets. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2019–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2019–034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2019–034 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22026 Filed 10–8–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *Id.*

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87213; File No. SR–BX–2019–032]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX's By-Laws

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2019, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its By-Laws, as further discussed below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its By-Laws to (i) harmonize certain provisions related to the regulatory independence of the Exchange with those of the Exchange's affiliates, Nasdaq ISE, LLC (''ISE''), Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

GEMX, LLC (''GEMX''), and Nasdaq MRX, LLC (''MRX''), (ii) modify Director categorizations, (iii) update compositional requirements of the Regulatory Oversight Committee (''ROC''), and (iv) make additional, non-substantive edits. Each change is discussed below.[3]

Regulatory Independence

The Exchange proposes to modify a number of provisions in its By-Laws related to the regulatory independence of the Exchange. As discussed below, the Exchange believes that the proposed changes will make these provisions more robust and will serve to align the Exchange's By-Laws with the Limited Liability Company Agreements (''LLC Agreements'') of its affiliates, ISE, GEMX, and MRX.

• *Dividends:* The Exchange currently has distribution provisions in Section 9.8 of the By-Laws that prohibits the Exchange from issuing dividends to its stockholder (*i.e.,* Nasdaq, Inc.), using Regulatory Funds.[4] The Exchange now proposes to amend this provision to substantially conform to Section 15 in the LLC Agreements of ISE, GEMX, and MRX by specifying that Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange. The Exchange believes these are minor changes that make the dividend provisions more robust by specifying how Regulatory Funds may be used. Lastly, the Exchange proposes to add that it would not be required to pay dividends to the stockholder if such dividends would violate the Delaware General Corporation Law or any other applicable law or would otherwise be required to fulfill the regulatory functions or responsibilities of the Exchange.

• *Books and Records:* The Exchange proposes to add in new Section 10.5 of the By-Laws a provision requiring that the books and records of the Exchange must be maintained in the United States, which will harmonize this provision with Section 16 in the ISE, GEMX, and MRX LLC Agreements. The Exchange further proposes to substantially conform to ISE, GEMX, and MRX in Section 10.5 by providing that the books of the Exchange shall at all times be maintained by the Board. The Exchange's books of account shall be kept using the method of accounting determined by the stockholder. The Exchange's independent auditor shall be an independent public accounting firm selected by the Board. Other than as provided in Section 10.5 with respect to the Commission, all confidential information relating to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) Not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof, (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange, and (iii) must not be used for any non-regulatory purpose. Furthermore, the Exchange proposes to add, similar to the ISE, GEMX, and MRX LLC Agreements, that nothing in the By-Laws shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission. The Exchange believes that the proposed changes will add more specificity as to who may access the Exchange's books and records, especially relating to confidential information on the self-regulatory function of the Exchange, and the use of such information.

Director Categorizations

Currently, the definition of ''Non-Industry Director'' in the Exchange By-Laws refers to, among other individuals, an officer or employee of an issuer of securities listed on the Exchange.[5] Because only its affiliate, The Nasdaq Stock Market LLC (''Nasdaq''), currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer or employee of an issuer of securities listed on a national securities exchange operated by the Exchange *or one of its affiliates.* The Exchange believes that the proposed changes will bring greater clarity to the Exchange's rules by aligning the By-Law provision to how the Exchange currently operates. In addition, the Exchange proposes a non-substantive change in (ii) of the definition of Non-Industry Director to add a reference to ''director'' in order to align with its affiliated exchanges.[6] The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange's Board are contemplated by this rule change. Today, a Non-Industry Director who is not designated by the Exchange as a Public Director[7] under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (*i.e.,* ''an officer or employee of an issuer of securities listed on the national securities exchange operated by the Exchange'') would still fall under (iii) an individual who would not be an Industry Director.[8] With the proposed

[3] All references herein and in the Exhibit 5 to ''the Corporation'' mean the Exchange. Corporation is defined in the By-Laws to mean Nasdaq BX, Inc.

[4] ''Regulatory Funds'' means fees, fines, or penalties derived from the regulatory operations of the Exchange. ''Regulatory Funds'' shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange. *See* By-Law Article I, Section (ii). The definition of Regulatory Funds is not changing under this proposal.

[5] In addition, the term ''Non-Industry Director'' encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. *See* By-Law Article I, Section (bb).

[6] In particular, the definitions of Non-Industry Director on Nasdaq Phlx LLC (''Phlx''), Nasdaq, ISE, GEMX, and MRX all refer to, among other individuals, ''. . . an officer, director, or employee of an issuer of securities . . .'' *See* Phlx By-Law Article I, Section (bb); Nasdaq By-Law Article I, Section (v); ISE By-Law Article I, Section (w); GEMX By-Law Article I, Section (w); and MRX By-Law Article I, Section (w).

[7] The term ''Public Director'' means a Director who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA. *See* By-Law Article I, Section (gg).

[8] The term ''Industry Director'' means a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the ''Staff Directors'')), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services

changes, these Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange's affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming changes to the definition of a ''Non-Industry member'' of a committee.[9]

Currently, the Exchange's Board compositional requirements require at least one Public Director and at least one Director representative of issuers and investors.[10] As set forth in Article I, Section (gg), a ''Public Director'' is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. ''Director representative of issuers and investors'' is not defined specifically in the Exchange's By-Laws, but is implicitly defined in the term Non-Industry Director as ''an officer or employee of an issuer of securities listed on the Exchange.'' [11] The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered a Director representative of issuers and investors. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.[12] Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and Directors representative of issuers and investors. In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a ''Public member'' of a committee.[13]

The Exchange does not seek to amend the Board's qualification requirements in the By-Laws other than the proposed changes to the definitions of Non-Industry Director and Public Director. With the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and Directors representative of issuers and investors), Industry Directors, and Member Representative Directors.[14] Accordingly, current Board qualification requirements such as the number of Non-Industry Directors, including at least one Public Director and at least one Director representative of issuers and investors, equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.[15]

Regulatory Oversight Committee

Currently, By-Law Article IV, Section 4.13(c) requires that the Regulatory Oversight Committee (''ROC'') be comprised of three members, each of whom shall be a Public Director and an ''independent director'' as defined in Nasdaq Rule 4200. The Exchange proposes to amend Section 4.13(c) to provide that the ROC shall be comprised of *at least* three members, as is currently set forth in the ROC Charter.[16] All members of the ROC will continue to be Public Directors and ''independent directors.'' Lastly, the Exchange also proposes to make technical changes in Section 4.13(c) to correct a typographical error and to update the reference to Nasdaq Rule 4200 to Rule 5605.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,[18] in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Regulatory Independence

The Exchange believes that the proposed changes to the By-Law provisions on dividends, and books and records are consistent with the Act. As discussed above, the Exchange believes that its proposal will bring greater specificity and detail to provisions related to the regulatory independence of the Exchange. The Exchange believes that the proposed changes will make clear the independence of the Exchange's regulatory function and facilitate the ability of the Exchange to carry out its responsibility and operate in a manner consistent with the Act. Furthermore, the proposed amendments will have the additional benefit of bringing the Exchange's By-Laws into greater conformity with similar provisions in the LLC Agreements of ISE, GEMX, and MRX, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.[19]

Director Categorizations

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry

to the Corporation or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years. *See* By-Law Article I, Section (t).

[9] *See* By-Law Article I, Section (cc).

[10] *See* By-Law Article IV, Section 4.3.

[11] *See* By-Law Article I, Section (bb). As discussed above, the Exchange will amend this provision to refer to an ''officer, *director,* or employee of an issuer of securities listed on a national securities exchange operated by the Exchange *or one of its affiliates*.''

[12] This is consistent with the longstanding best practice of the Exchange's parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board's Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered ''independent directors'' as defined in Nasdaq Rule 5605. *See* By-Law Article IV, Section 4.13(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

[13] *See* By-Law Article I, Section (hh).

[14] The term ''Member Representative Director'' means a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to the Exchange's By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative Directors elected pursuant to Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. *See* By-Law Article I, Section (x). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the ''rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs . . .''

[15] In addition, the Board qualification requirement that at least 20 percent of the Directors be Member Representative Directors will continue to apply. *See* By-Law Article IV, Section 4.3.

[16] The ROC Charter is available at: *http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(1), (b)(3), and (b)(5).

[19] *See* ISE, GEMX, and MRX LLC Agreements, Sections 15 and 16.

member proposed above will enhance the clarity of these provisions given that only the Exchange's affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance practices.[20] Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20 percent of the Directors be Member Representative Directors, would continue to apply.[21] Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act. Lastly, the proposed change to add ''director'' in the definition of Non-Industry Director will bring this definition in greater conformity with the Exchange's affiliated exchanges, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.

Regulatory Oversight Committee

The Exchange believes that the proposed rule change in By-Law Article IV, Section 4.13(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and ''independent directors'' as defined in Nasdaq's Rules will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical changes in Section 4.13(c) to correct a typographical error and to update the reference to Nasdaq Rule 4200 to Rule 5605 will bring greater clarity to the Exchange's rules, which will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[24] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[25] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its By-Laws, which would provide more specificity and would better align provisions in the Exchange's By-Laws with those in the By-Laws and LLC Agreements of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2019–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2019–032. 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

[20] *See supra* note 12.

[21] *See supra* notes 14 and 15, with accompanying text.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2019–032 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22014 Filed 10–8–19; 8:45 am]

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87205; File No. SR–FINRA–2019–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 7620B To Modify the Trade Reporting Fees Applicable to Participants That Use the FINRA/NYSE Trade Reporting Facility

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7620B (Trade Reporting Facility Reporting Fees) to modify the trade reporting fees applicable to participants that use the FINRA/NYSE Trade Reporting Facility (''FINRA/NYSE TRF'').

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The FINRA/NYSE TRF, which is operated by NYSE Market (DE), Inc. (''NYSE Market (DE)''), is one of four FINRA facilities[5] that FINRA members can use to report over-the-counter (''OTC'') trades in NMS stocks. While members are required to report all OTC trades in NMS stocks to FINRA, they may choose which FINRA Facility (or Facilities) to use to satisfy their trade reporting obligations.[6]

As discussed below, NYSE Market (DE) proposes to modify the trade reporting fees applicable to FINRA members that use the FINRA/NYSE TRF (''FINRA/NYSE TRF Participants'' or ''Participants''). Currently, the monthly fee for use of the FINRA/NYSE TRF is calculated using a tiered fee structure based on the reporting member's OTC trading activity. NYSE Market (DE) proposes to:

- Change the tier basis to use just the trading activity reported to the FINRA/NYSE TRF, rather than using all trading activity published on FINRA's public website, as it does now; and
- increase the number of fee tiers to address differences in participant usage.

If there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the first quarter of 2019, under the proposed fee schedule the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease.

FINRA is proposing to amend FINRA Rule 7620B (FINRA/NYSE Trade Reporting Facility Reporting Fees) accordingly. There is no new product or service accompanying the proposed fee change.

Background

The FINRA/NYSE TRF

Under the governing limited liability company agreement,[7] the FINRA/NYSE TRF has two members: FINRA and NYSE Market (DE). FINRA, the ''SRO Member,'' has sole regulatory responsibility for the FINRA/NYSE TRF. NYSE Market (DE), the ''Business Member,'' is primarily responsible for the management of the FINRA/NYSE TRF's business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA.

The Business Member establishes pricing for use of the FINRA/NYSE TRF, which pricing is implemented pursuant to FINRA rules that FINRA must file with the Commission and that must be consistent with the Act. The relevant FINRA rules are administered by NYSE Market (DE), in its capacity as the Business Member and operator of the

[5] The four FINRA facilities are the FINRA/NYSE TRF, two FINRA/Nasdaq Trade Reporting Facilities (together, the ''FINRA/Nasdaq TRF''), and the Alternative Display Facility (''ADF'' and together, the ''FINRA Facilities'').

[6] Members can use the FINRA/NYSE TRF as a backup system and reserve bandwidth if there is a failure at another FINRA Facility that supports the reporting of OTC trades in NMS stocks. As set forth in Trade Reporting Notice 1/20/16 (OTC Equity Trading and Reporting in the Event of Systems Issues), a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility must establish and maintain connectivity and report to a second FINRA Facility, if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.

[7] *See* the Second Amended and Restated Limited Liability Company Agreement of FINRA/NYSE Trade Reporting Facility LLC. The limited liability company agreement, which was submitted as part of the rule filing to establish the FINRA/NYSE TRF and was subsequently amended and restated, can be found in the FINRA Manual.

FINRA/NYSE TRF on behalf of FINRA,[8] and the Business Member collects all fees on behalf of the FINRA/NYSE TRF. In addition, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/NYSE TRF.

FINRA/NYSE TRF Participants are charged fees pursuant to Rule 7620B and may qualify for transaction credits under Rule 7610B (Securities Transaction Credit). In addition, pursuant to Rule 7630B (Aggregation of Activity of Affiliated Members), affiliated members can aggregate their activity for purposes of fees and credits that are dependent upon the volume of their activity.[9]

The FINRA/NYSE TRF is smaller than the FINRA/Nasdaq TRF in terms of reported volume: FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC. For example, from July 2018 through June 2019, the breakout of trade report activity among the FINRA Facilities was as follows:

Facility	Number of reported shares	Percentage of TRF total
FINRA/NYSE TRF	130,536,250,022	19.5
FINRA/NASDAQ TRF	540,520,980,728	80.5

Competitive Environment

According to the Business Member, the FINRA/NYSE TRF operates in a competitive environment. The FINRA Facilities have different pricing [10] and compete for FINRA members' trade report activity. In turn, FINRA members can choose which FINRA Facility they use to report OTC trades in NMS stocks. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC, compared to approximately 80% for the FINRA/Nasdaq TRF. The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities. At the same time, the Business Member believes that the current fee structure under Rule 7620B discourages some FINRA members from becoming FINRA/NYSE TRF Participants, because the current fee is not tied to how much trading is reported specifically to the FINRA/NYSE TRF.

To address this issue, the Business Member has designed a fee structure under which FINRA/NYSE TRF Participants' monthly reporting fees would not be calculated using a Participant's total OTC trading activity. As discussed below, the proposed change would base the monthly fee on the Participant's share of total market volume reported to the FINRA/NYSE TRF. Accordingly, the Business Member believes that the proposed fee change will more closely correspond to actual usage and encourage more FINRA members to become FINRA/NYSE TRF Participants and use the FINRA/NYSE TRF. Such a change would make the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF and give members more attractive options for trade reporting, potentially encouraging FINRA members to use the FINRA/NYSE TRF to report more than the approximately 20% of their shares in NMS stocks traded OTC that they currently use it for.

Proposed Amendments to Rule 7620B

Under Rule 7620B, FINRA/NYSE TRF Participants are charged a flat fee for access to the complete range of functionality offered by the FINRA/NYSE TRF rather than a separate fee for each activity (*e.g.,* a per trade or per side fee for reporting a trade, a separate per trade fee for canceling a trade, etc.) or a separate fee for connectivity.[12] Rather than charging the same fee to all FINRA/NYSE TRF Participants irrespective of trading activity, the fees set forth in Rule 7620B are tiered, to tie the amount of the monthly fees to a Participant's trading activity.

The Current Monthly Fee

As noted above, the monthly fee for use of the FINRA/NYSE TRF is calculated using a tiered fee structure based on a Participant's total OTC trading activity, whether or not it is reported to the FINRA/NYSE TRF. Specifically, pursuant to current Rule 7620B,[13] each Participant is charged a fee based on its ''ATS & Non-ATS OTC Market Share,'' which is defined as the percentage calculated by dividing:

a. The total number of ATS and non-ATS shares [14] reported by the Participant to FINRA and published on FINRA's public website (''OTC Transparency Data website'') [15] pursuant to Rule 6110 (Trading Otherwise than on an Exchange) [16] during a given calendar quarter, by

b. the total number of all shares reported to the Consolidated Tape Association (''CTA'') or the Nasdaq

[8] FINRA's oversight of this function performed by the Business Member is conducted through a recurring assessment and review of the FINRA/NYSE TRF operations by an outside independent audit firm.

[9] No change is proposed to be made to Rules 7610B or 7630B, and so there will be no change to the requirements for, or process of, securities transaction credits and the aggregation of affiliated member activity.

[10] Because the FINRA/NYSE TRF and FINRA/Nasdaq TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04).

[12] *See, e.g.,* Rules 7510(a) and 7520 (trade reporting fees and connectivity charges for the ADF) and Rule 7620A (trade reporting fees for the FINRA/Nasdaq TRF).

[13] *See* Securities Exchange Release No. 79050 (October 5, 2016), 81 FR 70462 (October 12, 2016) (SR–FINRA–2016–037).

[14] ''ATS shares'' are shares of NMS stocks executed within a member's alternative trading system (''ATS'') and ''non-ATS shares'' are shares of NMS stocks executed OTC by a member outside of an ATS.

[15] *See otctransparency.finra.org/otctransparency/AtsIssueData.*

[16] Pursuant to Rule 6110, FINRA publishes on its OTC Transparency Data website the number of shares and trades by security executed OTC (''Trading Information'') by each ATS and member firm with a trade reporting obligation under FINRA rules. Trading Information published on FINRA's website is derived directly from OTC trades reported by the member firm to the FINRA Facilities.

Securities Information Processor (''UTP SIP''), as applicable, during that period.

The ATS & Non-ATS OTC Market Share is calculated in aggregate across all tapes.[17] Such calculation is based on the data available for the prior full calendar quarter and determines the monthly fees in subsequent periods. By using the total number of ATS and non-ATS shares reported, the ATS & Non-ATS OTC Market Share does not limit its calculation to reports submitted to the FINRA/NYSE TRF.

The following chart sets forth the current fee tiers:

ATS & non-ATS OTC market share	Monthly subscriber fee
Greater than or equal to 2.0%	$30,000
Greater than or equal to 0.5% but less than 2.0%	15,000
Greater than or equal to 0.1% but less than 0.5%	5,000
Less than 0.1%	2,000

The Proposed Monthly Fee

The Business Member has determined to adjust the fees for use of the FINRA/NYSE TRF to base the monthly fee on the Participant's share of total market volume reported to the FINRA/NYSE TRF. More specifically, rather than using the ATS & Non-ATS OTC Market Share, the proposed fees will be based on the Participant's ''FINRA/NYSE TRF Market Share,'' defined as the percentage calculated by dividing:

a. The total number of shares reported to the FINRA/NYSE TRF for public dissemination (or ''tape'') purposes during a given calendar month that are attributable to a FINRA/NYSE TRF Participant, by

b. the total number of all shares reported to the CTA or UTP SIP, as applicable, during that period.

The FINRA/NYSE TRF Market Share would be calculated in aggregate across all tapes and would be based on the number of shares attributable to a FINRA/NYSE TRF Participant, irrespective of whether the trade is reported by the Participant or on behalf of the Participant by another FINRA/NYSE TRF Participant. Such calculation would be based on the data available for the prior full calendar month.[18]

The text of Rule 7620B would be revised to be consistent with the changes. As noted, the fee would be calculated based on the shares reported to the FINRA/NYSE TRF and would no longer be based on the shares published on FINRA's OTC Transparency Data website. Accordingly, amended Rule 7620B would remove the reference to ''ATS and non-ATS'' shares because that classification is used on FINRA's OTC Transparency Data website, but not by the FINRA/NYSE TRF.

Amended Rule 7620B would state that a transaction is attributed to a FINRA/NYSE TRF Participant if the Participant is identified as the executing party, *i.e.,* has the trade reporting obligation under Rule 6380B(b), in a trade report submitted to the FINRA/NYSE TRF for tape purposes. Finally, amended Rule 7620B would state that FINRA/NYSE TRF Market Share would be calculated in aggregate across all Tapes and only include shares reported to the Tapes.

In addition to basing the fee on the Participant's FINRA/NYSE TRF Market Share, the proposed changes to Rule 7620B would expand the tier structure from four monthly participant fees to nine. Under the proposed rule change, for those Participants with a FINRA/NYSE TRF Market Share of less than 0.10%, the determination of the applicable tier would be tied to the number of tape reports submitted to the FINRA/NYSE TRF.

The following chart sets forth the nine proposed fee tiers: [19]

FINRA/NYSE TRF market share	Count of tape reports to FINRA/NYSE TRF	Monthly participant fee
Greater than or equal to 1.25%	n/a	$30,000
Greater than or equal to 0.75% but less than 1.25%	n/a	20,000
Greater than or equal to 0.50% but less than 0.75%	n/a	17,500
Greater than or equal to 0.25% but less than 0.50%	n/a	15,000
Greater than or equal to 0.10% but less than 0.25%	n/a	10,000
Less than 0.10%	25,000 or more trade reports	2,000
Less than 0.10%	100 or more trade reports but fewer than 25,000 trade reports	750
Less than 0.10%	1 or more trade reports but fewer than 100 trade reports	250
Less than 0.10%	No trade reports	2,000

As now, the monthly fee will be charged at the end of the calendar month and will apply to any Participant that has submitted a participant application agreement to the FINRA/NYSE TRF pursuant to Rule 7220B (Trade Reporting Participation Requirements). If a new FINRA/NYSE TRF Participant submits the participant application agreement and reports no shares traded in a given month, the Participant will not be charged the monthly fee for the first two calendar months in order to provide time to connect to the FINRA/NYSE TRF.[20]

The monthly fees paid by FINRA/NYSE TRF Participants will continue to include unlimited use of the Client Management Tool, as well as full access to the FINRA/NYSE TRF and supporting functionality, *e.g.,* trade submission, reversal and cancellation.[21]

Application of Proposed Fee Schedule

The proposed fee schedule will be applied in the same manner to all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It will not apply differently to different types or sizes of Participants. Rather, because it will utilize the FINRA/NYSE TRF Market Share, the proposed fees will be based on a Participant's activity on the FINRA/NYSE TRF, not, as now, on its total OTC trading activity, whether or not it is reported to the

[17] There are three tapes: ''Tape A'' includes securities listed on the New York Stock Exchange, ''Tape B'' includes securities listed on NYSE American and regional exchanges, and ''Tape C'' includes securities listed on Nasdaq.

[18] For example, the bill issued in June would be for the month of May, and would be based on shares reported during May. The Business Member believes that having the calculation based on monthly data would allow the fees to reflect any changes in a Participant's use of the FINRA/NYSE TRF more quickly than if fees were calculated using quarterly data.

[19] Because the first sentence states that ''each participant'' will be charged the fee, to make the rule consistent in its terminology ''Subscriber'' would be replaced with ''Participant'' in the heading of the third column in the table.

[20] As is the case today, after the first two calendar months, the Participant will be charged regardless of connectivity.

[21] *See* 81 FR 70462, *supra* note 13, at 70465.

FINRA/NYSE TRF.[22] At the same time, by expanding the tier structure from four monthly participant tiers to nine, the proposed rule change would create a more nuanced fee structure, under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month.

FINRA/NYSE TRF Market Share

Measured at any given point, a Participant's FINRA/NYSE TRF Market Share would always be lower than or equal to its ATS & Non-ATS OTC Market Share. Although one is calculated monthly and the other quarterly, given that the denominator for both is the total number of shares reported to the CTA or UTP SIP during the relevant period, a ratio that has the shares reported only to the FINRA/NYSE TRF as the numerator will be smaller than, or at most equal to, a ratio that has all shares reported to all FINRA Facilities as the numerator. Based on the Business Member's comparison of the information on the OTC Transparency Data website with its own activity records, the Business Member understands that few, if any, Participants do all of their reporting on the FINRA/NYSE TRF. Accordingly, the Business Member expects that most Participants' FINRA/NYSE TRF Market Share would be lower than, not equal to, their ATS & Non-ATS OTC Market Share.

Proposed Tiers

To facilitate comparison of the current and proposed tiers, the following table sets forth the proposed and current tiers, applicable monthly fee, and the number of Participants that were subject to each of the current tiers as of March 31, 2019.

ATS & non-ATS OTC market share (current tiers)	FINRA/NYSE TRF market share (proposed tiers)	Monthly fee (current and proposed)	Number of participants in each current tier [1]
Greater than or equal to 2.00%	Greater than or equal to 1.25%	$30,000	4
	Greater than or equal to 0.75% but less than 1.25%	20,000	
	Greater than or equal to 0.50% but less than 0.75%	17,500	
Greater than or equal to 0.50% but less than 2.00%	Greater than or equal to 0.25% but less than 0.50%	15,000	4
	Greater than or equal to 0.10% but less than 0.25%	10,000	
Greater than or equal to 0.10% but less than 0.50%		5,000	3
Less than 0.10%	Less than 0.10% and 25,000 or more trade reports to the FINRA/NYSE TRF.	2,000	18
	Less than 0.10% and 100 or more trade reports but fewer than 25,000 trade reports to the FINRA/NYSE TRF.	750	
	Less than 0.10% and 1 or more trade reports but fewer than 100 trade reports to the FINRA/NYSE TRF.	250	
	Less than 0.10% and no trade reports to the FINRA/NYSE TRF.	2,000	
Total			29

[1] As of March 31, 2019.

The Business Member selected the proposed tiers and fees based on its evaluation of what thresholds and fees would create a more nuanced structure, under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month, without excessive charges. In making its evaluation, the Business Member utilized its comparison of the information on the OTC Transparency Data website with its own activity records.

The proposed fee schedule uses different threshold percentages for its tiers than the current fee schedule, as shown in the table above. Specifically, the highest fee would still be $30,000, but the threshold percentage of the FINRA/NYSE TRF Market Share would be 1.25%, as opposed to the current tier, which sets the threshold ATS & Non-ATS OTC Market Share at 2.0%.

The current fee schedule has two tiers between the lowest and highest tiers, *i.e.,* for Participants with an ATS & Non-ATS OTC Market Share that is at least 0.10% and less than 2.0%. By contrast, under the proposed rule change, there would be four tiers for Participants with a FINRA/NYSE TRF Market Share that is at least 0.10% and less than 1.25%.

Currently, all Participants with an ATS & Non-ATS OTC Market Share of less than 0.10% incur a flat monthly fee of $2,000. No fee is below $2,000. Under the proposed rule change, a Participant with a FINRA/NYSE TRF Market Share of less than 0.10% would pay a fee based on its number of trade reports to the FINRA/NYSE TRF. As indicated in the table above, a Participant with a FINRA/NYSE TRF Market Share of less than 0.1% would be subject to a $250 or $750 monthly fee if it had one or more but fewer than 25,000 trade reports. It would incur the $2,000 monthly fee if it (a) had less than 0.10% market share and 25,000 or more trade reports, or (b) had no trade reports.

Currently, approximately 60% of FINRA/NYSE TRF Participants are subject to the flat monthly fee of $2,000

[22] For example, using the total number of all shares reported to the CTA and UTP SIP in March 2019, if Firm A, a very large firm with a significant amount of trade reporting volume, had 364 million shares per day to report to any TRF and chose to report it all to the FINRA/NYSE TRF for the entire month, its FINRA/NYSE TRF Market Share would be 4.9% and its fee would be $30,000. If instead Firm A chose to report 64 million shares to the FINRA/NYSE TRF and 300 million shares to another FINRA Facility, the FINRA/NYSE TRF Market Share would be 0.88%, and Firm A's fee would be $20,000. The other FINRA Facility would charge the firm based on its fee schedule.

By contrast, if Firm B, a more moderate sized firm, had 21 million shares to report per day and reported all of it to the FINRA/NYSE TRF, its FINRA/NYSE TRF Market Share would be 0.29%, and Firm B would have a fee of $15,000. If it chose to report 5 million shares to the FINRA/NYSE TRF, its FINRA/NYSE TRF Market Share would be 0.07%, and it would incur a fee based on its count of tape reports. Specifically, if it reported 30,000 trades, the FINRA/NYSE TRF fee would be $2,000; if it were 500 trades, the FINRA/NYSE TRF fee would be $750; if it were one trade, the FINRA/NYSE TRF fee would be $250; and if it reported no trades, the FINRA/NYSE TRF fee would be $2,000. In each case, the FINRA Facility it reported the other shares to would charge Firm B based on its fee schedule.

for having an ATS & Non-ATS OTC Market Share of less than 0.10%.[23] All else being equal, the Business Member believes that the number of Participants with a FINRA/NYSE TRF Market Share of less than 0.10% is unlikely to be the same, as the fee will now more closely correspond to their usage of the FINRA/NYSE TRF. However, if we assume that Participants do not change their reporting behavior, the Business Member believes that most Participants would likely fall into the four bottom tiers.

The Business Member believes that using the number of trade reports submitted to the FINRA/NYSE TRF to help set the dividing line between the four bottom tiers provides a basis for distinguishing among such Participants, allowing the proposed fee to be more commensurate with the Participants' actual usage. At the same time, the Business Member believes that it is reasonable and equitable to charge a Participant the same $2,000 fee if it reports 25,000 or more reports or none at all, because it would create a reasonable incentive for reporting to the FINRA/NYSE TRF. Indeed, a Participant that submits just one report, rather than none, will reduce its fee from $2,000 to $250, an 87.5% reduction. A Participant that does not submit any reports would be charged $2,000 under the current fee structure.

Anticipated Application of the New Structure

It is not possible to fully predict the number of FINRA members that are likely to become FINRA/NYSE TRF Participants, how many Participants would be subject to each of the proposed tiers, or whether there will be an appreciable increase—or decrease—in reporting to the FINRA/NYSE TRF.[24] As noted above, the Business Member anticipates that the proposed pricing will incentivize Participants to increase their reporting to the FINRA/NYSE TRF.

If there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the first quarter of 2019, under the proposed fee schedule, the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease. More specifically, of the four Participants with a monthly subscriber fee of $30,000 as of March 31, three would remain at that rate and one would see its fee fall to $10,000. Of the four Participants with a monthly subscriber fee of $15,000, one would remain at that rate, and the others would pay fees ranging from $2,000 to $17,500. None of the three Participants with monthly subscriber fees of $5,000 would stay at that rate: one would see a fee increase, to $10,000, and the other two would be subject to fees of $750 and $2,000. Finally, of the 18 Participants with a monthly subscriber fee of $2,000, four would remain at $2,000 and 14 would see a fee reduction to $750.

The following table suggests how the new tiers would apply if more FINRA members were Participants. Using FINRA data for activity reported to the FINRA Facilities in the first quarter of 2019 from FINRA's OTC Transparency Data website, the table indicates the number of firms that would be subject to each tier if all FINRA members (excluding de minimis firms) were reporting to the FINRA/NYSE TRF subject to the current or proposed fee.[25] For the current fee, no assumptions are required, as it is calculated based on the ATS & Non-ATS OTC Market Share. For the proposed fee, the table shows the number of firms that would be in each tier were they to report 25%, 50% or 100% of their activity to the FINRA/NYSE TRF.

ATS & non-ATS OTC market share	FINRA/NYSE TRF market share	Number of firms per tier under current fee	Number of firms per tier based on percentage of reported volume [1]		
			25%	50%	100%
Greater than or equal to 2.00%	Greater than or equal to 1.25%	7	1	6	7.
	Greater than or equal to 0.75% but less than 1.25%.		2		4.
	Greater than or equal to 0.50% but less than 0.75%.		3	2	3.
Greater than or equal to 0.50% but less than 2.00%.	Greater than or equal to 0.25% but less than 0.50%.	8	2	6	7.
	Greater than or equal to 0.10% but less than 0.25%.		6	8	7.
Greater than or equal to 0.10% but less than 0.50%.		14			
Less than 0.10%	Less than 0.10% and 25,000 or more trade reports to the FINRA/NYSE TRF.	33	35	22	17.
	Less than 0.10% and 100 or more trade reports but fewer than 25,000 trade reports to the FINRA/NYSE TRF.		7	14	15.
	Less than 0.10% and 1 or more trade reports but fewer than 100 trade reports to the FINRA/NYSE TRF.		6	4	2.

[23] For the 15 months ended March 2019, the number of FINRA/NYSE TRF Participants subject to the flat $2,000 fee was between 17 and 19, and the total number of Participants reporting to the FINRA/NYSE TRF was 29 or 30.

[24] The Business Member does not propose to change the revenue sharing structure. The Business Member notes, however, that the proposed pricing may increase revenue sharing by encouraging Participants that have a FINRA/NYSE TRF Market Share of less than 0.10% to make trade reports to the FINRA/NYSE TRF in order to reduce their fees from $2,000 to $250 or $750. The Business Member believes that the increase in reporting would increase such Participants' revenue share as well as decrease the fee.

[25] The table excludes FINRA members whose activity is ''de minimis,'' which account for 1.5% of all shares reported. Such firms' activity cannot be allocated, as information for firms with ''de minimis'' volume outside of an ATS is aggregated and published on a non-attributed basis. *See* ''OTC (ATS & Non-ATS) Transparency'' at *www.finra.org/industry/otc-%28ats-%26-non-ats%29-transparency.*

ATS & non-ATS OTC market share	FINRA/NYSE TRF market share	Number of firms per tier under current fee	Number of firms per tier based on percentage of reported volume [1]		
			25%	50%	100%
	Less than 0.10% and no trade reports to the FINRA/NYSE TRF.	.....	Not available	Not available	Not available.
Total Firms	.....	62	62	62	62.

[1] Number of firms that would be in each tier had the firm reported 25%, 50% or 100% of its activity to the FINRA/NYSE TRF. Total activity based on data posted on the OTC Transparency Data website for the first quarter of 2019.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be October 1, 2019.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[26] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. All similarly situated members are subject to the same fee structure and access to the FINRA/NYSE TRF is offered on fair and nondiscriminatory terms.

The Proposed Rule Change Is an Equitable Allocation of Reasonable Fees

FINRA believes that the proposed rule change is an equitable allocation of reasonable fees for the following reasons.

The proposed fee would be based on the Participant's FINRA/NYSE TRF Market Share, rather than its ATS & Non-ATS OTC Market Share. As a result, the proposed fee will be based on a Participant's activity on the FINRA/NYSE TRF, not, as now, on its total OTC trading activity, whether or not it is reported to the FINRA/NYSE TRF. At the same time, the proposed changes to Rule 7620B would expand the tier structure from four monthly participant fees to nine. As a result, Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month. In addition, the Business Member believes that having the calculation based on monthly data will allow the fees to reflect any changes in a Participant's use of the FINRA/NYSE TRF more quickly than if fees were calculated on a quarterly basis.

The proposed fee schedule uses different threshold percentages for its tiers than the current schedule, because the percentages are of a different ratio. Measured at any given point, a Participant's FINRA/NYSE TRF Market Share would always be lower than or equal to its ATS & Non-ATS OTC Market Share. Although one is calculated monthly and the other quarterly, given that the denominator for both is the total number of shares reported to the CTA or UTP SIP during the relevant period, a ratio that has the shares reported only to the FINRA/NYSE TRF as the numerator will be smaller than, or at most, equal to, a ratio that has all shares reported to all FINRA Facilities as the numerator. Based on the Business Member's comparison of the information on the OTC Transparency Data website with its own activity records, it believes that few, if any, Participants do all of their reporting on the FINRA/NYSE TRF. Accordingly, the Business Member expects that most Participants' FINRA/NYSE TRF Market Share would be lower than, not equal to, their ATS & Non-ATS OTC Market Share.

The Business Member selected the proposed tiers and fees based on its evaluation of what thresholds and fees would create a more nuanced structure, under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month, without excessive charges. In making its evaluation, the Business Member utilized its comparison of the information on the OTC Transparency Data website with its own activity records.

Currently, approximately 60% of FINRA/NYSE TRF Participants are subject to the flat monthly fee of $2,000 for having an ATS & Non-ATS OTC Market Share of less than 0.10%.[27] All else being equal, the Business Member believes that the number of Participants with a FINRA/NYSE TRF Market Share of less than 0.10% is unlikely to be the same, as the fee will now more closely correspond to their usage of the FINRA/NYSE TRF. However, if we assume that Participants do not change their reporting behavior, the Business Member believes that most Participants would likely fall into the four bottom tiers.

The Business Member believes that using the number of trade reports submitted to the FINRA/NYSE TRF to help set the dividing line between the four bottom tiers would be equitable because it would provide a basis for distinguishing among such Participants, allowing the proposed fee to be more commensurate with the Participants' actual usage. At the same time, the Business Member believes that it is reasonable and equitable to charge a Participant with a FINRA/NYSE TRF Market Share of less than 0.10% the same $2,000 fee if it reports 25,000 or more reports or none at all, because it would create a reasonable incentive for reporting to the FINRA/NYSE TRF. Indeed, a Participant that submits just one report, rather than none, will reduce its fee from $2,000 to $250, an 87.5% reduction. It would be charged $2,000 under the current fee structure.

As is true currently, the proposed fees are designed such that more active Participants have a higher fee, while less active Participants pay less. At the same time, by adding additional tiers to the current structure, the proposed rule change should lead to fees that are more reflective of Participants' activity on the FINRA/NYSE TRF.

The Proposed Rule Change Is Not Unfairly Discriminatory

FINRA believes that the proposed rule change is not unfairly discriminatory for the following reasons.

The proposed fee schedule will be assessed in the same manner on all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It will not be assessed differently to different types or sizes of Participants. Access to the FINRA/NYSE TRF is offered on fair and non-discriminatory terms.

FINRA members can choose among four FINRA Facilities when reporting OTC trades in NMS stocks: the FINRA/

[26] 15 U.S.C. 78*o*–3(b)(5).

[27] For the 15 months ended March 2019, the number of FINRA/NYSE TRF Participants subject to the flat $2,000 fee was between 17 and 19, and the total number of Participants reporting to the FINRA/NYSE TRF was 29 or 30.

NYSE TRF, the two FINRA/Nasdaq TRFs, or ADF. The FINRA Facilities have different pricing and compete for FINRA members' trade report activity. FINRA members will continue to have the option of using another FINRA Facility for purposes of reporting OTC trades in NMS stocks if they determine that the fees and credits of another facility are more favorable. The pricing structures of the other FINRA Facilities are publicly available, allowing FINRA members to make rational decisions based on the information. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28]

FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC, compared to approximately 80% for the FINRA/Nasdaq TRF. The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities.

At the same time, the Business Member believes that the current structure of Rule 7620B discourages FINRA members from becoming FINRA/NYSE TRF Participants. Because it is calculated using a Participant's total OTC trading activity, the current fee is not tied to how much trading is reported to the FINRA/NYSE TRF. In other words, a member may not choose to become a FINRA/NYSE TRF Participant because it would then be subject to a fee based on all its reporting, not just its usage of the FINRA/NYSE TRF. The Business Member believes that the proposed fee change will encourage more FINRA members to become FINRA/NYSE TRF Participants and use the FINRA/NYSE TRF. Such a change would make the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF and give members more attractive options for trade reporting, potentially encouraging FINRA members to use the FINRA/NYSE TRF to report more than the approximately 20% of their shares in NMS stocks traded OTC that they currently use it for.

Because it will utilize the FINRA/NYSE TRF Market Share, the proposed fees will be based on a Participant's activity on the FINRA/NYSE TRF, not, as now, on its total OTC trading activity, whether or not it is reported to the FINRA/NYSE TRF. At the same time, by expanding the tier structure from four monthly participant tiers to nine, the proposed rule change would create a structure under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month.

The Business Member selected the proposed tiers and fees based on its evaluation of what thresholds and fees would create a more nuanced structure, under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month, without excessive charges. In making its evaluation, the Business Member utilized its comparison of the information on the OTC Transparency Data website with its own activity records.

The Business Member believes that, for those Participants with a FINRA/NYSE TRF Market Share of less than 0.10%, using the number of trade reports submitted to the FINRA/NYSE TRF to help set the dividing line between tiers provides a basis for distinguishing among such Participants, allowing the proposed fee to be more commensurate with the Participants' actual usage. At the same time, the Business Member believes that it is reasonable and equitable to charge a Participant the same $2,000 fee if it reports 25,000 or more reports or none at all, because it would create a reasonable incentive for reporting to the FINRA/NYSE TRF. Indeed, a Participant that submits just one report, rather than none, will reduce its fee from $2,000 to $250, an 87.5% reduction. It would be charged $2,000 under the current fee structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Business Member believes that, rather than impose a burden on competition, the proposed change will benefit competition because it will give all FINRA members more attractive options for trade reporting. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [29]

Intramarket Competition. FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC, compared to approximately 80% for the FINRA/Nasdaq TRF. Based on the Business Member's comparison of the information on the OTC Transparency Data website with its own activity records, the Business Member understands that few, if any, Participants do all of their reporting on the FINRA/NYSE TRF.

The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities. At the same time, the Business Member believes that the current fee structure under Rule 7620B discourages some FINRA members from becoming FINRA/NYSE TRF Participants, because the current fee is not tied to how much trading is reported specifically to the FINRA/NYSE TRF.

To address this issue, the Business Member has designed a fee structure under which FINRA/NYSE TRF Participants' monthly reporting fees would no longer be calculated using a Participant's total OTC trading activity. Instead, as discussed above, the proposed change would base the monthly fee on the Participant's share of total market volume reported to the FINRA/NYSE TRF. Accordingly, the Business Member believes that the proposed fee change will more closely correspond to actual usage and encourage more FINRA members to become FINRA/NYSE TRF Participants and use the FINRA/NYSE TRF, thereby

[28] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04).

[29] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04).

making it more competitive with the FINRA/Nasdaq TRF.

The Business Member does not believe that the proposed fee would place certain market participants at a relative disadvantage compared to other market participants, because the proposed fee schedule will be applied in the same manner to all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It will not apply differently to different types or sizes of Participants. Rather, the proposed fees will be based on a Participant's activity on the FINRA/NYSE TRF, because it will utilize the FINRA/NYSE TRF Market Share.[30] At the same time, by expanding the tier structure from four monthly participant tiers to nine, the proposed rule change would create a structure under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month.

As of March 31, 2019, there were 29 Participants, of which a majority of 18 were in the $2,000 per month tier. Four of the remaining Participants were in the $30,000 per month tier, four were in the $15,000 per month tier, and three were in the $5,000 per month tier. Assuming the number of Participants remained flat, the average fee incurred during March 2019 was estimated to be approximately $7,966 per Participant across the 29 Participants.

If there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the first quarter of 2019, under the proposed fee schedule, the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease. More specifically, assuming there was no change in reporting to the FINRA/NYSE TRF, under the proposed fee schedule the average subscriber fee that would have been incurred would have been approximately $6,060 across the 29 Participants, compared to approximately $7,966 per Participant under the current fee. Of the four Participants with a monthly subscriber fee of $30,000, three would remain at that rate and one would see its fee fall to $10,000. Of the four Participants with a monthly subscriber fee of $15,000, one would remain at that rate, and the others would pay fees ranging from $2,000 to $17,500. None of the three Participants with monthly subscriber fees of $5,000 would stay at that rate: One would see a fee increase, to $10,000, and the other two would be subject to fees of $750 and $2,000. Finally, of the 18 Participants with a monthly subscriber fee of $2,000, four would remain at $2,000 and 14 would see a fee reduction to $750.

Participants may potentially alter their trading activity in response to the proposed rule change. Specifically, those Participants that would incur higher fees may refrain from reporting to the FINRA/NYSE TRF and may choose to report to another FINRA Facility. Alternatively, such firms may continue reporting or new firms may start reporting to the FINRA/NYSE TRF if they find that the proposed net cost of reporting and other functionalities provided represent the best value to their business.[31] The net effect on any individual Participant of the proposed change in reporting fees will depend on the number of shares the Participant reports to the FINRA/NYSE TRF and the total number of all shares reported to the CTA or UTP SIP, as applicable, during a period.

Intermarket Competition. The FINRA/NYSE TRF operates in a competitive environment. The proposed fee would not impose a burden on competition on other FINRA Facilities that is not necessary or appropriate. The FINRA Facilities have different pricing and compete for FINRA members' trade report activity. The pricing structures of the FINRA/NYSE TRF and other FINRA Facilities are publicly available, allowing FINRA members to make rational decisions regarding which FINRA Facility they use to report OTC trades in NMS stocks.

FINRA members can choose among four FINRA Facilities when reporting OTC trades in NMS stocks: The FINRA/NYSE TRF, the two FINRA/Nasdaq TRFs, or ADF. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they determine that the fees and credits of another FINRA Facility are more favorable, so long as they are participants of such other facility.

The Business Member believes that in such an environment the FINRA/NYSE TRF must adjust its fees to be competitive with other FINRA Facilities and to attract Participant reporting. By making the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF, the Business Member believes that the proposed fee change will encourage more FINRA members to become FINRA/NYSE TRF Participants and use the FINRA/NYSE TRF, thereby increasing competition among the FINRA Facilities and giving FINRA members more attractive options for trade reporting.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[32] and paragraph (f)(2) of Rule 19b–4 thereunder.[33] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[30] *See* note 22, *supra.* As noted in note 6, *supra,* a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility would have connectivity to a second FINRA Facility for backup purposes. The proposed fee change is expected to reduce costs for many Participants that utilize the FINRA/NYSE TRF as a backup facility only, because it will be calculated using the Participant's share of total market volume reported to the FINRA/NYSE TRF, rather than its total OTC trading activity. For example, if Firm A, a very large firm with a significant amount of trade reporting volume, had 364 million shares per day to report and chose to report it all to another FINRA Facility, but kept its position as a Participant in the FINRA/NYSE TRF for backup purposes, its current FINRA/NYSE TRF fee would be $30,000 for the month, because it would be based on Firm A's total OTC trading activity. Under the proposed fee Firm A would pay only $2,000 per month, because the fee would be based on its reporting to the FINRA/NYSE TRF.

[31] The FINRA/NYSE TRF does not impose a fee on new Participants, and so a FINRA member that opts to become a Participant would not incur an additional cost from the FINRA/NYSE TRF. In some cases, a new Participant may incur incidental costs to connect to the FINRA/NYSE TRF, but those are not charged by the FINRA/NYSE TRF. An existing Participant that ceases to be a Participant is not subject to any change fee by the FINRA/NYSE TRF.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(2).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2019–024 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–FINRA–2019–024. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2019–024 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Jill M. Peterson,

Assistant Secretary.

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[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87214; File No. SR–ISE–2019–24]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE's Rulebook and By-Laws

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2019, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the compositional requirements of the Exchange's board (''Board'') and Regulatory Oversight Committee (''ROC''), and (iv) make additional, non-substantive edits.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the Board and ROC compositional requirements, and (iv) make additional, non-substantive edits. Each change is discussed below.[3]

Rules 200–203

Chapter 2 of the Exchange's Rulebook presently contains a number of rules relating to the organization and administration of committees of the Exchange. In particular, Rules 200–203 set forth provisions for the establishment of committees, removal of committee members, committee procedures and the general duties and powers of committees, all of which have been in place since the Exchange's inception. The Exchange has since amended its committee structure and related rules to align with those of its affiliates.[4] Accordingly, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange's Limited Liability Company Agreement (''LLC Agreement'') and its By-Laws.

Historically, Rules 200 and 201 authorized the Chief Executive Officer of the Exchange to establish committees not comprised of directors pursuant to delegated authority by the Board, and to appoint or remove any such committee members with Board approval.[5] With

[3] All references herein and in the Exhibit 5 to ''the Company'' mean the Exchange. Company is defined in the By-Laws to mean Nasdaq ISE, LLC.

[4] *See* Securities Exchange Act Release No. 81263 (July 31, 2017), 82 FR 36497 (August 4, 2017) (SR–ISE–2017–32) (establishing, among other changes, a Board and committee structure substantially similar to The Nasdaq Stock Market LLC's structure); and Securities Exchange Act Release No. 83703 (July 25, 2018), 83 FR 36992 (July 31, 2018) (SR–ISE–2018–59) (establishing, among other changes, an Exchange Review Council substantially similar to Exchange Review Council of Nasdaq BX, Inc. to replace the Business Conduct Committee). As a result of these changes, Exchange's board and committee structure is generally harmonized with its affiliates, Nasdaq BX, Inc. (''BX''), The Nasdaq Stock Market LLC (''Nasdaq''), and Nasdaq PHLX LLC (''Phlx'').

[5] For example, the Exchange's former Business Conduct Committee (''BCC'') was established by the Chief Executive Officer pursuant to delegated authority. As noted above, the BCC was recently replaced by the Exchange Review Council in SR–ISE–2018–59. *See* Securities Exchange Act Release

Continued

the changes in SR–ISE–2017–32 and SR–ISE–2018–59, these rules have been superseded by By-Law provisions that specify the committees composed solely of Directors and committees not composed solely of Directors, including the appointment and removal of such committee members.[6] In this respect, the Exchange notes that it is following the approach of its affiliates, BX, Nasdaq, and Phlx, which similarly have provisions in their respective By-Laws, instead of their rulebooks, pertaining to committees composed solely of Directors and committees not composed solely of Directors.[7] The Exchange further seeks to delete Rules 202 and 203 given that similar provisions governing committee procedures and general duties and powers are now set forth in Section 9(g) of the LLC Agreement and in By-Law Article III and Article VI.

By-Law Article I

Currently, the definition of ''Non-Industry Director'' in the Exchange By-Laws refers to, among other individuals, an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.[8] Because only Nasdaq currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange *or one of its affiliates.* The Exchange believes that the proposed changes will bring greater clarity to the Exchange's rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange's Board are contemplated by this rule change. Today, a Non-Industry Director who is not designated by the Exchange as a Public Director[9] under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (*i.e.,* ''an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange'') would still fall under (iii) an individual who would not be an Industry Director.[10] With the proposed changes, these Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange's affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming changes to the definition of a ''Non-Industry member'' of a committee.[11]

Currently, the Exchange's Board compositional requirements require at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).[12] As set forth in Article I, Section (z), a ''Public Director'' is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. ''Issuer representative'' is not defined specifically in the Exchange's By-Laws, but is implicitly defined in the term Non-Industry Director as ''an officer, director, or employee or an issuer of securities listed on the national securities exchange operated by the Exchange.''[13] The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.[14] Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives. In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a ''Public member'' of a committee.[15]

The Exchange notes that with the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and issuer representatives), Industry Directors, and Member Representative Directors.[16] Accordingly, current Board

No. 83703 (July 25, 2018), 83 FR 36992 (July 31, 2018) (SR–ISE–2018–59).

[6] *See* By-Law Article III, Sections 4–6. In addition, the provisions governing the Exchange Review Council are specified in By-Law, Article VI.

[7] *See* BX By-Law Article IV, Sections 4.12–4.14 and Article VII; Nasdaq By-Law Article III, Sections 4–6 and Article VI; and Phlx By-Law Article V.

[8] In addition, the term ''Non-Industry Director'' encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. *See* By-Law Article I, Section (w).

[9] The term ''Public Director'' means a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. *See* By-Law Article I, Section (z).

[10] The term ''Industry Director'' means a Director (excluding any two officers of the Company, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the ''Staff Directors'')), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. *See* By-Law Article I, Section (m).

[11] *See* By-Law Article I, Section (x).

[12] *See* By-Law Article III, Section 2(a).

[13] *See* By-Law Article I, Section (w). As discussed above, the Exchange will amend this provision to refer to ''an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange *or one of its affiliates*.''

[14] This is consistent with the longstanding best practice of the Exchange's ultimate parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board's Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered ''independent directors'' as defined in Nasdaq Rule 5605. *See* By-Law Article III, Section 5(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

[15] *See* By-Law Article I, Section (aa).

[16] The term ''Member Representative Director'' means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the Exchange's By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an

qualification requirements such as the number of Non-Industry Directors equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.[17]

By-Law Article III, Section 2(a)

The Exchange proposes to amend By-Law Article III, Section 2(a) to revise the qualifications for any position on the Board required to be representative of issuers. As discussed above, Article III, Section 2(a) requires that the Board be composed of at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).[18] The Exchange adopted this provision when it conformed its By-Laws to those of Nasdaq as part of its effort to harmonize corporate governance processes with its affiliated exchanges.[19] As noted above, unlike Nasdaq, the Exchange does not currently operate an equities listing market and therefore believes it is more appropriate to align its Board composition requirements on this point with the By-Laws of BX and Phlx, which both currently require only one Director representative of issuers and investors, regardless of Board size.[20] The Exchange's proposal would also change the Board composition requirement to more closely track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be ''representative of issuers and investors.''

By-Law Article III, Section 5(c)

Currently, By-Law Article III, Section 5(c) requires that the Regulatory Oversight Committee (''ROC'') be comprised of three members, each of whom shall be a Public Director and an ''independent director'' as defined in Nasdaq Rule 5605. The Exchange proposes to amend Section 5(c) to provide that the ROC shall be comprised of *at least* three members, as is currently set forth in the ROC Charter.[21] All members of the ROC will continue to be Public Directors and ''independent directors'' as defined in Nasdaq Rule 5605. Lastly, the Exchange also proposes to make technical changes in Section 5(c) to correct a typographical error and to update Nasdaq's name.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,[23] in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Rules 200–203

As discussed above, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange's LLC Agreement and By-Laws. The Exchange believes that deleting rules that no longer apply to the Exchange's current committee structure will more clearly identify currently applicable rules, which will remove impediments to and perfect the mechanism of a free and open market. The Exchange further believes that the proposed rule change will eliminate potential confusion regarding which rules apply to the organization and administration of committees, which ultimately protects investors and the public interest.

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange's affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance practices.[24] Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.[25] Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act.

By-Law Article III, Section 2(a)

The Exchange believes that its proposal to expand the Board qualifications from an issuer representative to a representative of issuers and investors, and eliminate the requirement that the Board have two such representatives if the Board consists of ten or more Directors is consistent with the Act. The Exchange notes that the proposed changes track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be ''representative of issuers and investors.'' The Exchange also notes that the elimination of the requirement to have at least two Director positions representative of issuers if the Board consists of ten or more Directors is consistent with Section 6(b)(3) of the Act, which only requires the Board to have one such representative. Furthermore, the Exchange will continue to require the Board

Exchange Member. *See* By-Law Article I, Section (r). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the ''rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs . . .''

[17] *See* By-Law Article III, Section 2(a). In addition, the Board qualification requirement that at least 20% of the Directors be Member Representative Directors will continue to apply. *See* LLC Agreement Section 9(a).

[18] By-Law Article III, Section 2(a) also requires that the number of Non-Industry Directors (which includes Public Directors and issuer representatives) shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. Furthermore, Section 9(a) of the LLC Agreement requires that at least 20% of the Directors be Member Representative Directors. These Board qualifications are not being amended.

[19] *See* Securities Exchange Act Release No. 81263 (July 31, 2017), 82 FR 36497 (August 4, 2017) (SR–ISE–2017–32).

[20] *See* BX By-Law Article IV, Section 4.3; and Phlx By-Law Article III, Section 3–2(a). Similar to the Exchange, BX and Phlx do not currently operate equities listing markets.

[21] The ROC Charter is available at: *http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25.*

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(1), (b)(3), and (b)(5).

[24] *See supra* note 14.

[25] *See supra* notes 16 and 17, with accompanying text.

composition to reflect a balance among Non-Industry Directors (including Public Directors and Director representatives of issuers and investors), Industry Directors, and Member Representative Directors (with the latter continuing to constitute 20% of the Board).[26] Accordingly, the Exchange believes that the changes to the Board qualifications proposed herein will more accurately reflect current Exchange operations while continuing to meet the statutory requirements under Section 6(b)(3) of the Act. In addition, the proposed amendments will have the additional benefit of bringing the Exchange's Board qualifications on this point into greater conformity with those of BX and Phlx, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.[27]

By-Law Article III, Section 5(c)

The Exchange believes that the proposed rule change in By-Law Article III, Section 5(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and ''independent directors'' as defined in Nasdaq Rule 5605 will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical changes in Section 5(c) to correct a typographical error and to update Nasdaq's name will bring greater clarity to the Exchange's rules, which protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[26] *See supra* note 18.

[27] *See supra* note 20.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and subparagraph (f)(6) of Rule 19b–4 thereunder.[29]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[30] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[31] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its Rulebook and By-Laws, which would eliminate obsolete provisions in the Exchange's Rulebook and better align provisions in the Exchange's By-Laws with those in the By-Laws of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2019–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2019–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2019–24 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87216; File No. SR–CBOE–2019–073]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Minor Updates and Consolidate Various Exchange Rules in Connection With Regulatory Reports, Records, and Audits on the Exchange, and Move Those Rules From the Currently Effective Rulebook to Proposed Chapter 7 of the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to make minor updates and consolidate various Exchange Rules in connection with regulatory reports, records, and audits on the Exchange, and move those Rules from the currently effective Rulebook (''current Rulebook'') to proposed Chapter 7 of the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to consolidate current rules in connection with regulatory reports, records, and audits, including the rules related to the Consolidated Audit Trail (''CAT''), on the Exchange into sections of proposed Chapter 7 in the shell Rulebook. The Exchange notes that in addition to consolidating and moving the various rules related to reports, records, and audits to proposed Chapter 7, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change moves and, where applicable, consolidates the rules as follows:

CHAPTER 7—REGULATORY REPORTS, RECORDS, AND AUDITS

Section A. General	
7.1 Maintenance, Retention, and Furnishing of Books, Records, and Other Information	
7.1(a)	15.1 Maintenance, Retention and Furnishing of Books, Records, and Other Information, including 15.1.01.
7.1(b)	15.1.02.
7.1(c)	15.1.03.
7.1(d)	15.1.04.

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

CHAPTER 7—REGULATORY REPORTS, RECORDS, AND AUDITS—Continued

7.1(e)	28.16 (corporate debt security Market-Makers), including 28.16.01, provision regarding current Rule 15.1.
7.1(f)	21.30 (government securities options Market-Makers), including 21.30.01, provision regarding current Rule 15.1.
7.1(g)	23.15 (interest rate options Market-Makers), including last sentence of paragraph, provision regarding current Rule 15.1.
7.2 Reports of Uncovered Short Positions	15.3 Reports of Uncovered Short Positions.
7.3 Financial Reports	15.5 Financial Reports
7.3(a)	15.5.01.
7.3(b)	15.5.02.
7.4 Audits	15.6 Audits.
7.5 Automated Submission of Trading Data	15.7 Automated Submission of Trading Data.
7.6 Securities Accounts and Orders of Market-Makers (note: Rule 7.6(a)–(c) currently in shell Rulebook).	
7.6(d)	28.16 (corporate debt security options Market-Makers), provision regarding current Rule 8.9.
7.6(e)	21.20 (government securities options Market-Makers), provision regarding current Rule 8.9.
7.6(f)	23.15 (interest rate options Market-Makers), provision regarding current Rule 8.9.
7.7 Risk Analysis of Market-Maker Accounts	
7.7(a)–(b)	15.8(a)–(b) Risk Analysis of Market-Maker Accounts.
7.7(c)	15.8.01.
7.8 Risk Analysis of Portfolio Margin Accounts	15.8A Risk Analysis of Portfolio Margin Accounts.
7.9 Regulatory Cooperation	15.9 Regulatory Cooperation.
7.10 Fingerprint-Based Background Checks of Exchange Directors, Officers, Employees, and Others.	15.10 Fingerprint-Based Background Checks of Exchange Directors, Officers, Employees, and Others.
Section B. Consolidated Audit Trail (CAT) Compliance Rule	
7.20 Definitions	6.85 Definitions.
7.21 Clock Synchronization	6.86 Clock Synchronization.
7.22 Industry Member Data Reporting	6.87 Industry Member Data Reporting.
7.23 Customer Information Reporting	6.88 Customer Information Reporting.
7.24 Industry Member Information Reporting	6.89 Industry Member Information Reporting.
7.25 Time Stamps	6.90 Time Stamps.
7.26 Clock Synchronization Rule Violation	6.91 Clock Synchronization Rule Violation.
7.27 Connectivity and Data Transmission	6.92 Connectivity and Data Transmission.
7.28 Development and Testing	6.93 Development and Testing.
7.29 Recordkeeping	6.94 Recordkeeping.
7.30 Timely, Accurate, and Complete Data	6.95 Timely, Accurate, and Complete Data.
7.31 Compliance Dates	6.96 Compliance Dates.
7.32 Fee Dispute Resolution	6.97 Fee Dispute Resolution.

The proposed rule change makes only non-substantive changes to the rules being moved into the shell Rulebook in order to update and/or incorporate headings that better align with the consolidated rules, update cross-references to other rule text that will be implemented upon migration, update certain technical text formatting that will be used in the Rules upon migration (specifically, changing all times to Eastern Time without time zone indication pursuant to Rule 1.6 in the shell Rulebook which states that unless otherwise specified, all times in the Rules are Eastern Time), incorporate defined terms in the shell Rulebook, and reformat the paragraph lettering and numbering.

The proposed rule also makes non-substantive changes in connection with removing redundant rule language. The proposed rule change removes the list of cross-referenced Rules that contain specific maintenance and furnishing of information requirements under current Rule 15.1.01. The Exchange believes that because the current list of cross-referenced Rules is extensive, but not an exhaustive list (as the current rule states that Trading Permit Holders (''TPHs'') must comply with all applicable recordkeeping and reporting requirements whether or not listed), and contains rules that are no longer in existence or have since been moved or changed (*e.g.,* Rule 6.59 is no longer in the current Rulebook), the current list is potentially confusing and unnecessarily cumbersome for market participants as written. Instead, the Exchange maintains the language in current Rule 15.1.01 (and moves it to proposed 7.1(a)) that provides that Trading Permit Holders must comply with all applicable recordkeeping and reporting requirements under the Rules. By maintaining the language in the current rule that covers all Rules that require record retention and reporting requirements, the proposed change does not substantively alter the Rule. Also, the Exchange believes that by providing language that succinctly covers all Rules that require or will require record maintenance or reporting, the proposed rule change will mitigate any potential investor confusion, both upon effectiveness of this proposed change and whenever a new or changed rule is incorporated into the Exchange Rulebook. The proposed change also incorporates the term ''maintenance'', alongside the term production, in proposed Rule 7.1(d) and (c) (current Rules 15.1.02 and 15.1.03) [sic] which accurately reflects the existing obligations under the Rules, and in accordance with Rule 7.1 (current Rule 15.1), regarding maintenance, retention, and furnishing of books, records, and other information. In addition, the

proposed rule change separates the provisions in Rule 28.16 (regarding Market-Makers in Corporate Debt Security options), Rule 21.30 (regarding Market-Makers in Government security options), and Rule 23.15 (regarding Market-Makers in interest rate options) that are directly related to current Rule 15.1 from the provisions that are directly related to current Rule 8.9, and moves them into the applicable rule in the shell Rulebook. The proposed rule change also removes the language under current Rules 28.16 and 21.30 which states that the respective rules supplement current Rule 8.9 (Rule 7.6 in the shell Rulebook) and Rule 15.1 (proposed Rule 7.1) and the Interpretations and Policies thereunder. This language is redundant given the fact that these rules are being consolidated into the rules in which they reference. Finally, the Exchange notes that it makes a non-substantive change to the language, ''See Rule 17.50(g)(2)'', in current Rule 15.3 (proposed Rule 7.2), to instead state that Trading Permit Holders may be subject to fines pursuant to Rule 13.15(g)(2) (the updated cross-reference in the shell Rulebook) for violations of this Rule. This does not alter the current application of Rule 17.50(g)(2) (or shell Rule 13.50(g)(2)) but merely adds context which provides additional clarity to investors regarding the specific matter to which the cross-referenced rule governs and/or pertains.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change does not make any substantive changes to the rules and is merely intended to consolidate and update the Exchange's rules in anticipation of the technology migration on October 7, 2019. The Exchange believes that the non-substantive proposed changes, which update technical text and formatting (*e.g.,* paragraph headings, time-related references, and verbiage to accurately reflect the maintenance and production requirements), update rule cross-references (as well as provide added context surrounding one such cross-reference in order to provide additional clarity), consolidate and reorganize rules and rule paragraphs and/or Interpretations and Policies, incorporate defined terms, and remove redundant and/or cumbersome provisions that are potentially confusing for market participants, particularly in light of the consolidated shell Rulebook format, will foster cooperation and coordination with those facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and national market system by simplifying the Exchange Rules and Rulebook as a whole, and making its Rules easier to follow and understand, which will also result in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the context of a technology migration of the Cboe Affiliated Exchanges, and not as a competitive filing. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because it does not make any substantive changes to the current Exchange Rules. The proposed rule change merely intends to provide consolidated rules upon migration, which are consistent with the technical text and formatting in the shell Rulebook that will be in place come October 7, 2019. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition because the proposed rules are the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may implement the proposed rule change at the time of its anticipated October 7, 2019 system migration. The Exchange believes that waiver of the operative delay is appropriate because, as the Exchange discussed above, its proposal does not make any substantive changes to the Exchange's rules, but merely relocates current rules regarding reporting, records, and audit to Chapter 7 of the Shell Rulebook. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues and makes only non-substantive

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

changes to the rules. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–073 on the subject line.

PaperComments

- 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–CBOE–2019–073. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–073 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22017 Filed 10–8–19; 8:45 am]

BILLING CODE 8011–01–P

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87206; File No. SR–Phlx–2019–40]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 133

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 133.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 133 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The market-wide circuit breaker (''MWCB'') mechanism under Rule 133 was approved by the Commission to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[3] including any extensions to the pilot period for the LULD Plan.[4] The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[5] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 133 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[6]

The Exchange now proposes to amend Rule 133 to extend the pilot to the close of business on October 18, 2020. This filing does not propose any substantive

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[4] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–Phlx–2011–129) (Approval Order); and 68816 (February 1, 2013), 78 FR 9760 (February 11, 2013) (SR–Phlx–2013–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of a Rule Change to Exchange Rule 133).

[5] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[6] *See* Securities Exchange Act Release No. 85579 (April 9, 2019), 84 FR 15258 (April 15, 2019) (SR–Phlx–2019–12).

or additional changes to Rule 133. The Exchange will use the extension period to develop with the other SROs rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The market-wide circuit breaker under Rule 133 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[7] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 133, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading until the primary listing market opens the next trading day.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 133 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 133 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism. Furthermore, as noted above, the extension will permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot to halt trading across the U.S. markets. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[7] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *Id.*

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–40 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–Phlx–2019–40. 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–Phlx–2019–40 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22024 Filed 10–8–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87215; File No. SR–CBOE–2019–071]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Minor Updates and Consolidate Various Exchange Rules in Connection With the Post-Transaction Process on the Exchange, and Move Those Rules From the Current Rulebook to Proposed Chapter 6 of the Shell Rulebook

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to make minor updates and consolidate various Exchange Rules in connection with the post-transaction process on the Exchange, and move those Rules from the currently effective Rulebook (''current Rulebook'') to proposed Chapter 6 of the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

The Exchange proposes to consolidate various rules in connection with the post-execution processes on the Exchange into sections of proposed Chapter 6 (Post-Transaction Matters) in the shell Rulebook. The Exchange notes that in addition to consolidating and moving the various post-transaction related rules to proposed Chapter 6, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change moves and, where applicable, consolidates the rules as follows:

Proposed rule	Current rule
6.1 Report Transactions to the Exchange	
6.1(a), (b), (d), (e)	6.51 Reporting Duties.
6.1(c)	6.51.01.
6.1(f)	6.51.02.
6.1(g)	6.51.03.
6.1(h)	6.51.04.
6.1(i)	6.51.04.
6.1(j)	6.58 Submission of Trade Information to the Exchange.
6.2 Transaction Reports; Users' Identities	Cboe Rule N/A; copied from C2 Rule 6.28, and substantively the same as EDGX Rule 21.10 and BZX Rule 21.10.
6.3 Unmatched Trade Reports	
6.3(a)	6.60 Unmatched Trade Reports.
6.3(b)	6.61 Reconciliation and Resolution of Unmatched Trades.
6.3(b) and (b)(1)–(4)	6.61.01.
6.3(c)	6.61.02.
6.3(d)	6.61.03.
6.3(e)	6.61.04.
6.3(f)	6.61.05.
6.3.(g)	10.1 Disagreement on Unmatched Trade.
6.3(b)(3)(A)	21.16 Reconciliation of Unmatched Trades (Government securities options).
6.3(b)(3)(A)	23.11 Reconciliation of Unmatched Trades (interest rate options).
6.4 Reporting of Trades to OCC	
6.4(a)	6.50 Submission for Clearance.
6.4(b)	6.63 Reporting of Matched Trades to Clearing Corporation; conforms language to C2 Rule 6.27.
6.5 Nullification and Adjustment of Option Transactions Including Obvious Errors.	6.25 Nullification and Adjustment of Options Transactions including Obvious Errors.
6.5.09	29.15 Nullification and Adjustment of Credit Option Transactions.
6.20 Exercise of Option Contracts	
6.20(a)–(b)	11.1(a)–(b) Exercise of Option Contracts.
6.20(c)	11.1(c)(1).
6.20(d)	11.1(c)(2)–(3) and (d).
6.20(e)	24.18 Exercise of American-Style Index Options.
6.20(f)	20.11 Exercise of Range Options.
6.20(g)	22.15 Automatic Exercise of Binary Option Contracts.
6.20(h)	29.9 Determination of Credit Event, Automatic Exercise and Settlement (Credit Options).
6.20.01–07	11.1.01–.07.
6.21 Allocation of Exercise Notices	
6.21(a)–(c)	11.2 Allocation of Exercise Notices.
6.21(d)	21.23 Allocation of Exercise Assignment Notices (Government security options).
6.21(e)	28.14 Allocation of Exercise Assignment Notices (Corporate Debt Security options).
6.21(f)	22.15 and 29.9 (last sentences).
6.22 Delivery and Payment	
6.22(a)	11.3 Delivery and Payment.
6.22(b)	21.24 Delivery and Payment (Treasury Bonds and Notes) i.e., Government securities options.
6.22(c)	28.15 Delivery and Payment (Corporate Debt Security options).
6.21(d)	22.15 (last sentence).

The proposed rule changes, indicated in the table above, generally make only non-substantive changes to the rules (see below for a description of the one proposed additional rule, Rule 6.2). Overall, the proposed rule change makes only non-substantive rule changes in order to update headings, update references to other rule text that will be implemented upon migration, update certain technical text formatting that will be used in the Rules upon migration (specifically, changing all times to Eastern Time without time zone indication pursuant to Rule 1.1 in the shell Rulebook which states that unless otherwise specified, all times in the Rules are Eastern Time), incorporate defined terms, and reformat the paragraph lettering and/or numbering.

The proposed rule change updates the language in current Rule 6.51.01 (proposed Rule 6.1(c)(1)) to remove the language providing that a seller in each transaction (or buyer if designated by the Exchange) may submit a paper form copy of the transaction to the price reporting belt, which is no longer in existence, and instead provide that the seller (or buyer) may provide a paper copy form to the price reporting authority on the Exchange floor, the manner in which paper form copies are

currently submitted. This does not substantially alter the manner in which a participant reports paper form copies, but merely updates the provisions under proposed Rule 6.1 to reflect the current terms and process for paper form reporting, thereby providing additional clarity for market participants. The proposed rule change also deletes from current Rule 6.58 (proposed Rule 6.1(j)) the language that provides for the submission of trade information on a diskette or tape. These mediums are out-of-date and are no longer used by the Exchange or by its Trading Permit Holders (''TPHs''). Therefore, the removal of this language does not substantively alter the application of this rule but merely updates it to accurately reflect the manner in which trade information is currently submitted to the Exchange today.

The Exchange also notes that proposed Rule 6.4(b) governs the Exchange's submission of trades to the Options Clearing Corporation (''OCC'') and is substantively the same as current Rule 6.63, it merely updates the rule language by means of conforming it to corresponding C2 Rule 6.27. The proposed rule change also makes a non-substantive change in removing current Rule 15.2 which states that each TPH shall submit to the Exchange on each business day a report of all transactions made by it during said business day, and that the Exchange may, in its discretion, deem this requirement to be satisfied by the reports required to be filed under the provisions of (current) Rule 6.51(d). The proposed rule change deletes this provision because the Exchange does not administer separate requirements under this rule but instead deems the reports under current Rule 6.51(d) (proposed Rule 6.1(d)) satisfactory. Therefore, Rule 15.2 is redundant of proposed Rule 6.1(d). The Exchange notes that current Rule 15.2 does not require or provide any additional transaction reporting information or instruction for TPHs. Instead, proposed Rule 6.1(d), unlike current Rule 15.2, specifically details the trade information required from TPHs in each business day's transaction report, thereby providing sufficiently clear and specific transaction reporting instructions for market participants. Likewise, the proposed rule change deletes current Rule 24.15 as it is redundant of the current (and shell) rules governing automatic execution of options on the Exchange. Current Rule 24.15 states that Rule 6.13 (shell Rules 5.8 and 5.32) governs the automatic execution of index options trading on the Hybrid System (or, the System as defined in shell Rule 1.1). Current Rule 6.13 (shell Rules 5.8 and 5.32) already governs the automatic execution, including order priority and allocation, of all options trading on the System.

Additionally, the proposed rule change adds proposed Rule 6.2, which is the same as C2 Rule 6.28. Proposed Rule 6.2 states the System sends to a User aggregated and individual transaction reports for the User's transactions, which reports include transaction details; the contra party's EFID, clearing TPH account number, and Capacity; and the name of any away exchange if an order was routed for execution. The Exchange reveals a User's identity when a registered clearing agency ceases to act for a participant, or the User's Clearing TPH, and the registered clearing agency determines not to guarantee the settlement of the User's trades, or for regulatory purposes or to comply with an order of an arbitrator or court. The Exchange currently sends out transaction reports containing similar information, and the Exchange believes including this information in the Rules will provide more transparency to market participants regarding these reports. As indicated above, the proposed rule is consistent with C2 Rule 6.28 and is substantively the same as EDGX Rule 21.10 and BZX Rule 21.10. The proposed rule change is consistent with current Exchange and options industry practices including the fact that clearing information available through OCC provides contra-party information, as well as the ability of a User to disclose its identity on orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is generally intended to consolidate and update the Exchange's rules in anticipation of the technology migration on October 7, 2019. Generally, the proposed rule change does not make any substantive changes to the current Exchange Rules. The Exchange notes that the one proposed additional rule, proposed Rule 6.2, is an Exchange practice already in place and is designed to provide market participants with additional transparency in the Rules. Additionally, proposed Rule 6.2 is substantively the same as C2 Rule 6.28, EDGX Rule 21.10, and BZX Rule 21.10. Likewise, proposed Rule 6.4(b) is substantially the same as current Rule 6.63 and merely conforms language to match that of corresponding C2 Rule 6.27. The proposed rule change seeks to provide greater harmonization between the rules of the Cboe Affiliated Exchanges, which would result in greater uniformity, less burdensome and more efficient regulatory compliance, and increase the understanding of the Exchange's operations for Exchange participants that are also participants on the Cboe Affiliated Exchanges. The Exchange believes that the non-substantive majority of the proposed changes, which update technical text and formatting (*e.g.,* paragraph headings and time-related references), update rule cross-references, consolidate, reorganize and make consistent rules and rule paragraphs and/or Interpretations and Policies, incorporate defined terms, and remove out-of-date processes and redundant rules that are already provided for under other rules in greater detail and clearer instruction, will also foster cooperation and coordination with those facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and national market system by simplifying the Exchange Rules and Rulebook as a whole, and making its Rules easier to follow and understand, likewise resulting in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the context of a technology migration of the Cboe Affiliated Exchanges, and not as a competitive filing. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because, largely, it does not make any substantive changes to the current Exchange Rules, and the one additional rule proposed is already an Exchange practice and is consistent with the rules of the Cboe Affiliated Exchanges. The proposed rule change merely intends to provide consolidated rules upon migration and are consistent with the terms, rules, and formatting presented in the shell Rulebook that will be in place come October 7, 2019. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition because the proposed rules are the same as the Exchange's current rules, and the one proposed additional rule is consistent with the rules of the Cboe Affiliated Exchanges, all of which have all been previously filed with the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that it may implement the proposed rule change in connection with the technology migration on October 7, 2019. According to the Exchange, waiver of the operative delay will help to avoid any potential confusion by providing investors with a complete Exchange Rulebook upon the completion of migration. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change raises no new or novel issues and makes only non-substantive changes to the rules. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–071 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–CBOE–2019–071. 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–CBOE–2019–071 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22016 Filed 10–8–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87207; File No. SR–OCC–2019–008]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish a Regulatory Committee of The Options Clearing Corporation's Board of Directors

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2019, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would establish the OCC Regulatory Committee (''Committee'') and adopt the OCC Regulatory Committee Charter (''Committee Charter''). The Committee Charter is being submitted in its entirety as new rule text. A corresponding proposed change to OCC's Article III, Section 4 of the OCC By-Laws (''By-Laws'') and the OCC Board of Directors Charter and Corporate Governance Principles (''Board Charter'') would be adopted in to list the Committee among the other OCC Board of Directors (''Board'') committees. The proposed rule change does not require any changes to the text of OCC's Rules.

The proposed rule change is available on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.* All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

OCC is filing this proposed rule change to establish a Board-level Regulatory Committee that would: (a) Operate separately from the current OCC Audit Committee; (b) complement the work done by independent consultants on regulatory compliance matters; (c) take over and continues the work done by the current OCC Regulatory Oversight Working Group (''ROWG''), including but not limited to OCC's efforts to demonstrate compliance with applicable laws and regulations; and (d) be solely comprised of OCC's Public Directors, as that term is defined in the Board Charter.[4] For the avoidance of doubt, upon approval of the proposed Committee Charter, the ROWG will cease to exist.

The contents of the proposed rule change are summarized as follows.

Regulatory Committee Charter

Committee Purpose

The proposed Committee Charter would state that the OCC Board has established the Committee to assist the Board in overseeing OCC's efforts to demonstrate compliance with its regulatory obligations with particular attention to the OCC Regulatory Compliance Oversight Group (''RCOG''), a working group established by OCC management. The proposed Committee Charter would explain that given OCC's designation as a Systemically Important Financial Market Utility, the Board believes it is critical that OCC demonstrate its continued strong commitment to compliance with applicable regulations in the conduct of its core clearance and settlement activities. The proposed Committee Charter would also state that nothing in the Committee Charter alters the existing roles and responsibilities of other Board Committees.

Committee Membership and Organization

Composition

The proposed Committee Charter would provide that the Committee will be comprised of all OCC Public Directors, as that term is defined in the Board Charter. The proposed Committee Charter would state that (i) unless a chair of the Committee (''Chair'') is elected by the Board, the members of the Committee will designate a Chair by majority vote of the full membership, and (ii) in the absence of the Chair at any meeting of the Committee, those members of the Committee present would designate a Committee member to serve as acting Chair. The proposed Committee Charter would explain that in the event of a vacancy on the Committee, the Committee would continue to undertake its responsibilities, so long as the remaining Committee members are capable of satisfying the quorum requirement.

Meetings

The proposed Committee Charter would provide that the Committee will meet at least quarterly, or more frequently, as deemed necessary by the Committee in order to fulfill its purposes as described in the Committee Charter. The proposed Committee Charter would additionally provide that other meetings may be called by the Chair as circumstances dictate. The proposed Committee Charter would explain that the Chair or designee, in consultation with OCC management, as well as the OCC Corporate Secretary, would establish the agenda for Committee meetings. The proposed Committee Charter would state that members of the Committee may ask members of OCC management or others to attend the meeting and provide pertinent information as necessary. The proposed Committee Charter would provide that the OCC Chief Compliance Officer, or one of his or her deputies if the Chief Compliance Officer in unable to attend, shall attend all meetings of the Committee. The proposed Committee Charter would provide that the Committee may call executive sessions from which members of management and invited guests, and other Committee members to the extent the Chair determines there exists an actual or potential conflict of interest, may be excluded. The proposed Committee Charter would explain that the Chair or acting Chair, as applicable, would serve as Chair for the executive session. The proposed Committee Charter would explain that members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other.

Quorum

The proposed Committee Charter would state that a simple majority of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[4] OCC's Board Charter can be found on OCC's website: *https://www.theocc.com/about/corporate-information/board-charter.jsp.*

Committee members would constitute a quorum for the transaction of business.

Minutes and Reports

The proposed Committee Charter would require that the Committee maintain minutes of all Committee meetings. The proposed Committee Charter would explain that the Chair or acting Chair, as applicable, would determine whether separate minutes of executive sessions are to be recorded as well as determined by the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. The proposed Committee Charter would provide that meeting minutes would reflect that an executive session was convened and broadly describe the topic(s) discussed. The proposed Committee Charter would require that minutes of Committee meetings are circulated to the Board.

The proposed Committee Charter would provide that the Committee would make such reports to the Board as deemed necessary or advisable and that the Chair is responsible for ensuring that important issues discussed at Committee meetings are reported timely to the Board. The proposed Committee Charter would require that on an annual basis, the Committee would provide a report to the Board summarizing its activities during the previous year.

Committee Authority

The proposed Committee Charter would provide that subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Committee Charter. The proposed Committee Charter would further provide that in discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC and that the Committee may confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties.

The proposed Committee Charter would provide that the Committee would have the authority to hire specialists or rely upon other outside advisors, including legal advisors, to assist it in carrying out its activities. The proposed Committee Charter would also state that the Committee would have the authority to approve the fees and retention terms applicable to such advisors and specialists. The proposed Committee Charter would require that the Committee's annual report to the Board reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

Committee Functions and Responsibilities

The proposed Committee Charter would state that the Committee's role is one of oversight, and that it remains the responsibility of the RCOG to identify, manage, monitor, and report on OCC's activities that demonstrate compliance with regulatory obligations.

The proposed Committee Charter would provide that the Committee would have the following functions and responsibilities in discharging its oversight role:

- The Committee would oversee, and assist the Board in evaluating, OCC's efforts to demonstrate compliance with applicable laws and regulations, including banking and securities laws and other applicable regulatory guidance and standards, through regular reporting to the Committee by the RCOG.
- The Committee would oversee OCC management's action plans to achieve compliance with any proposed new regulation to which OCC is subject.
- The Committee would oversee work performed by any independent compliance auditor(s) engaged by OCC and approved by the Board.
- The Committee would make recommendations to the Board as it deems appropriate, and as the Board may request.
- The Committee would meet with OCC's regulators, with or without OCC management, as the Committee deems necessary, in order to discuss OCC's efforts to enhance its regulatory compliance posture.
- The Committee would review any annual regulatory compliance reports provided by OCC management.
- The Committee would review any final exam report letter received from OCC's regulators. Additionally, the Committee would review any OCC response to an exam report letter received from OCC's regulators. The Committee would receive a briefing on OCC's action plans, if any, in response to items identified in any final exam report letter received from OCC's regulators.
- The Committee would perform such other activities consistent with the Board Charter and By-Laws and applicable legal and regulatory requirements, as the Committee deems necessary or appropriate.

Review Cycle

The proposed Committee Charter would provide that the Committee review the Committee Charter at least once every twelve months and submit the Committee Charter to the Board for approval, with such changes, if any, as the Board deems advisable. The proposed Committee Charter would additionally provide that the Board would have the authority to diminish or eliminate the duties and obligations of the Committee as of the date of any final report of any independent compliance auditor, but in any case, no sooner than three years from the initial approval of the Committee Charter, subject to the approval of the Commission.

By-Laws

The proposed rule change would also adopt an amendment to the OCC By-Laws to include reference to the Regulatory Committee in Article III, Section 4 to list the Committee among the other OCC Board committees. The proposed By-Law provision would state that the Board shall appoint the Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. The proposed By-Law provision would state that the Committee members will be all OCC Public Directors. The proposed By-Law provision would state that the chairman of the Committee shall be designated by the Board or by a majority vote of the Committee membership from among the members of the Committee.

Board Charter

The proposed rule change would also adopt an amendment to the Committees section of the Board Charter to include reference to the Committee among the other Board committees. The proposed Board Charter amendment would state that the Board has established Board-level committees including: Audit, Compensation and Performance, Governance and Nominating, Regulatory, Risk and Technology.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act [5] and the rules thereunder applicable to OCC. Section 17A(b)(3)(A) of the Act [6] requires, among other things, that a clearing agency be so organized and have the capacity to be able to facilitate the prompt and

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(A).

accurate clearance and settlement of securities transactions and derivatives agreements, contracts, and transactions for which it is responsible. OCC believes the proposed rule change is consistent with this requirement because the change would help ensure OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears. For example, the proposed Committee Charter would provide that, among other things, the Committee would oversee OCC management's action plans to achieve compliance with any proposed new regulation to which OCC is subject.

OCC believes the proposed rule change is also consistent with the requirements in Rule 17Ad–22(e)(2)(i) [7] and (v) [8] to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. The proposed rule change is also consistent with the requirement to have governance arrangements that specify clear and direct lines of responsibility because the Committee Charter would provide a clear statement of the functions and responsibilities of the Committee. For example, the proposed Committee Charter would provide that, among other things, the Committee would make recommendations to the Board as it deems appropriate, and as the Board may request. Additionally, the proposed Committee Charter would provide that nothing in the Committee Charter alters the existing roles and responsibilities of other Board Committees. Finally, including the Committee in the By-Laws and Board Charter provides for consistency with how other committees of the Board are represented in the By-Laws and Board Charter.

OCC also believes that the proposed rule change is consistent with the requirement in Rule 17Ad–22(e)(3)(i) [9] to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for managing legal, credit, liquidity, operational, general business, investment, custody and other risks that arise in or are borne by OCC, including risk management policies, procedures, and systems that are designed to identify, measure, monitor, and manage such risks and that are subject to review on a periodic basis and approved annually by the Board. For example, the Committee Charter would provide that, among other things, the Committee would oversee, and assist the Board in evaluating, OCC's efforts to demonstrate compliance with applicable laws and regulations, including banking and securities laws and other applicable regulatory guidance and standards, through regular reporting to the Committee by the RCOG. Additionally, the Committee Charter would provide that the Committee will review the Committee Charter at least once every twelve months and submit the Committee Charter to the Board for approval, with such changes, if any, as the Committee deems advisable.

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impact or impose any burden on competition.[10] The proposed rule change addresses one charter used in OCC's governance structure, and all Clearing Members would be equally subject to these governance arrangements. Consequently, the Committee Charter, By-Laws and Board Charter would not provide any Clearing Member with a competitive advantage over any other Clearing Member. Further, the proposed rule change would not affect Clearing Member's access to OCC's services or impose any direct burdens on Clearing Members. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2019–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2019–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for

[7] 17 CFR 240.17Ad–22(e)(2)(i).

[8] 17 CFR 240.17Ad–22(e)(2)(v).

[9] 17 CFR 240.17Ad–22(e)(3)(i).

[10] 15 U.S.C. 78q–1(b)(3)(I).

inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2019–008 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Petersen,

Assistant Secretary.

[FR Doc. 2019–22025 Filed 10–8–19; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration Number #16147 Disaster Number #ZZ–00015]

The Entire United States and U.S. Territories; Military Reservist Economic Injury Disaster Loan Program (MREIDL)

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/01/2019.

DATES: Issued on 10/01/2019.

MREIDL Loan Application Deadline Date: 1 year after the essential employee is discharged or released from active duty.

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 Public Law 106–50, the Veterans entrepreneurship and Small Business Development Act of 1999, and the Military Reservist and Veteran Small Business Reauthorization Act of 2008, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL).

Effective 10/01/2019, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict or have received notice of an expected call-up, and those employees are essential to the success of the small business daily operations.

The purpose of the MREIDL program is to provide funds to an eligible small business to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up or expects to be called-up to active duty in his or her role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active duty. For information/applications contact 1–800–659–2955 or visit *www.sba.gov.*

Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

The Interest Rate for eligible small businesses is 4.000.

The number assigned is 161470.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–22040 Filed 10–8–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16145 and #16146; SOUTH CAROLINA Disaster Number SC–00060]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of SOUTH CAROLINA (FEMA–4464–DR), dated 09/30/2019.

Incident: Hurricane Dorian.

Incident Period: 08/31/2019 through 09/06/2019.

DATES: Issued on 09/30/2019.

Physical Loan Application Deadline Date: 11/29/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 06/30/2020.

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 President's major disaster declaration on 09/30/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Beaufort, Berkeley, Charleston, Colleton, Dillon, Dorchester, Georgetown, Horry, Jasper, Marion, Williamsburg.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 161458 and for economic injury is 161460.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–22039 Filed 10–8–19; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 303 (Sub-No. 53X)]

Wisconsin Central Ltd.—Discontinuance of Service Exemption—in Baraga County, Mich.

Wisconsin Central Ltd. (WCL) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue common carrier service over approximately 4.9 miles of rail line in Baraga County, Mich., extending

between milepost 219.0 at L'Anse (southwest of the intersection of U.S. 41 and Menge Creek Rd.) and milepost 223.9 at Baraga (the Line). The Line traverses U.S. Postal Service Zip Codes 49946 and 49908.

WCL has certified that: (1) No local traffic has moved over the Line for at least two years; (2) overhead traffic (to the extent any exists) can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) [1] to subsidize continued rail service has been received, this exemption will be effective on November 8, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by October 18, 2019, and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) [2] must be filed by October 21, 2019.[3] Petitions for reconsideration must be filed by October 29, 2019, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WCL's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decision and notices are available at *www.stb.gov.*

Decided: October 2, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2019–21842 Filed 10–8–19; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA to subsidize continued rail service must first file a formal expression of intent to file an offer, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

[3] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board (Board) has received a request from the Southern California Association of Governments (WB19–49—10/1/19) for permission to use select data from the Board's 2011–2015 Unmasked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB19–49.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2019–22060 Filed 10–8–19; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2018–0001]

Withdrawal of Bifacial Solar Panels Exclusion to the Solar Products Safeguard Measure

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On January 23, 2018, the President imposed a safeguard measure on imports of certain solar products pursuant to a section 201 investigation. On February 14, 2018, the U.S. Trade Representative established procedures for interested persons to request product-specific exclusions from application of the safeguard measure. On June 13, 2019, the U.S. Trade Representative published a notice granting certain requests for exclusions and excluding the products at issue from the safeguard measure's application. In particular, the U.S. Trade Representative excluded bifacial solar panels consisting only of bifacial solar cells. Since publication of that notice, the U.S. Trade Representative has evaluated this exclusion further and, after consultation with the Secretaries of Commerce and Energy, determined it will undermine the objectives of the safeguard measure. Accordingly, the U.S. Trade Representative has modified the Harmonized Tariff Schedule of the United States (HTSUS) to withdraw the exclusion of bifacial solar panels from application of the safeguard measure. The U.S. Trade Representative also has modified the HTSUS to make certain technical changes in connection with the safeguard measure.

DATES: The withdrawal of the exclusion for bifacial solar panels from application of the safeguard measure and technical changes will apply as of October 28, 2019.

FOR FURTHER INFORMATION CONTACT: Victor Mroczka, Office of WTO and Multilateral Affairs, at *vmroczka@ustr.eop.gov* or (202) 395–9450, or Dax Terrill, Office of General Counsel, at *Dax.Terrill@ustr.eop.gov* or (202) 395–4739.

SUPPLEMENTARY INFORMATION:

A. Background

On January 23, 2018, the President issued Proclamation 9693 (83 FR 3541) to impose a safeguard measure under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) with respect to certain crystalline silicon photovoltaic (CSPV) cells and other products (CSPV products) containing these cells. The Proclamation directed the U.S. Trade Representative to establish procedures for interested persons to request the exclusion of particular products from the safeguard measure. It also authorized the U.S. Trade Representative, after consultation with the Secretaries of Commerce and Energy, to exclude products by modifying the HTSUS with publication of a determination in the **Federal Register** regarding the exclusion of such products.

On February 14, 2018, the U.S. Trade Representative issued a notice setting out the procedures to request a product exclusion and opened a public docket. *See* 83 FR 6670 (the February 2018 notice). Under the February 2018 notice, requests for exclusion were to identify the particular product in terms of its

physical characteristics, such as dimensions, wattage, material composition, or other distinguishing characteristics, that differentiate it from other products that are subject to the safeguard measure. The notice said that the U.S. Trade Representative would not consider requests identifying the product at issue in terms of the identity of the producer, importer, or ultimate consumer, the country of origin, or trademarks or tradenames. The notice also provided that the U.S. Trade Representative would evaluate each request on a case-by-case basis and would grant only those exclusions that did not undermine the objectives of the safeguard measure.

The February 2018 notice indicated that the U.S. Trade Representative would consider exclusion requests filed no later than March 16, 2018. The Office of the U.S. Trade Representative (USTR) received 48 product exclusion requests and 213 comments responding to the various requests. The exclusion requests generally fell into seven categories, one of which concerned bifacial solar panels. Proponents asserted that the volume of bifacial solar panel production available for export to the United States was highly limited, that the products would not compete directly with CSPV products produced in the United States, and that the exclusion would not undermine the objectives of the safeguard measure.

On September 19, 2018, and June 13, 2019 (the June 2019 notice), the U.S. Trade Representative granted certain product exclusion requests in notices published in the **Federal Register** (83 FR 47393 and 84 FR 27684) and modified the HTSUS accordingly. In particular, based on the above assertions, the June 2019 notice specifically excluded from application of the safeguard measure ''bifacial solar panels that absorb light and generate electricity on each side of the panel and that consist of only bifacial solar cells that absorb light and generate electricity on each side of the cells.''

B. Further Evaluation of the Bifacial Solar Panel Exclusion

USTR has received multiple inquiries, requests, and other comments from members of the public. Some have asserted that the bifacial solar panels exclusion granted in the June 2019 notice is broader than the category of products described in the exclusion requests submitted as of March 16, 2018. Others have stated that the exclusion will cause a significant increase in imports of bifacial solar panels, with projections that such a surge is imminent.

After evaluating newly available information from these and other sources demonstrating that global production of bifacial solar panels is increasing, that the exclusion will likely result in significant increases in imports of bifacial solar panels, and that such panels likely will compete with domestically produced monofacial and bifacial CSPV products in the U.S. market, the U.S. Trade Representative has determined, after consultation with the Secretaries of Commerce and Energy, that maintaining the exclusion will undermine the objectives of the safeguard measure.

C. Withdrawal of the Bifacial Solar Panel Exclusion

Based on an evaluation of the factors set out in the February 2018 notice, and further consideration of the exclusion granted for bifacial solar panels in the June 2019 notice, the U.S. Trade Representative has determined after consultation with the Secretaries of Commerce and Energy to withdraw that exclusion.

Accordingly, as set out in the Annex to this notice, USTR is modifying subdivision (c)(iii) of U.S. note 18 to subchapter III of chapter 99 of the HTSUS to remove subdivision (c)(iii)(15), which implements the exclusion of bifacial solar panels.

D. Technical Changes to the HTSUS

It has come to the attention of USTR that certain technical clarifications to the Annex will facilitate administration of the safeguard measure. Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415) authorizes the U.S. Trade Representative to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTSUS. Pursuant to this delegated authority, the U.S. Trade Representative modifies the HTSUS to make the technical changes set out in the Annex to this notice.

Annex

Effective with respect to articles entered for consumption, or withdrawn from a warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 28, 2019, U.S. note 18 to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by removing the following from subdivision (c)(iii):

''(15) bifacial solar panels that absorb light and generate electricity on each side of the panel and that consist of only bifacial solar cells that absorb light and generate electricity on each side of the cells;''

U.S. note 18 to subchapter III of chapter 99 of the HTSUS is further modified by redesignating current subdivisions (c)(iii)(16) and (c)(iii)(17) as subdivisions (c)(iii)(15) and (c)(iii)(16), respectively.

U.S. note 18 to subchapter III of chapter 99 of the HTSUS is further modified by striking from subdivision (c)(i) the HTSUS number ''8541.40.6030'' and by inserting in lieu thereof ''8541.40.6025''.

U.S. note 18 to subchapter III of chapter 99 of the HTSUS is further modified by striking from subdivision (g) of such note the HTSUS number ''8541.40.6020'' and by inserting in lieu thereof ''8541.40.6015''.

Jeffrey Gerrish,

Deputy United States Trade Representative, Office of the U.S. Trade Representative.

[FR Doc. 2019–22074 Filed 10–8–19; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2019–0003]

Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations and action.

SUMMARY: The U.S. Trade Representative has determined that the European Union (EU) and certain member States have denied U.S. rights under the World Trade Organization (WTO) Agreement and have failed to implement WTO Dispute Settlement Body recommendations concerning certain subsidies to the EU large civil aircraft industry. The U.S. Trade Representative has determined to take action in the form of additional duties on products of certain member States of the EU, as specified in Annex A to this notice.

DATES: The additional duties set out in Annex A are applicable with respect to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 18, 2019.

FOR FURTHER INFORMATION CONTACT: For questions about the determinations in this investigation, contact Assistant General Counsel Megan Grimball, (202) 395–5725, or Director for Europe

Michael Rogers, at (202) 395–3320. For questions on customs classification of products identified in Annex A, contact *Traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Proceedings in the Investigation

On April 12, 2019, the U.S. Trade Representative announced the initiation of an investigation to enforce U.S. rights in the WTO dispute against the EU and certain EU member States addressed to subsidies on large civil aircraft. *See* 84 FR 15028 (April 12 notice). The April 12 notice contains background information on the investigation and the dispute settlement proceedings, as well as the website where you can find the WTO reports: *https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds316_e.htm.*

The April 12 notice solicited comments on a proposed determination that, *inter alia,* the EU and certain member States have denied U.S. rights under the WTO Agreement, and in particular, under Articles 5 and 6.3 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the General Agreement on Tariffs and Trade 1994 (GATT 1994), and have failed to comply with the WTO Dispute Settlement Body (DSB) recommendations to bring the WTO-inconsistent subsidies into compliance with WTO obligations. The April 12 notice invited public comment on a proposed action in the form of an additional *ad valorem* duty of up to 100 percent on products of EU member States to be drawn from a list of 317 tariff subheadings and 9 statistical reporting numbers of the Harmonized Tariff Schedule of the United States (HTSUS) included in the annex to that notice.

The public comment process following the April 12 notice included an opportunity for the submission of written comments, and the opportunity to participate in a public hearing. The Office of the United States Trade Representative (USTR) received over 600 submissions, and held a 2 day public hearing where 47 witnesses provided testimony.

In response to these public comments, and upon further analysis, USTR published a notice inviting public comment on a second list of products also being considered for an additional *ad valorem* duty of up to 100 percent. *See* 84 FR 32248 (July 5, 2019) (July 5 notice). USTR received nearly 1,900 submissions in response to the July 5 notice, and held a hearing on August 5, 2019, where 31 witnesses provided testimony.

The public versions of submissions received in response to the April 12 and July 5 notices, as well as transcripts of both hearings, are available on *www.regulations.gov* under docket number USTR–2019–0003.

As stated in the April 12 and July 5 notices, any final list of products subject to additional tariffs would take into account the report of the WTO Arbitrator on the appropriate level of countermeasures authorized by the WTO. On October 2, 2019, the WTO Arbitrator issued a report that concluded that the appropriate level of countermeasures in response to the WTO-inconsistent launch-aid provided by the EU or certain member States to their large civil aircraft domestic industry is approximately $7.5 billion annually.

B. Determination of Whether U.S. Rights Under a Trade Agreement Are Being Denied

Based on the original panel and appellate reports, the compliance panel and appellate reports, the report of the WTO Arbitrator, and information obtained during the investigation, including public comments and the advice of the Section 301 Committee, the U.S. Trade Representative has determined, under sections 301(a), 304(a), and 306(b) of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2411(a), 2414(a) and 2416(b)), that the rights of the United States under the GATT 1994 and the SCM Agreement, particularly Articles 5 and 6.3 of the SCM Agreement, are being denied; that subsidies provided by the EU and certain member States violate, or are inconsistent with, the provisions of these agreements; and that the EU has not satisfactorily implemented a recommendation of the WTO DSB. For these reasons, the U.S. Trade Representative has made an affirmative determination of actionability under sections 301(a), and 304(a)(1)(A) of the Trade Act.

C. Determination of Action

Upon making an affirmative determination that U.S. rights under a trade agreement are being denied, or that an act, policy, or practice of a foreign country violates, or is inconsistent with, the provisions of, a trade agreement, section 301(a) of the Trade Act provides that the U.S. Trade Representative shall take all appropriate and feasible action authorized under section 301(c), subject to the specific direction, if any, of the President regarding such action, and all other appropriate and feasible action within the power of the President that the President may direct the U.S. Trade Representative to take under section 301(a), to enforce such rights or to obtain the elimination of such act, policy, or practice.

Pursuant to sections 301(a), 301(c), 304(a)(1)(B), and 306(b) of the Trade Act (19 U.S.C. 2411(a), 2411(c), 2414(a)(1)(B), and 2416(b)), the U.S. Trade Representative has determined to impose additional duties on products of certain EU member States, as specified in Annex A to this notice. The annual trade value of the list of tariff subheadings subject to additional duties is approximately $7.5 billion, which is consistent with the WTO Arbitrator's finding on the appropriate level of countermeasures. Annex A identifies the products covered by the action, the rate of duty to be assessed, and the EU member States affected. The final list of products and rates of additional duty take into account the public comments and the testimony from the public hearings, the advice of advisory committees, and the advice of the Section 301 Committee. In accordance with section 306(b)(2)(F) of the Trade Act (19 U.S.C. 2416(b)(2)(F)), Annex A includes reciprocal goods of the affected industry. Annex B contains the same list of tariff subheadings, with unofficial descriptions of the types of products covered in each subheading.

In order to implement this determination, effective October 18, 2019, subchapter III of chapter 99 of the HTSUS is modified by Annex A of this notice. Products provided for in new HTSUS subheading 9903.89.05 will be subject to an additional *ad valorem* duty of 10 percent. Products provided for in new HTSUS subheadings 9903.89.10, 9903.89.13, 9903.89.16, 9903.89.19, 9903.89.22, 9903.89.25, 9903.89.28, 9903.89.31, 9903.89.34, 9903.89.37, 9903.89.40, 9903.89.43, 9903.89.46, and 9903.89.49, will be subject to an additional *ad valorem* duty of 25 percent.

The additional duties provided for in the new HTSUS subheadings established by Annex A apply in addition to all other applicable duties, fees, exactions, and charges.

Any product listed in Annex A, except any product that is eligible for admission under 'domestic status' as defined in 19 CFR 146.43, which is subject to the additional duty imposed by this determination, and is admitted into a U.S. foreign trade zone on or after 12:01 a.m. eastern daylight time on October 18, 2019, only may be admitted as 'privileged foreign status' as defined in 19 CFR 146.41. Such products will be subject upon entry for consumption to any *ad valorem* rates of duty or quantitative limitations related to the

classification under the applicable HTSUS subheading.

The U.S. Trade Representative will continue to consider the action taken in this investigation. In determining whether future modifications may be appropriate, the U.S. Trade Representative will take into account the public comments and testimony previously provided in response to the April 12 and July 5 notices. USTR remains open to discussing matters related to this investigation with the EU and EU member States.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

BILLING CODE 3290–F0–P

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 October 18, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting in numerical sequence the following new note and tariff provisions, with the material in the latter inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

"21 (a) For the purposes of subheadings 9903.89.05 through 9903.89.49, inclusive, and superior text thereto, products of Austria, of Belgium, of Bulgaria, of Croatia, of Republic of Cyprus, of Czech Republic, of Denmark, of Estonia, of Finland, of France, of Germany, of Greece, of Hungary, of Ireland, of Italy, of Latvia, of Lithuania, of Luxembourg, of Malta, of Netherlands, of Poland, of Portugal, of Romania, of Slovakia, of Slovenia, of Spain, of Sweden or of the United Kingdom, as specified in such provisions and this note, shall be subject to additional duties as provided herein. All products of the specified countries that are classified in the subheadings enumerated in this note are subject to the additional duties imposed by subheadings 9903.89.05 through 9903.89.49. The duties imposed by such heading and subheadings shall be in addition to the general duty rates provided for in the applicable provisions of the tariff schedule.

Products of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are classified in the subheadings enumerated in this note and that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99 shall be subject to the additional duties imposed by subheadings 9903.89.05 through 9903.89.49, and any such duty exemption or reduction shall apply only to the permanent general rate prescribed in provisions of chapters 1 through 97 of the tariff schedule.

The additional duties imposed by subheadings 9903.89.05 through 9903.89.49 do not apply to goods for which entry is properly claimed under a provision of chapter 98 of the HTSUS, except for goods entered under subheadings 9802.00.40, 9802.00.50 and 9802.00.60 and heading 9802.00.80. For subheadings 9802.00.40, 9802.00.50 and 9802.00.60, the additional duties apply to the value of repairs, alterations or processing performed in one or more of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom and as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article less the cost or value of such products of the United States, as described in heading 9802.00.80.

Products of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are described in any of subheading 9903.89.05 through 9903.89.49 and classified in one of the subheadings enumerated in such subheadings and in this note shall continue to be subject to antidumping, countervailing or other duties (including duties imposed by other provisions of subchapter III of this chapter and safeguard duties set forth in provisions of subchapter IV of this chapter), fees, exactions and charges that apply to such products, as well as to the additional imposed herein.

(b) For purposes of subheading 9903.89.05, the term "new airplanes or other new aircraft" means airplanes or aircraft with no time in service or hours in flight other than for production testing and for each such airplane's or aircraft's flight required to enter the airplane or aircraft into the U.S. customs territory or to arrive at a U.S. port of entry. Such subheading shall not cover used or rebuilt airplanes or other aircraft not covered by the definition of "new" goods set forth in this subdivision.

(c) Subheading 9903.89.10 and superior text thereto shall apply to all products of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are classified in the subheadings enumerated below:

0403.10.50	0406.30.28	0406.90.94
0403.90.85	0406.30.34	0805.10.00
0403.90.90	0406.30.38	0805.21.00
0405.20.20	0406.30.55	0805.22.00
0406.10.28	0406.30.69	0805.50.20
0406.10.54	0406.30.79	0812.10.00
0406.10.58	0406.40.44	0813.40.30
0406.10.68	0406.40.48	1602.49.10
0406.20.51	0406.90.32	1605.53.05
0406.20.53	0406.90.43	1605.56.05
0406.20.69	0406.90.52	1605.56.10
0406.20.77	0406.90.54	1605.56.15
0406.20.79	0406.90.68	1605.56.20
0406.20.87	0406.90.72	1605.56.30
0406.20.91	0406.90.74	1605.56.60
0406.30.05	0406.90.82	1605.59.05
0406.30.18	0406.90.92	1605.59.60

(d) Subheading 9903.89.13 and superior text thereto shall apply to all products of Germany, of Spain or of the United Kingdom that are classified in the subheadings enumerated below:

0203.29.40	0406.10.84	0406.10.95
0404.10.05	0406.10.88	0406.90.14

0406.90.16	1509.10.20	2005.70.12
0406.90.56	1509.90.20	2005.70.25

(e) Subheading 9903.89.16 and superior text thereto shall apply to all products of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are classified in the subheadings enumerated below:

0403.10.90	0406.90.99	2008.70.20
0405.10.10	0811.90.80	2008.97.90
0405.10.20	1601.00.20	2009.89.65
0406.30.89	2008.60.00	2009.89.80

(f) Subheading 9903.89.19 and superior text thereto shall apply to all products of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are classified in the subheadings enumerated below:

0405.20.30	0406.90.78	1602.42.40
0405.20.80	1602.41.90	1602.49.40
0406.30.85	1602.42.20	1602.49.90

(g) Subheading 9903.89.22 and superior text thereto shall apply to all products of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are classified in the subheadings enumerated below:

0405.90.10	0406.90.41	2007.99.70
0406.30.51	0406.90.42	2008.40.00
0406.30.53	0406.90.48	2009.89.20
0406.40.54	0406.90.90	2009.89.40
0406.90.08	0406.90.97	
0406.90.12	1605.53.60	

(h) Subheading 9903.89.25 and superior text thereto shall apply to all products of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are classified in subheading 0406.90.46.

(i) Subheading 9903.89.28 and superior text thereto shall apply to all products of Austria, Belgium, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are classified in subheading 0406.90.57.

(j) Subheading 9903.89.31 and superior text thereto shall apply to all products of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are classified in subheading 0406.90.95.

(k) Subheading 9903.89.34 and superior text thereto shall apply to all products of France, of Germany, of Spain or of the United Kingdom that are classified in the subheadings enumerated below:

0711.20.18	0711.20.40	2005.70.23
0711.20.28	2005.70.08	2204.21.50
0711.20.38	2005.70.16	

(l) Subheading 9903.89.37 and superior text thereto shall apply to all products of Germany that are classified in the subheadings enumerated below:

0901.21.00	8203.30.00	8467.19.50
0901.22.00	8203.40.60	8468.80.10
2101.11.21	8205.40.00	8468.90.10
8201.40.60	8211.93.00	8514.20.40
8203.20.20	8211.94.50	9002.11.90
8203.20.60	8467.19.10	

(m) Subheading 9903.89.40 and superior text thereto shall apply to all products of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom that are classified in subheading 1604.49.20.

(n) Subheading 9903.89.43 and superior text thereto shall apply to all products of Germany or the United Kingdom that are classified in the subheadings enumerated below:

1905.31.00	4911.91.20	8429.52.50
1905.32.00	4911.91.30	8467.29.00
4901.10.00	4911.91.40	
4908.10.00	8429.52.10	

(o) Subheading 9903.89.46 and superior text thereto shall apply to all products of Germany, of Ireland, of Italy, of Spain or of the United Kingdom that are classified in subheading 2208.70.00.

(p) Subheading 9903.89.49 and superior text thereto shall apply to all products of the United Kingdom that are either—

(1) single-malt Irish or Scotch Whiskies (provided for in subheading 2208.30.30), or

(2) provided for in the subheadings enumerated below:

6110.11.00	6110.30.30	6203.11.60
6110.12.10	6202.99.15	6203.11.90
6110.20.20	6202.99.80	6203.19.30

6203.19.90
6208.21.00
6211.12.40
6211.12.80
6301.30.00
6301.90.00
6302.21.50
6302.21.90”

Heading/ Subheading		Article description	Rates of Duty		
			1		2
			General	Special	
		"Articles the product of France, of Germany, of Spain or of the United Kingdom:			
9903.89.05		New airplanes and other new aircraft, as defined in U.S. note 21(b) to this subchapter (other than military airplanes or other military aircraft), of an unladen weight exceeding 30,000 kg (described in statistical reporting numbers 8802.40.0040, 8802.40.0060 or 8802.40.070).	The duty provided in the applicable subheading + 10%		
		Articles the product of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom:			
9903.89.10		Provided for in the subheadings enumerated in U.S. note 21(c) to this subchapter	The duty provided in the applicable subheading + 25%		
		Articles the product of Germany, of Spain or of the United Kingdom:			
9903.89.13		Provided for in subheadings enumerated in U.S. note 21(d) to this subchapter.	The duty provided in the applicable subheading + 25%		
		Articles the product of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom:			
9903.89.16		Provided for in subheadings enumerated in U.S. note 21(e) to this subchapter	The duty provided in the applicable subheading + 25%		

Heading/ Subheading		Article description	Rates of Duty		
			1		2
			General	Special	
9903.89.19		Articles the product of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom: Provided for in subheadings enumerated in U.S. note 21(f) to this subchapter.	The duty provided in the applicable subheading + 25%		
9903.89.22		Articles the product of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom: Provided for in subheadings enumerated in U.S. note 21(g) to this subchapter.	The duty provided in the applicable subheading + 25%		
9903.89.25		Articles the product of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom: Provided for in subheadings enumerated in U.S. note 21(h) to this subchapter	The duty provided in the applicable subheading + 25%		

Heading/ Subheading		Article description	Rates of Duty		
			1		2
			General	Special	
		Articles the product of Austria, Belgium, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom:			
9903.89.28		Provided for in subheadings enumerated in U.S. note 21(i) to this subchapter	The duty provided in the applicable subheading + 25%		
		Articles the product of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom:			
9903.89.31		Provided for in subheadings enumerated in U.S. note 21(j) to this subchapter.	The duty provided in the applicable subheading + 25%		
		Articles the product of France, of Germany, of Spain or of the United Kingdom:			
9903.89.34		Provided for in subheadings enumerated in U.S. note 21(k) to this subchapter	The duty provided in the applicable subheading + 25%		
		Articles the products of Germany:			
9903.89.37		Provided for in subheadings enumerated in U.S. note 21(l) to this subchapter.	The duty provided in the applicable subheading + 25%		

Heading/ Subheading		Article description	Rates of Duty		
			1		2
			General	Special	
		Articles the product of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom:			
9903.89.40		Provided for in subheadings enumerated in U.S. note 21(m) to this subchapter.	The duty provided in the applicable subheading + 25%		
		Articles the product of Germany or of the United Kingdom:			
9903.89.43		Provided for in subheadings enumerated in U.S. note 21(n) to this subchapter	The duty provided in the applicable subheading + 25%		
		Articles the product of Germany, of Ireland, of Italy, of Spain or of the United Kingdom:			
9903.89.46		Provided for in subheadings enumerated in U.S. note 21(o) to this subchapter	The duty provided in the applicable subheading + 25%		
		Articles the product of the United Kingdom:			
9903.89.49		Provided for in subheadings enumerated in U.S. note 21(p) to this subchapter.	The duty provided in the applicable subheading + 25%”		

Annex B

Note: The product descriptions that are contained this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the action, except as specified below. In all cases, the formal language in Annex A governs the tariff treatment of products covered by the action. Any questions regarding the scope of particular HTS subheadings should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

Part 1 – Products of France, Germany, Spain, or the United Kingdom described below are subject to additional import duties of 10 percent ad valorem:

Note: For purposes of the 8-digit subheading of HTS listed below, the product description defines and limits the scope of the proposed action.

HTS Subheading	Product Description
8802.40.00**	New airplanes and other new aircraft, as defined in U.S. note 21(b), (other than military airplanes or other military aircraft), of an unladen weight exceeding 30,000 kg (described in statistical reporting numbers 8802.40.0040, 8802.40.0060 or 8802.40.070)

**Only a portion of HS8 digit is to be covered

Part 2 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0403.10.50	Yogurt, in dry form, whether or not flavored or containing add fruit or cocoa, not subject to gen nte 15 or add. US nte 10 to Ch.4
0403.90.85	Fermented milk o/than dried fermented milk or o/than dried milk with added lactic ferments
0403.90.90	Curdled milk/cream/kephir & other fermentd or acid. milk/cream subject to add US note 10 to Ch.4
0405.20.20	Butter substitute dairy spreads, over 45% butterfat weight, subject to quota pursuant to chapter 4 additional US note 14
0406.10.28	Fresh (unripened/uncured) cheddar cheese, cheese/subs for cheese cont or proc from cheddar cheese, not subj to Ch4 US note 18, not GN15
0406.10.54	Fresh (unripened/uncured) Italian-type cheeses from cow milk, cheese/substitutes cont or proc therefrom, subj to Ch4 US nte 21, not GN15
0406.10.58	Fresh (unrip./uncured) Italian-type cheeses from cow milk, cheese/substitutes cont or proc therefrom, not subj to Ch4 US note 21 or GN15
0406.10.68	Fresh (unripened/uncured) Swiss/emmentaler cheeses exc eye formation,

HTS Subheading	Product Description
	gruyere-process cheese and cheese cont or proc. from such, not subj ..
0406.20.51	Romano, reggiano, provolone, provoletti, sbrinz and goya, made from cow's milk, grated or powdered, subject to add US note 21 to Ch.4
0406.20.53	Romano, reggiano, provolone, provoletti, sbrinz and goya, made from cow's milk, grated or powdered, not subj to Ch4 US nte 21 or GN15
0406.20.69	Cheese containing or processed from american-type cheese (except cheddar), grated or powdered, subject to add US note 19 to Ch. 4
0406.20.77	Cheese containing or processed from italian-type cheeses made from cow's milk, grated or powdered, subject to add US note 21 to Ch. 4
0406.20.79	Cheese containing or processed from italian-type cheeses made from cow's milk, grated or powdered, not subject to add US note 21 to Ch. 4
0406.20.87	Cheese (including mixtures), nesoi, n/o 0.5% by wt. of butterfat, grated or powdered, not subject to add US note 23 to Ch. 4
0406.20.91	Cheese (including mixtures), nesoi, o/0.5% by wt of butterfat, w/cow's milk, grated or powdered, not subject to add US note 16 to Ch. 4
0406.30.05	Stilton cheese, processed, not grated or powdered, subject to add US note 24 to Ch. 4
0406.30.18	Blue-veined cheese (except roquefort), processed, not grated or powdered, not subject to gen. note 15 or add. US note 17 to Ch. 4
0406.30.28	Cheddar cheese, processed, not grated or powdered, not subject to gen note 15 or in add US note 18 to Ch. 4
0406.30.34	Colby cheese, processed, not grated or powdered, subject to add US note 19 to Ch. 4
0406.30.38	Colby cheese, processed, not grated or powdered, not subject to gen note 15 or add US note 19 to Ch. 4
0406.30.55	Processed cheeses made from sheep's milk, including mixtures of such cheeses, not grated or powdered
0406.30.69	Processed cheese cont/procd fr american-type cheese (ex cheddar), not grated/powdered, subject to add US note 19 to Ch. 4, not GN15
0406.30.79	Processed cheese cont/procd from italian-type, not grated/powdered, not subject to add US note 21 to Ch. 4, not GN15
0406.40.44	Stilton cheese, nesoi, in original loaves, subject to add. US note 24 to Ch. 4
0406.40.48	Stilton cheese, nesoi, not in original loaves, subject to add. US note 24 to Ch. 4
0406.90.32	Goya cheese from cow's milk, not in original loaves, nesoi, not subject to gen. note 15 or to add. US note 21 to Ch. 4
0406.90.43	Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, not from cow's milk, not subject to gen. note 15
0406.90.52	Colby cheese, nesoi, subject to add. US note 19 to Ch. 4 and entered pursuant to its provisions
0406.90.54	Colby cheese, nesoi, not subject to gen. note 15 or to add. US note 19 to Ch. 4
0406.90.68	Cheeses & subst. for cheese(incl. mixt.), nesoi, w/romano/reggiano/parmesan/provolone/etc, f/cow milk, not subj. Ch4 US note 21, not GN15

HTS Subheading	Product Description
0406.90.72	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from blue-veined cheese, subj. to add. US note 17 to Ch.4, not GN15
0406.90.74	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from blue-veined cheese, not subj. to add. US note 17 to Ch.4, not GN15
0406.90.82	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from Am. cheese except cheddar, subj. to add. US note 19 to Ch.4, not GN15
0406.90.92	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, not subj. Ch4 US note 22, not GN15
0406.90.94	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/butterfat n/o 0.5% by wt, not subject to add. US note 23 to Ch. 4, not GN15
0805.10.00	Oranges, fresh or dried
0805.21.00	Mandarins and other similar citrus hybrids including tangerines, satsumas, clementines, wilkings, fresh or dried
0805.22.00	Clementines, fresh or dried, other
0805.50.20	Lemons, fresh or dried
0812.10.00	Cherries, provisionally preserved, but unsuitable in that state for immediate consumption
0813.40.30	Cherries, dried
1602.49.10	Prepared or preserved pork offal, including mixtures
1605.53.05	Mussels, containing fish meats or in prepared meals
1605.56.05	Products of clams, cockles, and arkshells containing fish meat; prepared meals
1605.56.10	Razor clams, in airtight containers, prepared or preserved, nesoi
1605.56.15	Boiled clams in immediate airtight containers, the contents of which do not exceed 680 g gross weight
1605.56.20	Clams, prepared or preserved, excluding boiled clams, in immediate airtight containers, nesoi
1605.56.30	Clams, prepared or preserved, other than in airtight containers
1605.56.60	Cockles and arkshells, prepared or preserved
1605.59.05	Products of molluscs nesoi containing fish meat; prepared meals of molluscs nesoi
1605.59.60	Molluscs nesoi, prepared or preserved

Part 3 – Products of Germany, Spain, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0203.29.40	Frozen meat of swine, other than retail cuts, nesoi
0404.10.05	Whey protein concentrates
0406.10.84	Fresh cheese, and substitutes for cheese, cont. cows milk, neosi, o/0.5% by wt. of butterfat, descr in add US note 16 to Ch 4, not GN15
0406.10.88	Fresh cheese, and substitutes for cheese, cont. cows milk, neosi, o/0.5% by wt. of butterfat, not descr in add US note 16 to Ch 4, not GN 15
0406.10.95	Fresh cheese, and substitutes for cheese, not cont. cows milk, neosi, o/0.5% by

HTS Subheading	Product Description
	wt. of butterfat
0406.90.14	Described in general note 15 of the tariff schedule and entered pursuant to its provisions
0406.90.16	Edam and gouda cheese, nesoi, subject to add. US note 20 to Ch. 4
0406.90.56	Cheeses, nesoi, from sheep's milk in original loaves and suitable for grating
1509.10.20	Virgin olive oil and its fractions, whether or not refined, not chemically modified, weighing with the immediate container under 18 kg
1509.90.20	Olive oil, other than virgin olive oil, and its fractions, not chemically modified, weighing with the immediate container under 18 kg
2005.70.12	Olives, green, not pitted, in saline, not ripe
2005.70.25	Olives, green, in a saline solution, pitted or stuffed, not place packed

Part 4 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0403.10.90	Yogurt, not in dry form, whether or not flavored or containing add fruit or cocoa
0405.10.10	Butter subject to quota pursuant to chapter 4 additional US note 6
0405.10.20	Butter not subject to general note 15 and in excess of quota in chapter 4 additional U.S. note 6
0406.30.89	Processed cheese (incl. mixtures), nesoi, w/cow's milk, not grated or powdered, subject to add US note 16 to Ch. 4, not GN15
0406.90.99	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/o cows milk, w/butterfat o/0.5% by wt, not GN15
0811.90.80	Fruit, nesoi, frozen, whether or not previously steamed or boiled
1601.00.20	Pork sausages and similar products of pork, pork offal or blood; food preparations based on these products
2008.60.00	Cherries, otherwise prepared or preserved, nesoi
2008.70.20	Peaches (excluding nectarines), otherwise prepared or preserved, not elsewhere specified or included
2008.97.90	Mixtures of fruit or other edible parts of plants, otherwise prepared or preserved, nesoi (excluding tropical fruit salad)
2009.89.65	Cherry juice, concentrated or not concentrated
2009.89.80	Juice of any single vegetable, other than tomato, concentrated or not concentrated

Part 5 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0405.20.30	Butter substitute dairy spreads, over 45% butterfat weight, not subj to gen note 15 and in excess of quota in ch. 4 additional US note 14
0405.20.80	Other dairy spreads, not butter substitutes or of a type provided for in chapter 4 additional US note 1
0406.30.85	Processed cheese (incl. mixtures), nesoi, n/o 0.5% by wt. butterfat, not grated or powdered, subject to Ch4 US note 23, not GN15
0406.90.78	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from cheddar cheese, not subj. to add. US note 18 to Ch.4, not GN15
1602.41.90	Prepared or preserved pork hams and cuts thereof, not containing cereals or vegetables, nesoi
1602.42.20	Pork shoulders and cuts thereof, boned and cooked and packed in airtight containers
1602.42.40	Prepared or preserved pork shoulders and cuts thereof, other than boned and cooked and packed in airtight containers
1602.49.40	Prepared or preserved pork, not containing cereals or vegetables, nesoi
1602.49.90	Prepared or preserved pork, nesoi

Part 6 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0405.90.10	Fats and oils derived from milk, other than butter or dairy spreads, subject to quota pursuant to chapter 4 additional US note 14
0406.30.51	Gruyere-process cheese, processed, not grated or powdered, subject to add. US note 22 to Ch. 4
0406.30.53	Gruyere-process cheese, processed, not grated or powdered, not subject to gen note 15 or add. US note 22 to Ch. 4
0406.40.54	Blue-veined cheese, nesoi, in original loaves, subject to add. US note 17 to Ch. 4
0406.90.08	Cheddar cheese, neosi, subject to add. US note 18 to Ch. 4
0406.90.12	Cheddar cheese, nesoi, not subject to gen. note 15 of the HTS or to add. US note 18 to Ch. 4
0406.90.41	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, subject to add. US note 21 to Ch. 4

HTS Subheading	Product Description
0406.90.42	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, not subj to GN 15 or Ch4 US note 21
0406.90.48	Swiss or Emmentaler cheese with eye formation, nesoi, not subject to gen. note 15 or to add. US note 25 to Ch. 4
0406.90.90	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, subj. to add. US note 22 to Ch.4, not GN15
0406.90.97	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, not subject to Ch4 US note 16, not GN15
1605.53.60	Mussels, prepared or preserved
2007.99.70	Currant and berry fruit jellies
2008.40.00	Pears, otherwise prepared or preserved, nesoi
2009.89.20	Pear juice, concentrated or not concentrated
2009.89.40	Prune juice, concentrated or not concentrated

Part 7 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0406.90.46	Swiss or Emmentaler cheese with eye formation, nesoi, subject to add. US note 25 to Ch. 4

Part 8 – Products of Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0406.90.57	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating

Part 9 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0406.90.95	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, subject to Ch 4 US note 16 (quota)

Part 10 – Products of France, Germany, Spain or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0711.20.18	Olives, n/pitted, green, in saline sol., in contain. > 8 kg, drained wt, for repacking or sale, subject to add. US note 5 to Ch. 7
0711.20.28	Olives, n/pitted, green, in saline sol., in contain. > 8 kg, drained wt, for repacking or sale, not subject to add. US note 5 to Ch. 7
0711.20.38	Olives, n/pitted, nesoi
0711.20.40	Olives, pitted or stuffed, provisionally preserved but unsuitable in that state for immediate consumption
2005.70.08	Olives, green, not pitted, in saline, not ripe, in containers holding o/8 kg for repkg, not subject to add. US note 4 to Ch. 20
2005.70.16	Olives, green, in saline, place packed, stuffed, in containers holding n/o 1 kg, aggregate quantity n/o 2700 m ton/yr
2005.70.23	Olives, green, in saline, place packed, stuffed, not in containers holding 1 kg or less
2204.21.50	Wine other than Tokay (not carbonated), not over 14% alcohol, in containers not over 2 liters

Part 11 – Products of Germany described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0901.21.00	Coffee, roasted, not decaffeinated
0901.22.00	Coffee, roasted, decaffeinated
2101.11.21	Instant coffee, not flavored
8201.40.60	Axes, bill hooks and similar hewing tools (o/than machetes), and base metal parts thereof
8203.20.20	Base metal tweezers
8203.20.60	Pliers (including cutting pliers but not slip joint pliers), pincers and similar tools
8203.30.00	Metal cutting shears and similar tools, and base metal parts thereof
8203.40.60	Pipe cutters, bolt cutters, perforating punches and similar tools, nesoi, and base metal parts thereof
8205.40.00	Screwdrivers and base metal parts thereof
8211.93.00	Knives having other than fixed blades
8211.94.50	Base metal blades for knives having other than fixed blades
8467.19.10	Tools for working in the hand, pneumatic, other than rotary type, suitable for metal working
8467.19.50	Tools for working in the hand, pneumatic, other than rotary type, other than suitable for metal working
8468.80.10	Machinery and apparatus, hand-directed or -controlled, used for soldering, brazing or welding, not gas-operated
8468.90.10	Parts of hand-directed or -controlled machinery, apparatus and appliances used

HTS Subheading	Product Description
	for soldering, brazing, welding or tempering
8514.20.40	Industrial or laboratory microwave ovens for making hot drinks or for cooking or heating food
9002.11.90	Objective lenses and parts & access. thereof, for cameras, projectors, or photographic enlargers or reducers, except projection, nesoi

Part 12 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
1602.49.20	Pork other than ham and shoulder and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers

Part 13 – Products of Germany or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
1905.31.00	Sweet biscuits
1905.32.00	Waffles and wafers
4901.10.00	Printed books, brochures, leaflets and similar printed matter in single sheets, whether or not folded
4908.10.00	Transfers (decalcomanias), vitrifiable
4911.91.20	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation
4911.91.30	Lithographs on paper or paperboard, over 0.51 mm in thickness, printed not over 20 years at time of importation
4911.91.40	Pictures, designs and photographs, excluding lithographs on paper or paperboard, printed not over 20 years at time of importation
8429.52.10	Self-propelled backhoes, shovels, clamshells and draglines with a 360 degree revolving superstructure
8429.52.50	Self-propelled machinery with a 360 degree revolving superstructure, other than backhoes, shovels, clamshells and draglines
8467.29.00	Electromechanical tools for working in the hand, other than drills or saws, with self-contained electric motor

Part 14 – Products of Germany, Ireland, Italy, Spain, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
2208.70.00	Liqueurs and cordials

Part 15 – Products of the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

Note: For purposes of 2208.30.30, the product description defines and limits the scope of the proposed action.

HTS Subheading	Product Description
2208.30.30**	Single-malt Irish and Scotch Whiskies (described in 2208.30.30)
6110.11.00	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of wool
6110.12.10	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of Kashmir goats, wholly of cashmere
6110.20.20	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, nesoi
6110.30.30	Sweaters, pullovers and similar articles, knitted or crocheted, of manmade fibers, nesoi
6202.99.15	Rec perf outwear, women's/girls' anoraks, wind-breakers & similar articles, not k/c, tex mats (not wool, cotton or mmf), cont < 70% by wt of silk
6202.99.80	Women's/girls' anoraks, wind-breakers & similar articles, not k/c, of tex mats (not wool, cotton or mmf), cont < 70% by wt of silk,
6203.11.60	Men's or boys' suits of wool, not knitted or crocheted, nesoi, of wool yarn with average fiber diameter of 18.5 micron or less
6203.11.90	Men's or boys' suits of wool or fine animal hair, not knitted or crocheted, nesoi
6203.19.30	Men's or boys' suits, of artificial fibers, nesoi, not knitted or crocheted
6203.19.90	Men's or boys' suits, of textile mats(except wool, cotton or mmf), containing under 70% by weight of silk or silk waste, not knit or croch
6208.21.00	Women's or girls' nightdresses and pajamas, not knitted or crocheted, of cotton
6211.12.40	Women's or girls' swimwear, of textile materials(except mmf), containing 70% or more by weight of silk or silk waste, not knit or crocheted
6211.12.80	Women's or girls' swimwear, of textile materials(except mmf), containing under 70% by weight of silk or silk waste, not knit or crocheted
6301.30.00	Blankets (other than electric blankets) and traveling rugs, of cotton
6301.90.00	Blankets and traveling rugs, nesoi
6302.21.50	Bed linen, not knit or crocheted, printed, of cotton, cont any embroidery, lace, braid, edging, trimming, piping or applique work, n/napped
6302.21.90	Bed linen, not knit or croc, printed, of cotton, not cont any embroidery, lace, braid, edging, trimming, piping or applique work, not napped

**Only a portion of HS8 digit is to be covered

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Solicitation of Nominations for Appointment to the Youth Access to American Jobs in Aviation Task Force

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

ACTION: Solicitation of Nominations for Appointment to the Youth Access to American Jobs in Aviation Task Force (the Task Force).

SUMMARY: The FAA is issuing this notice to solicit nominations for qualified candidates to serve on the Youth Access to American Jobs in Aviation Task Force (Task Force). Section 602, Youth Access to American Jobs in Aviation Task Force, of FAA Reauthorization Act of 2018, requires the FAA Administrator to establish a Task Force. The objective of the Task Force is to provide independent advice and recommendations to the FAA. The advice and strategies relate to developing recommended initiatives to the FAA to encourage high school students towards an aviation career. In response to FAA requests, the Task Force may provide the FAA with information that may be used for tactical and strategic planning purposes.

DATES: Nomination package materials (see below) must be received no later than October 30, 2019 to be considered for the initial committee appointment. Nomination packages received after that date will be retained for consideration to fill future committee vacancies.

ADDRESSES: All nominations shall be emailed to Angela Anderson, Designated Federal Officer, at *s602youthtaskforce@faa.gov* (subject line''2019 Youth in Aviation Task Force Nomination''). A return email confirmation will be sent upon receipt.

FOR FURTHER INFORMATION CONTACT: For questions about this process or general questions about the Task Force, please contact Angela Anderson at *s602youthtaskforce@faa.gov.*

SUPPLEMENTARY INFORMATION:

Description of Duties: The Task Force acts solely in an advisory capacity and does not exercise program management responsibilities. Any decisions directly affecting implementation of policy will remain with the FAA Administrator and the Secretary of Transportation.

Not later than 12 months after its establishment, the Task Force shall develop and submit to the FAA Administrator recommendations and strategies to:

a. Facilitate and encourage high school students in the United States, beginning in their junior year, to enroll in and complete career and technical education courses, including science, technology, engineering, and mathematics (STEM), that would prepare them to enroll in a course of study related to an aviation career at an institution of higher education, including a community college or trade school;

b. Facilitate and encourage the students described above to enroll in a course of study related to an aviation career, including aviation manufacturing, engineering, and maintenance, at an institution of higher education, including a community college or trade school; and

c. Identify and develop pathways for students who complete a course of study described above to secure registered apprenticeships, workforce development programs, or careers in the aviation industry of the United States.

Not later than 30 days after submission of the recommendations and strategies to the Administrator, the Task Force shall submit to the appropriate committees of Congress a report outlining such recommendations and strategies.

Considerations. When developing these recommendations and strategies, the Task Force shall:

a. Identify industry trends that encourage or discourage youth in the United States from pursuing careers in aviation;

b. Consider how the FAA; air carriers; aircraft, powerplant, and avionics manufacturers; aircraft repair stations; and other aviation stakeholders can coordinate efforts to support youth in pursuing careers in aviation;

c. Identify methods of enhancing aviation apprenticeships, job skills training, mentorship, education, and outreach programs that are exclusive to youth in the United States; and

d. Identify potential sources of government and private sector funding, including grants and scholarships, that may be used to carry out the recommendations and strategies described above and to support youth in pursuing careers in aviation.

Membership: The membership will be fairly balanced in terms of points of view represented and the functions performed. The stakeholder groups to be represented on the Task Force will include:

a. Air carriers.

b. Aircraft, powerplant, and avionics manufacturers.

c. Aircraft repair stations.

d. Local educational agencies or high schools.

e. Institutions of higher education, including community colleges and aviation trade schools.

f. Such other aviation and educational stakeholders and experts as the FAA Administrator considers appropriate.

All Task Force members serve at the pleasure of the Secretary of Transportation. Other membership criteria include:

a. Members shall be appointed for the duration of the existence of the Task Force.

b. Members will serve without government compensation or reimbursement.

c. Representative members must represent a particular interest in employment, education, experience, or affiliation with a specific aviation-related organization.

d. Members must attend at least three-quarters of all Task Force meetings (estimated two meetings annually).

Qualifications: Representative members must be in good public standing. Preference will be given to candidates who currently serve as members of their organization's core senior leadership team, but membership may also be granted to uniquely qualified individuals who do not serve their organizations in this capacity.

Materials to Submit: Candidates are required to submit, in full, the following materials to be considered for Task Force membership. Failure to submit the required information may disqualify a candidate from the review process.

a. A short biography of the nominee, including professional and academic credentials.

b. A résumé or curriculum vitae, which must include relevant job experience, qualifications, and contact information.

c. Up to three letters of recommendation may be submitted, but are not required.

Each letter may be no longer than one page.

d. A one-page statement describing how the candidate will benefit the Task Force, taking into account the candidate's unique perspective that will advance the conversation. This statement must also identify the primary and secondary stakeholder groups to which the candidate's expertise best aligns. Finally, candidates should state their previous experience on a Federal Advisory Committee (if any), their level of knowledge in the above stakeholder groups, and the size of the constituency they represent or are able to reach.

Evaluations will be based on the materials submitted by the prospective candidates and will include consideration for membership balancing to ensure each of the above stakeholder groups has adequate representation.

Issued in Washington, DC, on September 30, 2019.

Angela Anderson,

Senior Advisor, Office of the Assistant Administrator for Human Resource Management, Federal Aviation Administration.

[FR Doc. 2019–21961 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0128]

Washington Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of petition for determination of preemption; request for comments.

SUMMARY: FMCSA requests comments on a petition submitted by the Washington Trucking Associations, Inc. (WTA) requesting a determination that the State of Washington's Meal and Rest Break Rules (MRB rules), as applied to drivers of commercial motor vehicles (CMVs) subject to FMCSA's hours of service (HOS) regulations, are preempted by Federal law. FMCSA requests comments in response to this petition.

DATES: Comments must be received on or before November 8, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2019–0128 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *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, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

FOR FURTHER INFORMATION CONTACT: Tracy M. White, Enforcement and Litigation Division; FMCSA Office of Chief Counsel; Telephone: (202) 493–0349; email: *Tracy.White@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0128), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and materials 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2019–0128'' 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 in 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.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online FDMS is available 24 hours each day, 365 days each year.

Privacy Act: DOT solicits comments from the public to better inform its preemption determinations. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

SUPPLEMENTARY INFORMATION:

Background

On December 21, 2018, FMCSA granted petitions filed by the American Trucking Associations, Inc. and the Specialized Carriers and Rigging Association, and determined that California's meal and rest break rules, as applied to property-carrying CMV drivers subject to FMCSA's HOS regulations, are preempted under 49 U.S.C. 31141. (Docket No. FMCSA–2018–0304; 83 FR 67470 (December 28, 2018)). On April 8, 2019, the WTA submitted a petition to FMCSA seeking a determination that Washington's MRB rules are also preempted under 49 U.S.C. 31141.

The WTA's petition states that Washington law requires employers to provide employees with a meal period of at least 30 minutes for every 5-hour work period and a 10-minute break for every 4-hour work period. *See* Petition at 2 (citing Wash. Admin. Code (WAC) 296–126–092). In addition, the petition states that while ''employees may not waive their right to a rest period at all,'' employees may waive their right to a meal break. *Id.* (citations omitted). However, the WTA contends that ''a missed [meal] break creates the presumption of a violation, with the burden on the employer to prove waiver as an affirmative defense.'' *Id.* (citations omitted). In its petition, the WTA explains that ''Washington's rules contemplate a paid, on-duty 30-minute meal break when the employee is required by the employer to remain on duty on the premises.'' However, ''even if the 30-minute break is paid pursuant to that provision,'' the WTA argues that employers remain obligated to ''make every effort to provide employees with an uninterrupted meal period'' and to ''continue the meal period until the employee has received 30 minutes total of mealtime.'' *Id.* at 2–3.

In its petition, the WTA alleges that similar to California's requirements, the Washington MRB rules are ''regulations on commercial motor vehicle safety

within the meaning of [49 U.S.C. 31141]'' and that they are ''additional to or more stringent than FMCSA's rules.'' Petition at 4–5. Additionally, the petition states that the Washington MRB rules have no safety benefit beyond those provided by FMCSA's rules, are incompatible with the Federal HOS regulations, and impose an unreasonable burden on interstate commerce. *Id.* at 5–7. The petition states, ''Given the similarity between Washington and California meal and rest break rules, the Agency's analysis of California's rules in its recent preemption order applies equally to Washington's.'' *Id.* at 4.

Applicable Law

Section 31141 of title 49, United States Code, prohibits States from enforcing a law or regulation on CMV safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) Has the same effect as a regulation prescribed under 49 U.S.C. 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations; (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation 49 U.S.C. 31141(c)(1).

If the Secretary decides that a State law or regulation has the same effect as a regulation prescribed under 49 U.S.C. 31136, the State law or regulation may be enforced. 49 U.S.C. 31141(c)(2). If the Secretary decides that a State law or regulation is less stringent than a regulation prescribed under 49 U.S.C. 31136, the State law or regulation may not be enforced. *Id.* § 31141(c)(3). If the Secretary decides that a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under 49 U.S.C. 31136, the State law or regulation may be enforced unless the Secretary decides that the State law or regulation (1) has no safety benefit; (2) is incompatible with the regulation prescribed by the Secretary; or (3) would cause an unreasonable burden on interstate commerce. *Id.* § 31141(c)(4). In deciding whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the cumulative effect that the State's law or regulation and all similar laws and regulations of other States will have on interstate commerce. *Id.* § 31141(c)(5). The Secretary's authority under 49 U.S.C. 31141 is delegated to the FMCSA Administrator by 49 CFR 1.87(f).

Request for Comments

Although preemption under 49 U.S.C. 31141 is a legal determination reserved to the judgment of the Agency, FMCSA seeks comments on any issues raised in the WTA's petition or otherwise relevant. The Agency has placed the petition in the docket.

Issued on: September 27, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–22061 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0342]

Hours of Service of Drivers: American Concrete Pumping Association (ACPA); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the American Concrete Pumping Association (ACPA) exemption from the 30-minute rest break requirement in the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. The exemption enables all concrete pump operators, concrete pumping companies, and drivers who operate concrete pumps in interstate commerce to count on-duty time while attending equipment but performing no other work-related activity toward the 30-minute rest break provision of the HOS regulations. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The renewed exemption is effective October 9, 2019 and will expire October 9, 2024. Comments must be received November 8, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2016–0342 by any of the following methods:

- *Federal eRulemaking Portal: 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, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4225. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2016–0342) indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2016–0342'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Because this document renews without substantive change an exemption previously granted after public notice and consideration of the comments received, FMCSA finds, pursuant to the good-cause exception in 49 U.S.C. 553(b), that additional notice and opportunity for comment are unnecessary. Since this notice grants an exemption and relieves a restriction, 49 U.S.C. 553(d)(1) allows the exemption to be made effective upon publication.

III. Background

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its HOS regulations for drivers of property-carrying CMVs. The final rule adopted several changes to the HOS regulations including a new provision requiring drivers to take a rest break of at least 30 minutes during the work day under certain circumstances.

FMCSA did not specify when drivers must take the break but the rule requires that they wait no longer than 8 hours after the last off-duty period of 30 minutes or more to take it if they want to drive a CMV. Drivers who already take shorter breaks during the work day could comply with the rule by extending one of those breaks to 30 minutes. The new requirement took effect on July 1, 2013.

IV. Request for Exemption

On March 21, 2017, FMCSA granted ACPA an exemption from the 30-minute break rule in 49 CFR 395.3(a)(3)(ii) (82 FR 14595). On November 1, 2018, the Agency granted ACPA an exemption from the requirements of 49 CFR 395.1(e)(1)(ii)(A) concerning the 12-hour limit in the short-haul exception, allowing drivers up to 14 hours to return to the work-reporting location. At that time, the Agency believed the short-haul exemption eliminated the need for a separate exemption from the 30-minute rest break provision. Subsequently, the Agency learned that some ACPA members continue to need relief from the 30-minute rest break despite the newly granted exemption from the short-haul 12-hour limit. Therefore, ACPA applied for renewal of an exemption from the 30-minute rest break provision [49 CFR 395.3(a)(3)(ii)].

The previously granted exemption excused qualifying concrete pump operators, concrete pumping companies, and drivers who operate concrete pumps in interstate commerce from the requirement to take the 30-minute break. The ACPA represents more than 600 member companies who employ over 7,000 workers nationwide. The renewed exemption applies to all interstate operations of concrete pumper trucks and their operators, regardless of the motor carrier or membership in ACPA. Although many of the trucks operate intrastate and would therefore not be covered by an FMCSA exemption, an unknown number of the pumping trucks are operated in metropolitan areas and do cross State lines routinely.[1]

ACPA requests the exemption because it states that the mandatory 30-minute rest break increases the risk of technical complications and potentially costly problems at job sites. A mandatory 30-minute break during which the concrete pump operator is ''off duty'' would require the pump to be shut down and likely cleaned out. Stopping the flow of concrete through the pump creates the risk of introducing air in the pump's pipe system, which, in turn, could cause hose-whipping that can injure the pump operator and any personnel within reach of the hose. According to ACPA, concrete pump operators take rest breaks throughout the day; therefore, an additional 30-minute rest break does not enhance job safety.

ACPA added that concrete is a perishable product which creates difficult schedule coordination issues since it is needed on a just-in-time basis. ACPA continues to explain that concrete pump operators cannot plan the timing of the 30-minute break, as they cannot interrupt their work activity without the threat of failure—failure to accept and deliver concrete within its perishable limits and failure to comply with their contracts. Once the ingredients of ready-mixed concrete have been combined, there is a brief window during which the product can be pumped (roughly 90 minutes before the concrete hardens). Should the concrete pump operator be required to take the 30-minute rest break, it would cause a ripple effect on the ready-mixed concrete trucks in line to supply the pump. Per ACPA, such a delay could cost thousands of dollars to rectify and could potentially violate a delivery contract. Once the concrete pump starts to receive a delivery, it must be completed without disruption to conduct a safe and structurally sound pour.

ACPA asserts that renewing this exemption would achieve the same level of safety provided by the rule requiring the 30-minute rest break. The Association stated that the concrete pumping industry has a ''solid'' safety record. ACPA's Operation Certification Program ensures, encourages, and educates the industry on safe pumping and placement procedures. These safety practices allow concrete operators to maintain their safety record through careful training and well-developed safety guidelines.

[1] FMCSA does not have jurisdiction over intrastate transportation; however, most States have commercial motor vehicle statutes and regulations that are compatible with Federal regulations. An FMCSA exemption only applies to interstate transportation, although some States honor them for intrastate traffic.

V. FMCSA Decision

FMCSA has received no reports of accidents attributable to the previous 30-minute exemption. The renewal of the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. It is important to note that the Agency is not granting a complete exemption from the 30-minute rest break provision required by 49 CFR 395.3(a)(iii)(2). Instead, FMCSA is granting an exemption for concrete pump operators and drivers who remain with the CMV (*i.e.,* wait) while not performing any other work-related activities to count that time toward the 30-minute break. The only subject of the exemption is the duty status of the driver while ''waiting'' with the vehicle during a required rest break. The Agency grants the exemption request subject to the terms and conditions in this notice.

VI. Terms and Conditions of the Exemption

- Drivers who deliver, set up, and operate concrete pumps in interstate commerce across the United States, and all concrete pump operators and concrete pumping companies and drivers, are exempt from the requirement for a 30-minute rest break in Section 395.3(a)(3)(ii), in that they may count ''waiting'' periods when they are performing no work activity as the required 30-minute break.
- Drivers must possess a copy of this exemption while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
- All motor carriers operating under this exemption must have a ''Satisfactory'' safety rating with FMCSA, or be ''unrated.'' Motor carriers with ''Conditional'' or ''Unsatisfactory'' FMCSA safety ratings are prohibited from using this exemption.

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) has a retroactive effective date of March 17, 2019 through March 17, 2024, 11:59 p.m. local time.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). These drivers must comply will all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

(a) Identity of the exemption: ''ACPA'';

(b) Name of operating motor carrier and USDOT number;

(c) Date of the accident;

(d) City or town, and State, in which the accident occurred, or closest to the accident scene;

(e) Driver's name and license number and State of issuance;

(f) Vehicle number and State license plate number;

(g) Number of individuals suffering physical injury;

(h) Number of fatalities;

(i) The police-reported cause of the accident;

(j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations; and

(k) The driver's total driving time and total on-duty time prior to the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

VII. Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: September 17, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–22065 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0081]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated September 18, 2019, the Grenada Railroad, LLC (GRYR), a RailUSA limited liability company, petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2019–0081.

Applicant: Grenada Railroad, LLC, Mr. Trevor Costilow, General Manager, Ms. Barbara Wilson, President, 643 First Street, Grenada, MS 38901.

Specifically, GRYR requests permission to permanently remove the automatic block signals (ABS) from North Grenada, Mississippi, milepost (MP) 617.4 to Southaven, Mississippi, MP 403.0. The signal system has been out of service, but remained in place since January 8, 2013, per Docket Number FRA–2013–0095. The proposed changes include removal of the ABS and conversion to Track Warrant Control and Yard Limit rules. All Highway-Rail Grade Crossings will be retained.

GRYR explained the ABS is no longer needed in current or foreseeable future operations of the GRYR. There are substantial costs in maintaining the ABS.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

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

Communications received by November 25, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *http://www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2019–22059 Filed 10–8–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 12, 2019.

FOR FURTHER INFORMATION CONTACT: Otis Simpson at 1–888–912–1227 or (202) 317–3332.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be held Tuesday, November 12, 2019, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Otis Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 3, 2019

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–22086 Filed 10–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 13, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Wednesday, November 13, 2019, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 3, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–22088 Filed 10–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 21, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, November 21, 2019, at 1:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include various committee issues for submission to the

IRS and other TAP related topics. Public input is welcomed.

Dated: October 3, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–22093 Filed 10–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 14, 2019.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Thursday, November 14, 2019, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: October 3, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–22091 Filed 10–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 14, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Project Committee will be held Thursday, November 14, 2019, at 3:00 p.m. Eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 3, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–22090 Filed 10–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 13, 2019.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, November 13, 2019, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 3, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–22087 Filed 10–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 13, 2019.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer

Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, November 13, 2019, 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 3, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–22089 Filed 10–8–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quarterly Dealer Agenda Survey

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before November 8, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Departmental Offices (DO)

Title: Quarterly Dealer Agenda Survey.

OMB Control Number: 1505–0261.

Type of Review: Reinstatement of a previously approved collection.

Description: In order to finance the government's borrowing needs at the lowest cost over time, Treasury closely monitors economic conditions, market activity, and, if necessary, responds with appropriate changes in debt issuance based on analysis and consultation with market participants. Changes in debt management policy are generally developed through the quarterly refunding process near the middle of each calendar quarter. Treasury begins this process by soliciting advice and views from the private sector through questions to primary dealers in the Primary Dealer Meeting Agenda (Agenda). This survey is sent to all primary dealers, of which there are currently 24 financial institutions. As fiscal agent, the Federal Reserve Bank of New York sends and receives the survey, via email, to the primary dealers on Treasury's behalf.

The information is used to inform ODM's decision to set the securities' issuance sizes for the upcoming quarter. In effect, the information provides a market view of borrowing needs for the U.S. Government. In addition, aggregate statistics are made public through Treasury's Quarterly Refunding materials.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 24.

Frequency of Response: Quarterly.

Estimated Total Number of Annual Responses: 96.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 192 hours.

Authority: 44 U.S.C. 3501 et seq.

Dated: October 4, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–22105 Filed 10–8–19; 8:45 am]

BILLING CODE 4810–25–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board of Directors Meeting

TIME AND DATE: October 17, 2019, from 9:00 a.m. to Noon, Pacific time.

PLACE: Embassy Suites—San Diego Bay Downtown, 601 Pacific Highway, San Diego, California. These meetings will also be accessible via conference call. Any interested person may call 1–866–210–1669, passcode 5253902#, to listen and participate in these meetings.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the ''Board'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of the meeting will include:

Agenda

Portions Open to the Public

I. Welcome, Call to Order, and Introductions—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, and facilitate self-introductions.

II. Verification of Meeting Notice—UCR Operations Manager

The UCR Operations Manager will verify the publication of the meeting notice on the UCR website and in the **Federal Register**.

III. Review and Approval of Agenda and Setting of Ground Rules—UCR Board Chair

For Discussion and Possible Board Action

Agenda will be reviewed and the Board will consider adoption.

Ground Rules

- Board action only to be taken in designated areas on agenda.
- Please MUTE your telephone.
- Do NOT place call on hold.

IV. Approval of Minutes of the Aug. 1 & Sept. 5 UCR Board Meetings—UCR Board Chair

For Discussion and Possible Subcommittee Action

Minutes of the August 1, 2019 and September 5, 2019 Board meetings will be reviewed. The Board will consider action to approve.

V. Report of FMCSA—FMCSA Representative

FMCSA will provide a report on any relevant activity or rulemaking, including the recent appointments, and reappointments, of all UCR Board members, as well as any update available regarding a final rulemaking on 2020 UCR fees.

VI. UCR Executive Director Position—UCR Board Chair

For Discussion and Possible Subcommittee Action

The Board will review and consider the possible hiring of an independent contractor to serve as Executive Director. The Board may act to authorize and direct the Chair to negotiate and execute a contract for this service.

VII. Subcommittee Reports

Procedures Subcommittee

A. Proposed Amendments to UCR Refund Procedure—UCR Depository Manager

For Discussion and Possible Subcommittee Action

i. Refunds Resulting from Audits

The Board will review and consider a proposed amendment to the UCR refund procedure that would address carrier refunds issued by states that result from the findings of an audit. The Board may act to adopt the proposed amendment.

ii. Verification-Step for Permit Agents

The Board will review and consider an additional proposed amendment to the UCR refund procedure that would establish new requirements for permit agents to verify that they have the legal authority to register any given carrier-customer. The Board may act to adopt this proposed amendment.

B. Proposed Amendments to UCR Handbook—UCR Board Vice Chair

For Discussion and Possible Subcommittee Action

Proposed amendments to the UCR Handbook will be reviewed and the Board may act to adopt the amended language. The proposed amendments address the procedure for requesting, reviewing and processing carrier refunds, the situation whereby a carrier registers for UCR online and elects to pay by paper check, annual carrier audit requirements for participating states and the definition of a commercial motor vehicle.

C. Proposed Amendment to the UCR Agreement—Registration System Subcommittee Chair

For Discussion and Possible Subcommittee Action

A proposed amendment to the UCR Agreement will be reviewed and the Board may act to adopt the amended language. The proposed amendment would affect Section 10 of the UCR Agreement by clarifying the annual start and end dates of the UCR registration period.

D. Proposed Board Subcommittee Policy—UCR Administrator

For Discussion and Possible Subcommittee Action

A proposed policy to establish criteria for individuals serving on UCR Board Subcommittees, as well as the composition of the Subcommittees, will be reviewed. The Board may act to adopt the proposed policy.

E. Proposed Written Information Security Policy—Chief Legal Officer

For Discussion and Possible Subcommittee Action

A proposed policy to ensure the security, confidentiality, integrity, and availability of personal and other sensitive information collected, created, used, and maintained by the UCR, will be reviewed. The Board may act to adopt the proposed policy.

F. Proposed Incident Response Plan—Chief Legal Officer

For Discussion and Possible Subcommittee Action

A proposed policy to provide a structured and systematic incident response process for all information security incidents that affect any of the UCR's information technology systems, network, or data, including the UCR's data held or IT services provided by third-party vendors or other service providers, will be reviewed. The Board may act to adopt the proposed policy.

Audit Subcommittee

A. Report from States Delinquent on 2018 Carrier Audits—Audit Subcommittee Chair

The Board will hear report(s) from representatives in states that have not submitted an annual carrier audit report as required by the UCR Agreement. States will address their reasons for being delinquent, as well as their plan for reaching compliance.

B. Report on FY 2018 Depository Audit—UCR Depository Manager

The Board will hear a report on results of the independent financial audit of the UCR Depository for FY 2018 and have the opportunity to ask questions.

C. 2020 Proposed Audit Plan—UCR Depository Manager

For Discussion and Possible Subcommittee Action

i. State Compliance Reviews for 2020

The Board will review and possibly act to approve a proposal for conducting UCR compliance reviews for eight (8) participating states in 2020.

ii. National Registration System Financial Review

The Board will review and possibly act to approve a plan for conducting an independent financial review of the National Registration System for FY 2019.

iii. Depository Audit

The Board will consider and possibly act to approve a vendor to conduct an independent financial audit of the Depository for FY 2019.

D. Compliance Goal for Participating States—Audit Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Board will consider and discuss the implications of establishing a base motor carrier registration rate annual compliance goal of 85% for all participating states. The Board may act to adopt this goal.

E. Solicitation of New and Unregistered Motor Carriers—Audit Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Board will consider and discuss the implications of requiring participating states to solicit all new and unregistered motor carriers based in their state. The Board may act to adopt this requirement.

Finance Subcommittee

A. Contract Addendum with UCR Administrator—UCR Board Chair

For Discussion and Possible Subcommittee Action

The Board will review and consider the terms of a proposed contract addendum with the management firm currently serving as the UCR Administrator. The Board may act to instruct the Chair to execute the addendum.

B. Ending 2018 FARs on Dec. 31, 2019—Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Board will review a proposal requiring participating states to conclude their review and processing of

any focused anomaly reviews (FARs) identified for the 2018 registration year. The Board may act to adopt this recommendation.

Education and Training Subcommittee

A. Review of Timeline—Education Subcommittee Chair

The Board will receive a report on an estimated timeline of activity for the new UCR education and training program, with key milestones identified.

VIII. Updates Concerning UCR Legislation—UCR Board Chair

The UCR Board Chair will call for any updates regarding UCR Legislation since the last Board meeting.

IX. Contractor Reports

- UCR Administrator (Kellen)

The UCR Administrator will provide their monthly management report covering recent activity for the Depository, Operations, and Communications.

- DSL Transportation Services, Inc.

DSL will report on the latest data on state collections based on reporting from the Focused Anomalies Review (FARs) program.

- Seikosoft

Seikosoft will provide an update on recent/new activity related to the National Registration System.

X. Data Event Update—Chief Legal Officer

The Board will receive an update on the action items approved at its August 1, 2019 meeting related to the data event first reported to the Board at its June 4, 2019 meeting.

XI. Proposed Calendar for 2020 UCR Meetings—UCR Administrator

For Discussion and Possible Subcommittee Action

The Board will be presented a recommended calendar of proposed meetings (Board and Subcommittees) for 2020. The Board may act to adopt the calendar for 2020.

XII. Old/New Matters—UCR Board Chair

The UCR Board Chair will call for any business, old or new, from the floor.

XIII. Adjourn

UCR Board Chair will adjourn the meeting.

This agenda will be available no later than 5:00 p.m. Eastern daylight time, October 7, 2019 at: *https://ucrplan.org.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2019–22244 Filed 10–7–19; 4:15 pm]

BILLING CODE 4910–YL–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board Subcommittee Meetings

TIME AND DATE: October 16, 2019, from 9:00 a.m. to 3:30 p.m., Pacific time.

PLACE: Embassy Suites—San Diego Bay Downtown, 601 Pacific Highway, San Diego, California. These meetings will also be accessible via conference call. Any interested person may call 1–866–210–1669, passcode 5253902#, to listen and participate in these meetings.

STATUS: These meetings will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board Subcommittees (each a ''Subcommittee'') will continue their work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of these meetings will include:

Procedures Subcommittee Meeting

October 16, 2019

Proposed Agenda

Open to the Public

I. Call to Order—UCR Board Chair

Since the Subcommittee is currently without a Chair, the UCR Board Chair will call the meeting to order.

II. Verification of Publication of Meeting Notice—UCR Operations Manager

The UCR Operations Manager will verify the publication of meeting notice on the UCR website and in the **Federal Register.**

III. Approval of Minutes from June 3, 2019 Meeting—UCR Operations Manager

For Discussion and Possible Subcommittee Action

- Minutes from the June 3, 2019 Procedures Subcommittee meeting will be reviewed and Subcommittee will consider approval.

IV. Proposed Amendments to UCR Handbook—UCR Board Vice Chair

For Discussion and Possible Subcommittee Action

- Proposed amendments to the UCR Handbook will be reviewed and the Subcommittee may act to recommend the amended language to the Board for adoption. The proposed amendments address the procedure for requesting, reviewing and processing carrier refunds, the situation whereby a carrier registers for UCR online and elects to pay by paper check, annual carrier audit requirements for participating states, and the definition of a commercial motor vehicle.

V. Proposed Amendment to the UCR Agreement—UCR Registration System

Subcommittee Chair

For Discussion and Possible Subcommittee Action

- A proposed amendment to the UCR Agreement will be reviewed and the Subcommittee may act to recommend the amended language to the Board for adoption. The proposed amendment would affect Section 10 of the UCR Agreement by clarifying the start and end dates of the UCR registration period each year.

VI. Proposed UCR Board Subcommittee Policy—UCR Administrator

For Discussion and Possible Subcommittee Action

- A proposed policy to establish criteria for individuals serving on UCR Board Subcommittees, as well as the composition of the Subcommittees, will be reviewed. The Subcommittee may act to recommend the policy to the Board for adoption.

VII. Proposed Written Information Security Policy—Chief Legal Officer

For Discussion and Possible Subcommittee Action

- A proposed policy to ensure the security, confidentiality, integrity, and availability of personal and other sensitive information collected, created, used, and maintained by the UCR, will be reviewed. The Subcommittee may act to recommend the policy to the Board for adoption.

VIII. Proposed Incident Response Plan—Chief Legal Officer

For Discussion and Possible Subcommittee Action

- A proposed policy to provide a structured and systematic incident response process for all information security incidents that affect any of the UCR's information technology systems, network, or data, including the UCR's data held or IT services provided by third-party vendors or other service providers, will be reviewed. The Subcommittee may act to recommend the policy to the Board for adoption.

IX. **OTHER ITEMS**—*UCR Board Chair*

The Chair will call for any other items the Subcommittee members would like to discuss.

X. Adjourn—UCR Board Chair

The Chair will adjourn the meeting.

Unified Carrier Registration Plan

October 16, 2019

Audit Subcommittee Meeting

Agenda

Open to the Public

I. Call to Order—Subcommittee Chair

The Subcommittee Chair will call the meeting to order.

II. Verification of Meeting Notice—UCR Operations Manager

The UCR Operations Manager will verify the publication of meeting notice on the UCR website and in the **Federal Register.**

III. Approval of Minutes from September 19, 2019 Meeting—UCR Operations Manager

For Discussion and Possible Subcommittee Action

- Minutes from the September 19, 2019 Audit Subcommittee meeting will be reviewed and the Subcommittee will consider action to approve.

IV. Compliance Goal for Participating States—Subcommittee Chair

For Discussion and Possible Subcommittee Action

- The Subcommittee will consider and discuss the implications of establishing a base motor carrier registration rate annual goal of 85% for all participating states. The Subcommittee may act to recommend that the Board adopt this goal.

V. Solicitation of New and Unregistered Motor Carriers—Subcommittee Chair

For Discussion and Possible Subcommittee Action

- The Subcommittee will consider and discuss the implications of requiring participating states to solicit all new and unregistered motor carriers based in their state. The Subcommittee may act to recommend that the Board adopt this requirement.

VI. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the Subcommittee members would like to discuss.

VII. Adjournment—Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

Unified Carrier Registration Plan

October 16, 2019

Finance Subcommittee Meeting

Agenda

Open to the Public

I. Call to Order—Subcommittee Chair

Chair will call the meeting to order.

II. Verification of Meeting Notice—UCR Operations Manager

The UCR Operations Manager will verify the publication of meeting notice on the UCR website and in the **Federal Register.**

III. Approval of Minutes from June 3, 2019 Meeting—UCR Operations Manager

For Discussion and Possible Subcommittee Action

- Minutes from the June 3, 2019 Finance Subcommittee meeting will be reviewed and the Subcommittee will consider action to approve.

IV. Contract Addendum with UCR Administrator—Subcommittee Chair

For Discussion and Possible Subcommittee Action

- The Subcommittee will review and consider the terms of a proposed contract addendum with the management firm currently serving as the UCR Administrator. The Subcommittee may act to recommend execution of the addendum to the Board.

V. Ending 2018 FARs on December 31, 2019—Subcommittee Chair

For Discussion and Possible Subcommittee Action

- The Subcommittee will review a proposal requiring participating states to conclude their review and processing of any focused anomaly reviews (FARs) identified for the 2018 registration year. The Subcommittee may act to recommend this requirement to the Board for adoption.

VI. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the Subcommittee members would like to discuss.

VII. Adjourn—Subcommittee Chair

Chair will adjourn the meeting.

Unified Carrier Registration Plan

October 16, 2019

Education and Training Subcommittee Meeting

Agenda

Open to the Public

I. Call to Order—Subcommittee Chair

The Subcommittee Chair will call the meeting to order.

II. Verification of Meeting Notice—UCR Operations Manager

The UCR Operations Manager will verify the publication of meeting notice on the UCR website and in the **Federal Register.**

III. Approval of Minutes from June 3, 2019 Meeting—UCR Operations Manager

For Discussion and Possible Subcommittee Action

- Minutes from the June 3, 2019 Education and Training Subcommittee meeting will be reviewed and the Subcommittee will consider action to approve.

IV. Review of Timeline—Subcommittee Chair

The Subcommittee will receive a report on an estimated timeline of activity for the new UCR education and training program, with key milestones identified.

V. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the subcommittee members would like to discuss.

VI. Adjournment—Subcommittee Chair

Subcommittee Chair will adjourn the meeting.

Unified Carrier Registration Plan

October 16, 2019

Industry Advisory Subcommittee Meeting

Agenda

Open to the Public

I. Call to Order—Subcommittee Chair

The Subcommittee Chair will call the meeting to order.

II. Verification of Meeting Notice—UCR Operations Manager

The UCR Operations Manager will verify the publication of meeting notice on the UCR website and in the **Federal Register.**

III. Industry Feedback on UCR Program—Subcommittee Chair

The Subcommittee Chair will report on any recent feedback, concerns, etc. from the motor carrier industry which are related to the UCR and its National Registration System.

IV. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the Subcommittee members would like to discuss.

V. Adjournment—Subcommittee Chair

Subcommittee Chair will adjourn the meeting.

These agendas will be available no later than 5:00 p.m. Eastern daylight time, October 7, 2019 at: *https://ucrplan.org.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2019–22245 Filed 10–7–19; 4:15 pm]

BILLING CODE 4910–YL–P

FEDERAL REGISTER

Vol. 84 Wednesday,

No. 196 October 9, 2019

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards Residual Risk and Technology Review for Ethylene Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0357; FRL–9999–59–OAR]

RIN 2060–AT02

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards Residual Risk and Technology Review for Ethylene Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Generic Maximum Achievable Control Technology Standards. The source category addressed in this action is Ethylene Production. The EPA is proposing decisions concerning the residual risk and technology review (RTR), including proposing amendments pursuant to technology review for storage vessels and heat exchange systems. The EPA is also proposing amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM), including removing general exemptions for periods of SSM, adding work practice standards for periods of SSM where appropriate, and clarifying regulatory provisions for certain vent control bypasses. Lastly the EPA is proposing to add monitoring and operational requirements for flares; and add provisions for electronic reporting of performance test results and reports and Notification of Compliance Status (NOCS) reports. We estimate that these proposed amendments will reduce hazardous air pollutants (HAP) emissions from this source category by 62 tons per year (tpy).

DATES: *Comments.* Comments must be received on or before November 25, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 8, 2019.

Public hearing. If anyone contacts us requesting a public hearing on or before October 15, 2019, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/acetal-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen.* See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2017–0357 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–2017–0357 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2017–0357.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2017–0357, 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. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Andrew Bouchard, Sector Policies and Programs Division (E–143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4036; and email address: *bouchard.andrew@epa.gov.* For specific information regarding the risk modeling methodology, contact Mark Morris, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5416; and email address: *morris.mark@epa.gov.* For questions about monitoring and testing requirements, contact Gerri Garwood, Sector Policies and Programs Division (D–245–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2406; and email address: *garwood.gerri@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Marcia Mia, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–7042; and email address: *mia.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Ms. Virginia Hunt at (919) 541–0832 or by email at *hunt.virginia@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0357. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. 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 EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0357. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov/* or email. 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 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 (CFR) 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–2017–0357.

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACC American Chemistry Council
AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
AFPM American Fuel & Petrochemical Manufacturers
AMEL alternative means of emission limitation
APCD air pollution control device
ATSDR Agency for Toxic Substances and Disease Registry
BAAQMD Bay Area Air Quality Management District
BACT best available control technology
BDL elow detection levels
Btu British thermal units
BWON benzene waste operations NESHAP
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emission monitoring system(s)
CFR Code of Federal Regulations
CMS continuous monitoring systems
CO carbon monoxide
CO_2 carbon dioxide
CPMS continuous parametric monitoring system(s)
DLL detection level limited
EBU enhanced biological unit
ECHO enforcement and compliance history online
EFR external floating roof
EMACT ethylene production MACT
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guideline
ERT Electronic Reporting Tool
FTIR Fourier transform infrared spectrometry
GACT generally available control technologies
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.1.0
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
HRVOC highly reactive volatile organic compounds
IBR incorporation by reference
ICR Information Collection Request
IFR internal floating roof
IRIS Integrated Risk Information System
km kilometer
kPa kilopascals
LAER lowest achievable emission rate
LDAR leak detection and repair
LEL lower explosive limit
lpm liters per minute
MACT maximum achievable control technology
m^3 cubic meter
mg/m^3 milligrams per cubic meter
Mg/yr megagrams per year
MIR maximum individual risk
MMBtu million British thermal units
MON miscellaneous organic chemical manufacturing NESHAP
MPGF multi-point ground flare(s)
MTVP maximum true vapor pressure
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NATA National Air Toxics Assessment
NEI national emission inventory
NESHAP national emission standards for hazardous air pollutants
NHVcz net heating value in the combustion zone gas
NHVdil net heating value dilution parameter
NHVvg net heating value in the vent gas
NOCS notification of compliance status
NPDES National Pollutant Discharge Elimination System
NRDC Natural Resources Defense Council
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PAH polycyclic aromatic hydrocarbons
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PDF portable document format
PM particulate matter
$PM_{2.5}$ particulate matter less than 2.5 microns in diameter
POM polycyclic organic matter
ppm parts per million
ppmv parts per million by volume
ppmvd parts per million by volume, dry basis
ppmw parts per million by weight
PRA Paperwork Reduction Act
PRD pressure relief device(s)
psig pounds per square inch gauge
RACT reasonably available control technology
RATA relative accuracy test audit
REL reference exposure level

RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RTR residual risk and technology review
SAB Science Advisory Board
SCAQMD South Coast Air Quality Management District
SCC source classification code
SOCMI synthetic organic chemical manufacturing industry
SSM startup, shutdown, and malfunction
TAB total annual benzene
TAC Texas Administrative Code
TCEQ Texas Commission on Environmental Quality
TOSHI target organ-specific hazard index
tpy tons per year
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
TSM total selected metals
UF uncertainty factor
$\mu g/m^3$ microgram per cubic meter
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
VCS voluntary consensus standards
VOC volatile organic compound(s)

Organization of this document. The information in this preamble is organized as follows below. In particular, section IV of this preamble describes the majority of the agency's rationale for the proposed actions in this preamble. Section IV.A specifies proposed monitoring and operational requirements for flares in the ethylene production source category to ensure that the level of control from the original MACT standards is achieved by these air pollution control devices (APCD). To ensure that CAA section 112 standards continuously apply (*Sierra Club* v. *EPA, 551 F.3d 1019* (D.C. Cir. 2008), section IV.A also proposes work practice standards for periods of SSM for when flares are used as an APCD, proposes work practice standards for periods of SSM for certain vent streams (*i.e.* PRD releases and maintenance vents), proposes clarifications for vent control bypasses for certain vent streams (*i.e.,* closed vent systems containing bypass lines, in situ sampling systems, and flares connected to fuel gas systems), and proposes work practice standards for decoking operations for ethylene cracking furnaces (which is currently defined as a shutdown activity in the Ethylene Production NESHAP).

Section IV.B of this preamble summarizes the results of the risk assessment while section IV.C of this preamble summarizes our proposed decisions regarding the results of the risk assessment. Section IV.D of this preamble summarizes the results of our technology review, and proposes revisions for storage vessels and heat exchange systems. Section IV.E of this preamble summarizes other changes we are proposing, including general regulatory language changes related to the removal of SSM exemptions, electronic reporting, and other minor clarifications identified as part our review of the NESHAP and as part of the other proposed revisions in this action. Lastly, section IV.F of this preamble summarizes our rationale for the compliance dates we are proposing.

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I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *National Emission Standards for Hazardous Air Pollutants; Revision of Initial List of Categories of Sources and Schedule for Standards Under Sections 112(c) and (e) of the Clean Air Act Amendments of 1990* (61 FR 28197, June 4, 1996), the Ethylene Production source category includes any chemical manufacturing process unit in which ethylene and/or propylene are produced by separation from petroleum refining process streams or by subjecting hydrocarbons to high temperatures in the presence of steam.[1] The ethylene production unit includes the separation of ethylene and/or propylene from associated streams such as a C4 product,[2] pyrolysis gasoline, and pyrolysis fuel oil. The ethylene production unit does not include the manufacture of Synthetic Organic Chemical Manufacturing Industry (SOCMI) chemicals such as the production of butadiene from the C4 stream and aromatics from pyrolysis gasoline.

[1] In the June 4, 1996, document that revised the Initial List of Source Categories, the EPA added seven categories of major sources that included a source category listed as ''Ethylene Processes,'' (61 FR 28197); however, subsequent regulatory actions taken by the EPA, including the initial NESHAP development (*e.g.,* 65 FR 76408, December 6, 2000) and current regulatory text at 40 CFR part 63, subpart YY refer to the source category as ''Ethylene Production.''

[2] The C4 product stream is a hydrocarbon product stream from an ethylene production unit consisting of compounds with four carbon atoms (*e.g.,* butanes, butenes, butadienes).

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Ethylene Production	Generic Maximum Achievable Control Technology Standards	325110

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/acetal-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. Information on the overall RTR program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0357).

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are ''developments in practices, processes, or control technologies'' that may be appropriate to incorporate into the standards. This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tpy or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [3] of approximately 1 in 10 thousand.'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration

[3] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, the EPA considers whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

The Ethylene Production MACT standards (herein called the EMACT standards) for the Ethylene Production source category are contained in the Generic Maximum Achievable Control Technology (GMACT) NESHAP which also includes MACT standards for several other source categories. The EMACT standards were promulgated on July 12, 2002 (67 FR 46258) and codified at 40 CFR part 63, subparts XX and YY. As promulgated in 2002, and further amended on April 13, 2005 (70 FR 19266), the EMACT standards regulate HAP emissions from ethylene production units located at major sources. An ethylene production unit is a chemical manufacturing process unit in which ethylene and/or propylene are produced by separation from petroleum refining process streams or by subjecting hydrocarbons to high temperatures in the presence of steam. The EMACT defines the affected source as all storage vessels, ethylene process vents, transfer racks, equipment, waste streams, heat exchange systems, and ethylene cracking furnaces and associated decoking operations that are associated with each ethylene production unit located at a major source as defined in CAA section 112(a).

As of January 1, 2017, there were 26 ethylene production facilities in operation and subject to the EMACT standards. This is based on our search of the National Emission Inventory (NEI) and the EPA's Enforcement and Compliance History Online (ECHO) database (*www.echo.epa.gov*), and facility responses to our CAA section 114 request (see section II.C of this preamble for details about our CAA section 114 request). We are also aware of the expansion and construction of several facilities. Based upon this anticipated growth for the Ethylene Production source category, we estimate that a total of 31 ethylene production facilities will ultimately be subject to the EMACT standards. A complete list of facilities that are currently subject, or will be subject, to the EMACT standards is available in Appendix A of the memorandum titled *Review of the RACT/BACT/LAER Clearinghouse Database for the Ethylene Production Source Category,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357.

C. What data collection activities were conducted to support this action?

In July 2014, the EPA issued a request, pursuant to CAA section 114, to collect information from ethylene production facilities owned and operated by nine entities (*i.e.,* corporations). This effort focused on gathering comprehensive information about process equipment, control technologies, point and fugitive emissions, and other aspects of facility operations. Companies completed the survey and submitted responses (and follow-up responses) to the EPA between October 2014 and September 2015. Additionally, in April 2016, the EPA requested historical monitoring and compliance data for heat exchange systems and ethylene cracking furnaces, emissions source sampling for certain pollutants for heat exchange systems, and stack testing for certain pollutants for ethylene cracking furnaces under both normal operation as well as during decoking operations. The results of these requests were submitted to the EPA between the fall of 2016 and spring of 2017. The EPA has used the collected information to fill data gaps, establish the baseline emissions and control levels for purposes of the regulatory reviews, to identify the most effective control measures, and estimate the environmental and cost impacts associated with the regulatory options considered and reflected in this proposed action. The information not claimed as CBI by respondents is available in the memorandum titled *Data Received From Information Collection Request for the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357.

D. What other relevant background information and data are available?

We are relying on certain technical reports and memoranda that the EPA developed for flares used as APCDs in the petroleum refinery sector and new source performance standards (NSPS) (80 FR 75178, December 1, 2015). For completeness of the rulemaking record for this action and for ease of reference in finding these items in the publicly available Refinery rulemaking Docket, we are including in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2017–0357) a list of specific technical support documents in Table 1 of the memorandum titled *Control Option Impacts for Flares Located in the Ethylene Production Source Category.* The Petroleum Refinery sector and NSPS rulemaking Docket is located at Docket ID No. EPA–HQ–OAR–2010–0682.

In addition, the EPA is incorporating into the docket for this rulemaking, materials associated with a number of site-specific alternative means of emission limitation (AMEL) requests for facilities electing to use multi-point ground flares (MPGFs) as an APCD. These site-specific AMEL requests for MPGFs have been approved by the EPA because the MPGF can achieve at least equivalent reductions in emissions as the underlying flare operational standards in various NESHAP and/or NSPS. The EPA receives these AMEL requests because MPGF are designed to operate above the current maximum permitted velocity requirements for flares in the General Provisions at 40 CFR 63.11(b). Given that the EPA has provided notice and sought comments on certain specific AMEL requests, the underlying AMEL requests submitted by industry, MPGF test data, technical memorandums, **Federal Register** documents [4] and other supporting and related material that formed the basis of the AMEL requests and approved alternative operating conditions have been placed in a publicly available docket at Docket ID No. EPA–HQ–OAR–2014–0738. We consider all items in

[4] 80 FR 8023, February 13, 2015; 80 FR 52426, August 31, 2015; 81 FR 23480, April 21, 2016; 82 FR 16392, April 4, 2017; 82 FR 27822, June 19, 2017; and 83 FR 18034, April 25, 2018.

Docket ID No. EPA–HQ–OAR–2014–0738 part of our rulemaking record as well, given that this docket is specific to MPGF AMEL requests. We are, therefore, incorporating this docket by reference in this rule.

Lastly, the EPA is incorporating into the docket for this rulemaking, all materials associated with the development of the current GMACT and EMACT standards from Docket ID No. A–97–17, Docket ID No. A–98–22, and Docket ID No. OAR–2204–0411. Publicly available docket materials are available either electronically at *https://www.regulations.gov/,*or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. 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 EPA Docket Center is (202) 566–1742.

III. Analytical Procedures and Decision-Making

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information.'' 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[5] The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the EPA's response to comments on our policy under the Benzene NESHAP where the EPA explained that:

> ''[t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will 'protect the public health'.''

See 54 FR 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045.

Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.''[6]

[5] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential exposure to the HAP to the level at or below which no adverse chronic noncancer effects are expected; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

[6] Recommendations of the SAB Risk and Technology Review (RTR) Methods Panel are provided in their report, which is available at:

Continued

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency (1) conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed (or last updated) the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls to consider. See sections II.C and II.D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

C. How do we estimate post-MACT risk posed by the source category?

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB–HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.B of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The seven sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document, which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule.* The methods used to assess risk (as described in the seven primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009;[7] and described in the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

For each facility that we determined to be subject to the EMACT standards (see section II.B of this preamble), we gathered emissions data from Version 1 of the 2011 NEI. For each NEI record, we reviewed the source classification code (SCC), emission unit, and process descriptions, and then assigned the record to an emission source type (*i.e.,* each record was labeled storage vessel, process vent, transfer rack, equipment leak, waste, heat exchange system, cracking furnace, decoking pot, PRD, other ethylene source type, or non-ethylene source type).

In May 2014, the EPA provided member companies of the American Chemistry Council (ACC) and the American Fuel & Petrochemical Manufacturers (AFPM) an opportunity to voluntarily review their NEI records for completeness and accuracy, given that these records would form the underlying basis of our emissions modeling input files for the residual risk review. The NEI records were sent in separate Microsoft® Excel worksheet(s) via email to each company that operates at least one facility in the Ethylene Production source category. Each company was afforded an opportunity to review (and revise, if necessary) emission values, emission release point parameters, coordinates, and emission source type assignments. All revisions and changes from these voluntary reviews were received between June

https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.

[7] U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* June 2009. EPA–452/R–09–006. *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

2014 through October 2014, and then incorporated into the modeling file.

Also, as part of the mandatory July 2014 CAA section 114 request (see section II.C of this preamble for details about our CAA section 114 request), the EPA asked companies to provide emission release point parameters and coordinates, for all emission release points associated with ethylene production if this information had not been previously submitted as part of their voluntary review. In response to these requests, companies also submitted process flow diagrams illustrating the connectivity between each process and the emission release points. We used all this information to reevaluate each NEI record in the modeling file and to update emission release point parameter data. In other words, we used the CAA section 114 response data wherever possible in lieu of the 2011 NEI and/or voluntary review data.

Finally, we reviewed each of the emission source types to incorporate recent data and to ensure the data were complete and representative. For instance, for the modeling file, we replaced the 2011 NEI ethylene cracking furnace and decoking operation emissions data with the ethylene cracking furnace and decoking operation stack test data that we received from the CAA section 114 responses because we generally consider stack test data to be much more representative of emissions from these operations than emission estimates made in the absence of this data. For each of the other emission source types associated with an ethylene production unit (*i.e.,* storage vessels, ethylene process vents, transfer racks, equipment leaks, waste streams, and heat exchange systems), we compared emissions between all facilities, and, based on this comparison, we observed some inconsistencies with the reported emissions between the different emission sources. For example, certain facilities did not report emissions for an emission source type while others did so. Therefore, we focused on the following two criteria to determine whether facility emissions were both complete and representative: (1) A facility should have emissions for all emission source types (provided that the emission source type exists at the facility), and (2) a facility should have emissions for all emission source types above source-specific emission thresholds. If either of those criteria were not met for an emission source type at a facility, then we applied a model emissions profile to update the modeling file. These model emissions profiles, in concert with the stack test data received from the CAA section 114 responses, were also used to develop model plants for the new ethylene production facilities currently under construction and for recent major expansions at existing facilities for which annual emissions data were not available to the Agency. For further details on the assumptions and methodologies used to estimate actual emissions, identify the emissions release characteristics, develop model emissions profiles, and develop model plants, see Appendix 1 of the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking. We solicit comment on additional information for the Ethylene Production source category that the EPA could consider to estimate actual emissions.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTR (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

Apart from emissions from heat exchange systems and PRD releases, we have determined that the actual emissions data are reasonable estimates of the MACT-allowable emissions levels for the Ethylene Production source category. For heat exchange systems, the MACT-allowable emissions were assessed using a HAP speciation profile at the annualized mass leak rate of 29.5 tpy allowed by the underlying MACT standard at 40 CFR part 63, subpart XX. For atmospheric PRD releases, the MACT-allowable emissions were assessed using a single atmospheric PRD release identified from a review of excess emissions reported over a 7.5-year period for approximately 30 percent of the facilities in the source category.

The ability to estimate MACT-allowable emissions from the actual emissions dataset is largely dependent on the format of the standard for a given emissions source as well as the types of controls employed for the source. With respect to the various types of controls used within the Ethylene Production source category, the most prevalent is the use of a flare as a combustion control device. A flare can be used to control emissions for a single emissions source, or, as is generally the case, to control emissions from multiple emission sources/emission source types.

Flares are designed to handle a large range of variable flowrates and compositions of combustible waste gases. Within the Ethylene Production source category, flares generally control emissions from multiple emission source types. Consideration of this, along with not having a specific limit on how much gas can be combusted in a flare (given that in many cases multiple emissions sources are being controlled by this control device), means that it is extremely difficult to determine an allowable emission rate for flares. For purposes of this RTR, we have determined that flares in the Ethylene Production source category are currently complying with certain design and operational requirements that are generally expected to achieve 98-percent destruction efficiencies or control. HAP emissions inventories for flares in the Ethylene Production source category are developed using engineering knowledge and, in many instances, presume this 98-percent level of control. The Agency is unaware of any data that suggest that flares used as controls in the Ethylene Production source category are consistently over-controlling HAP emissions beyond 98-percent control. And, while the Agency is proposing new operating requirements for flares used as controls in this source category to ensure at least 98-percent control given that more recent studies have shown that some flares are operating less efficiently than 98-percent control (see section IV.A.1 of this preamble), for purposes of the MACT-allowable risk analysis, we are required to evaluate whether it is necessary to tighten the existing MACT standard and subsequent level of performance a flare is expected to

achieve. Thus, weighing all of these factors for flares, we believe that the actual emission levels are a reasonable estimation of the MACT-allowable emissions levels where the performance standards allow the use of a flare as an APCD (*e.g.,* storage vessels, ethylene process vents, equipment leaks, transfer racks, and waste operations).

For equipment leaks, which are currently subject to work practice standards, there would be no difference between actual and MACT-allowable emissions for facilities in the Ethylene Production source category, provided the facilities are complying with the EMACT standards as well as not conducting additional work practices proven to reduce emissions beyond those required by the rule. We are aware of only one rule in the State of Texas, which is the Texas Commission of Environmental Quality (TCEQ) Highly Reactive Volatile Organic Compounds (HRVOC) Rule (*i.e.,* 30 TAC Chapter 115, Subchapter H, Division 3), that may contain more stringent leak definitions and/or monitoring frequencies for certain pieces of equipment for the eight facilities located in Texas that might be subject to this rule. However, we note based on our review of the Texas rule that specific facilities, which are located in the Houston-Galveston-Brazoria area, still conduct a leak detection and repair (LDAR) program using EPA Method 21; that the vast majority of equipment (*i.e.,* more than 95 percent of all equipment surveyed in the CAA section 114 request), including almost all pieces of equipment in gas and vapor service that would tend to highly contribute to the overall equipment leak air emissions, are complying with the same leak definition as in the EMACT standards; and that the TCEQ HRVOC Rule generally requires quarterly monitoring while the EMACT standards have varying degrees of monitoring frequencies depending on the percentage of leaking equipment that could lead to more stringent, the same, or less stringent frequencies that would require an EPA Method 21 measurement and repair of a leaking component (if measured). Therefore, weighing all of these factors for equipment leaks, we determined that the actual emission levels for equipment leaks are a reasonable estimation of the MACT-allowable emissions levels.

For waste operations, the EMACT standards include various work practice standards for the collection system of waste streams as well as a performance standard for the treatment of these waste streams. Assuming that the equipment in the collection system is maintained properly and is in good working condition (as required), and that no facilities are employing additional work practices proven to reduce emissions beyond those required in the rule (we are unaware of any that are doing additional work practices), there would be no difference in the actual emissions level and the level allowed by the work practice standards for the collection of waste streams. In general, for this performance standard, it is possible that sources could over-control emission sources resulting in the actual emissions being lower than the MACT-allowable emissions. However, for waste operations, we are not aware of any such over-control. Therefore, we believe that the actual waste operations emission levels are a reasonable estimation of the MACT-allowable emissions levels.

For heat exchange systems, the EMACT standards include a LDAR work practice where facilities are required to monitor for potential leaks of HAP from process fluids into the cooling water of a heat exchange system. Emissions of HAP from heat exchange systems result when leakage of HAP from process fluids into the cooling water occurs and then that cooling water is exposed to air (*e.g.,* in a cooling tower for a closed-loop system or from trenches/ponds in a once-through system). If a leak is detected, it is only required to be repaired in a heat exchange system if the exit mean concentration is at least 10 percent greater than the entrance mean of the listed HAP (total or speciated) in Table 1 to subpart XX of 40 CFR part 63 (using a one-sided statistical procedure at the 0.05 level of significance) and if it is at least 3.06 kilograms per hour (kg/hr). Therefore, for example, a leak of 3.05 kg/hr or less of any HAP (total or speciated) that is listed in Table 1 to subpart XX of 40 CFR part 63 need not be repaired. If we assume that all the HAP at a 3.05 kg/hr leak rate would be emitted to the atmosphere after the process fluids leak into cooling water and then that cooling water is exposed to atmosphere, we would be left with an annual MACT-allowable emissions level for heat exchange systems of 29.5 tpy (*i.e.,* 3.05 kg/hr $\times$ 0.00110231 tons/kg $\times$ 8,760 hours per year (hr/yr)) of HAP (total or speciated) listed in Table 1 to subpart XX of 40 CFR part 63. In order to determine a reasonable HAP speciation profile to assess the MACT-allowable risk at the 29.5 tpy mass emission rate, we reviewed historical heat exchange system compliance data gathered under our CAA section 114 request. Given that 40 CFR part 63, subpart XX requires a monitoring sensitivity that would enable detection of a leak of 3.06 kg/hr or greater of the HAP listed in Table 1 to subpart XX of 40 CFR part 63, we focused our analysis on determining a reasonable HAP speciation profile based on historical leaks at or above 3.06 kg/hr. This was done for the purposes of removing records in the dataset that have a higher level of uncertainty surrounding them (given the monitoring sensitivity requirement in the rule), as well as to remove the uncertainty in biased data where any reported historical smaller leaks may have been predominately driven by data that were reported at the detection level but were not actually measured. Thus, upon reviewing the historical heat exchange system compliance data, we found records of 10 speciated HAP leaks above 3.06 kg/hr that we averaged for purposes of forming the basis of our HAP speciation profile for the MACT-allowable emission level for heat exchange systems. The HAP speciation profile analysis is available in Appendix 1 of the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

For ethylene cracking furnaces and associated decoking operations, based on new information obtained through our CAA section 114 request, we have determined that HAP are being emitted from these source types and their actual emissions, which were measured from various ethylene cracking furnaces and associated decoking operations during the stack testing conducted pursuant to the CAA section 114 request, are allowed by the rule. As such, we determined that the actual emissions are equal to MACT-allowable emissions for these operations.

Finally, in order to estimate the risk impacts of emissions from a PRD release, we reviewed TCEQ's Air Emission Event Report Database (*http://www2.tceq.texas.gov/oce/eer/*) over a 7.5-year period (*i.e.,* January 1, 2010, to July 7, 2017) for roughly 30 percent of all operating ethylene production facilities (*i.e.,* seven of 26 ethylene production facilities) in the source category that were chosen at random and that have been in operation since January 1, 2010. Accordingly, we believe these randomly selected facilities are a good representation of all ethylene production facilities in the source category. After reviewing TCEQ's database for reportable air emissions events for these seven facilities over a 7.5-year period, we determined that there were four reported emissions events that occurred from atmospheric

PRDs (*e.g.,* events where a PRD did not release emissions to an APCD like a flare) on equipment in the Ethylene Production source category. A closer inspection of these records, however, reveals that only one of these events was actually an atmospheric PRD release on a properly operating PRD. Therefore, for MACT-allowable emissions for PRD releases, and in keeping with our conservative approach, we assumed that each facility would have this reported release of HAP (*i.e.,* 46.8 pounds (lbs) of 1,3-butadiene) occur once in a 7.5-year period (given that this is the duration of the data we reviewed) and modeled an annualized PRD release of HAP of 0.003 tpy of 1,3-butadiene from the centroid of each ethylene production facility.

For further details on the assumptions and methodologies used to estimate MACT-allowable emissions, see Appendix 1 of the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risks?

Both long-term and short-term inhalation exposure concentrations and health risk from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM–3).[8] The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing HAP concentrations from industrial facilities.[9] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2017) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[10] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the source category. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter ($\mu g/m^3$)) by its unit risk estimate (URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for each of the carcinogenic HAP[11] emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target

[8] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[9] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[10] A census block is the smallest geographic area for which census statistics are tabulated.

[11] EPA's *2005 Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory, available at https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime'' (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level *(https://www.atsdr.cdc.gov/mrls/index.asp);* (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. In this proposed rulemaking, as part of our efforts to continually improve our methodologies to evaluate the risks that HAP emitted from categories of industrial sources pose to human health and the environment,[12] we are revising our treatment of meteorological data to use reasonable worst-case air dispersion conditions in our acute risk screening assessments instead of worst-case air dispersion conditions. This revised treatment of meteorological data and the supporting rationale are described in more detail in *Residual Risk Assessment for Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* We will be applying this revision in RTR rulemakings proposed on or after June 3, 2019.

To assess the potential acute risk to the maximally exposed individual, we use the peak hourly emission rate for each emission point, reasonable worst-case air dispersion conditions, and the point of highest off-site exposure. Specifically, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur and that a person is present at the point of maximum exposure.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) (for 1-hour exposure durations), if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [13] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[14] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are ''developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [15] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to

[12] See, *e.g.,* U.S. EPA. *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (Draft Report, May 2017. *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*).

[13] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[14] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals, page 2. Available at https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs *(https://www.epa.gov/aegl).*

[15] *ERPGS Procedures and Responsibilities.* March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/mergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf.*

1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For the acute inhalation risk assessment of the Ethylene Production source category, we did not use the default acute emissions multiplier of 10, but rather factors of 2, 4, 5, and 10, depending on the emission process group. In general, hourly emissions estimates were based on peak-to-mean ratios for 37 emission process groups ranging from a factor of 2 to 10, with emissions from transfer racks and other emission process groups where sufficient information did not exist to adequately assess peak hourly emissions (*e.g.,* flares controlling various unknown emissions sources) having the highest hourly peak emissions at a factor of 10 times the annual average. A further discussion of why these factors were chosen can be found in Appendix 1 of the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1 (even under the conservative assumptions of the screening assessment), and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we consider additional site-specific data to develop a more refined estimate of the potential for acute exposures of concern. For this source category, the data refinements employed consisted of determining the highest HQ value that might occur outside facility boundaries. These refinements are discussed more fully in the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducted a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determined whether any sources in the source category emit any HAP known to be persistent and bioaccumulative in the environment (PB–HAP), as identified in the EPA's Air Toxics Risk Assessment Library (See Volume 1, Appendix D, at *http://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the Ethylene Production source category, we identified PB–HAP emissions of arsenic compounds, cadmium compounds, lead compounds, mercury compounds, and polycyclic organic matter (POM) (of which polycyclic aromatic hydrocarbons (PAH) is a subset), so we proceeded to the next step of the evaluation. With the exception of lead, the human health risk screening assessment for PB–HAP consists of three tiers. We call this first evaluation the Tier 1 screening assessment. In a Tier 1 screening assessment, we determine whether the facility-specific emission rates of PB–HAP are large enough to warrant further evaluation of the human health risk through ingestion exposure under reasonable worst-case conditions. To facilitate this step, we used previously developed screening threshold emission rates for several PB–HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, chlorinated dibenzodioxins and furans, mercury compounds, and POM. Based on the EPA estimates of toxicity and bioaccumulation potential, the pollutants above represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at *https://www.epa.gov/sites/production/files/201308/documents/volume_1_reflibrary.pdf.*) In this assessment, we compare the facility-specific emission rates of these PB–HAP to the screening threshold emission rates for each PB–HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a ''screening value.''

We derive the Tier 1 screening threshold emission rates for these PB–HAP (other than lead compounds) to correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.,* for arsenic compounds, polychlorinated dibenzodioxins and furans, and POM) or, for HAP that cause noncancer health effects (*i.e.,* cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB–HAP or combination of carcinogenic PB–HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.,* the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment (ingestion rates are decoupled into separate upper-bound ingestion rates for the fisher, farmer, and gardener scenarios).

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher/farmer scenario. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km of each facility and assume the fisher only consumes fish from lakes within that 50 km zone. For the Tier 2 farmer scenario, we assume the farmer consumes meat, eggs, vegetables, and fruit grown near the facility. If further Tier 2 screening is necessary for the farmer scenario, we may apply the gardener scenario. For the gardener scenario, we assume the gardener only grows and consumes eggs, vegetables, and fruit products at the same ingestion rate as the farmer. If PB–HAP emission rates do not exceed a Tier 2 screening value of 1, we consider those PB–HAP emissions to pose risks below a level of concern.

We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously developed Tier 1 screening threshold emission rates for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and USGS waterbody data. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates and sufficient data are available, we may conduct a Tier 3 screening assessment. If PB–HAP emission rates do not exceed

a Tier 2 screening value of 1, we consider those PB–HAP emissions to pose risks below a level of concern. If, based on additional analysis and review, it is determined that no subsistence farming operations are in the area, then the farmer scenario is not used in Tier 3 and only gardener screening values are reported. If information obtained suggests that subsistence farming operations do not exist, the EPA considers the gardener scenario to be the most possible in all RTR evaluations.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the lakes are fishable, locating residential/garden locations for urban and/or rural settings, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume rise on chemical fate and transport (a time-series analysis). If necessary, the EPA may further refine the screening assessment through a site-specific assessment if the Tier 3 screening assessment indicates that risks above levels of concern cannot be ruled out.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standard (NAAQS) for lead.[16] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For further information on the multipathway assessment approach, see the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

[16] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an ''ample margin of safety to protect public health''). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.,* the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative, since that primary lead NAAQS reflects an adequate margin of safety.

5. How did we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the Ethylene Production source category emitted any of the environmental HAP. For the Ethylene Production source category, we identified emissions of arsenic compounds, cadmium compounds, HCl, hydrofluoric acid, lead, mercury, and POM. Because one or more of the environmental HAP evaluated are emitted by at least one facility in the source category, we proceeded to the second step of the evaluation.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB–HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons of pollutant per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB–HAP was compared to the Tier 1 screening threshold emission rate for that PB–HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility ''passes'' the screening assessment, and, therefore, is

not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, we evaluate the average soil concentration for all soil parcels within a 7.5-km radius for each facility and PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility ''passes'' the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, we evaluate the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the environmental screening assessment, we examine the suitability of the lakes around the facilities to support life and remove those that are not suitable (*e.g.,* lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.,* facility emission rate exceeds the screening threshold emission rate), we may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, we compared the average modeled air concentrations (from HEM–3) of lead around each facility in the source category to the level of the secondary NAAQS for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk because it is set to provide substantial protection against adverse welfare effects which can include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse environmental effect (as defined in section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: the size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and km^2; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

6. How did we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. For this source category, we conducted the facility-wide assessment using a dataset compiled from the 2011 NEI. The source category records of that NEI dataset were removed, evaluated, and updated as described in section II.C of this preamble. Once a quality assured source category dataset was available, it was placed back with the remaining records from the NEI for that facility. Also, because a preliminary screening of facility-wide risks based on the 2011 NEI indicated the potential for ethylene oxide to be a whole facility risk driver, we updated the facility-wide modeling file for ethylene oxide emissions using the 2014 NEI data set given that this was the best available data for this pollutant. The facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source category addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The document titled: *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report.*

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (EPA's 2005 *Guidelines for Carcinogen Risk Assessment,* page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk.[17] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[18] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[19] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk

[17] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[18] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[19] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

could be considered significant and widespread.

Although we make every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of a person. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur. We then include the additional assumption that a person is located at this point at the same time. Together, these assumptions represent a reasonable worst-case exposure scenario. In most cases, it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and hydrogen chloride). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[20]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not

[20] In the context of this discussion, the term ''*uncertainty*'' as it pertains to exposure and risk encompasses both variability in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

exceed screening threshold emission rates (*i.e.,* screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: Arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

IV. Analytical Results and Proposed Decisions

A. What actions are we taking in addition to those identified in the risk and technology review?

In addition to the proposed actions on the risk review and technology review discussed further in this section, we are proposing the following: (1) Adding monitoring and operational requirements for flares used as APCDs; (2) consistent with *Sierra Club* v. *EPA, 551 F.3d 1019* (D.C. Cir. 2008), ensuring that CAA section 112 standards apply continuously by proposing to add provisions and clarifications for periods of SSM and bypasses, including for PRD releases, bypass lines on closed vent systems, in situ sampling systems, maintenance activities, and certain gaseous streams routed to a fuel gas system; and (3) consistent with *Sierra Club* v. *EPA, 551 F.3d 1019* (D.C. Cir. 2008), proposing to remove the shutdown exemption for decoking operations (*i.e.,* the decoking of ethylene cracking furnace radiant tubes) and add work practice standards for this emission source. The results and proposed decisions based on the analyses performed pursuant to CAA section 112(d)(2) and (3) are presented below.

1. Flares

The EPA is proposing under CAA section 112(d)(2) and (3) to amend the operating and monitoring requirements for flares used as APCDs in the Ethylene Production source category. We have determined that the current requirements for flares are not adequate to ensure the level of destruction efficiency needed to conform with the EMACT standards. As previously explained, with respect to the various types of controls used within the Ethylene Production source category, a flare is the most prevalent APCD. A flare can be used to control emissions from either a single emissions source (*e.g.,* ethylene process vent), or multiple emission sources (*e.g.,* storage vessels, process vents, and transfer racks). In the development of the EMACT standards, the EPA stated that ''It is generally accepted that combustion devices achieve a 98 weight-percent reduction in HAP emissions. . .'' (65 FR 76428, December 6, 2000). The requirements applicable to flares, which are used to control emissions from various emission sources in this source category, are set forth in the General Provisions to 40 CFR part 63 and cross-referenced in 40 CFR part 63, subpart SS for storage vessels, ethylene process vents, transfer racks, and equipment leaks; and set forth in the General Provisions to 40 CFR part 60 and cross-referenced in 40 CFR part 61, subpart FF for waste operations. In general, flares used as APCDs are expected to achieve 98-percent HAP destruction efficiencies when designed and operated according to the requirements in the General Provisions. Studies on flare performance,[21] however, indicate that these General Provisions requirements are inadequate to ensure proper performance of flares at refineries and other petrochemical facilities (including ethylene production units), particularly when either assist steam or assist air is used. In addition, over the last decade, flare minimization efforts at these facilities have led to an increasing number of flares operating at well below their design capacity, and while these efforts have resulted in reduced flaring of gases by a number of facilities implementing cost saving projects to recover gases that would otherwise be flared and extract usable fuel value from them (*e.g.,* by using these gases to offset costs of natural gas that would have been used in a boiler or process heater at the ethylene production facility), situations of over assisting with either steam or air have become exacerbated, leading to the degradation of flare combustion efficiency. Therefore, these proposed amendments will ensure that ethylene production facilities that use flares as APCDs meet the MACT standards at all times when controlling HAP emissions.

The General Provisions of 40 CFR 60.18(b) and 40 CFR 63.11(b) each specify that flares be: (1) Steam-assisted, air-assisted, or non-assisted; (2) operated at all times when emissions may be vented to them; (3) designed for and operated with no visible emissions (except for periods not to exceed a total of 5 minutes during any 2 consecutive hours); and (4) operated with the presence of a pilot flame at all times. These General Provisions also specify both the minimum heat content of gas combusted in the flare and maximum exit velocity at the flare tip. The General Provisions specify monitoring for the presence of the pilot flame and the operation of a flare with no visible emissions. For other operating limits, 40 CFR part 63, subpart SS includes an initial flare compliance assessment to demonstrate compliance but specifies no monitoring requirements to ensure continuous compliance.

In 2012, the EPA compiled information and test data collected on flares and summarized its preliminary findings on operating parameters that affect flare combustion efficiency in a technical report titled *Parameters for Properly Designed and Operated Flares,* in Docket ID No. EPA–HQ–OAR–2010–0682–0191, which has been incorporated into the docket for this rulemaking.[22] The EPA submitted this report, along with a charge statement and a set of charge questions to an external peer review panel.[23] The panel,

[21] For a list of studies, refer to the technical report titled *Parameters for Properly Designed and Operated Flares,* in Docket ID No. EPA–HQ–OAR–2010–0682–0191, which has been incorporated into the docket for this rulemaking. (See section II.D of this preamble, which addresses the incorporation of certain EPA rulemaking dockets such as this one into the docket for this rulemaking.)

[22] See section II.D of this preamble, which addresses the incorporation of certain EPA rulemaking dockets such as this one into the docket for this rulemaking.

[23] These documents can also be found at *https://www.epa.gov/stationary-sources-air-pollution/review-peer-review-parameters-properly-designed-and-operated-flares.*

consisting of individuals representing a variety of backgrounds and perspectives (*i.e.,* industry, academia, and environmental experts, and industrial flare consultants), concurred with the EPA's assessment that the following three primary factors affect flare performance: (1) The flow of the vent gas to the flare; (2) the amount of assist media (*e.g.,* steam or air) added to the flare; and (3) the combustibility of the vent gas/assist media mixture in the combustion zone (*i.e.,* the net heating value, lower flammability, and/or combustibles concentration) at the flare tip. In response to peer review comments, the EPA performed a validation and usability analysis on all available test data as well as a failure analysis on potential parameters discussed in the technical report as indicators of flare performance. The peer review comments are in the memorandum titled *Peer Review of Parameters for Properly Designed and Operated Flares,* available in Docket ID No. EPA–HQ–OAR–2010–0682–0193, which has been incorporated into the docket for this rulemaking. These analyses resulted in a change to the population of test data the EPA used, and helped form the basis for the flare operating limits promulgated in the 2015 Petroleum Refinery Sector final rule at 40 CFR part 63, subpart CC (80 FR 75178, December 1, 2015).[24] We are also relying on the same analyses and proposing the same operating limits for flares used as APCDs in the Ethylene Production source category. The Agency believes, given the results from the various data analyses conducted for the Petroleum Refinery Sector final rule, that the operating limits promulgated for flares used in the petroleum refinery sector are also appropriate, reasonable, and will ensure flares used as APCDs in the Ethylene Production source category meet 98-percent destruction efficiency at all times. Therefore, we are proposing at 40 CFR 63.1103(e)(4) to directly apply the petroleum refinery flare rule requirements in 40 CFR part 63, subpart CC to flares in the Ethylene Production source category with clarifications, including, but not limited to, specifying that several definitions in 40 CFR part 63, subpart CC, that apply to petroleum refinery flares also apply to flares in the Ethylene Production source category, adding a definition and requirements for pressure-assisted multi-point flares, and specifying additional requirements when a gas chromatograph or mass spectrometer is used for compositional analysis.

The remainder of this section of the preamble includes a discussion of requirements that we are proposing for flares used as APCDs in the Ethylene Production source category, along with impacts and costs associated with these proposed revisions. Specifically, this action proposes to retain the General Provisions requirements of 40 CFR 63.11(b) and 40 CFR 60.18(b) that flares used as APCDs in the Ethylene Production source category operate pilot flame systems continuously and that flares operate with no visible emissions (except for periods not to exceed a total of 5 minutes during any 2 consecutive hours) when the flare vent gas flow rate is below the smokeless capacity of the flare. In addition, this action proposes to consolidate measures related to flare tip velocity and proposes new operational and monitoring requirements related to the combustion zone gas. Further, in keeping with the elimination of the SSM exemption as discussed in section IV.E.1.a of this preamble, this action proposes a work practice standard related to the visible emissions and velocity limits during periods when the flare is operated above its smokeless capacity (*e.g.,* periods of emergency flaring). Currently, the EMACT standards cross-reference the General Provisions at 40 CFR 60.18(b) and 40 CFR 63.11(b) for the operational requirements for flares used as APCD (through reference of 40 CFR part 63, subpart SS, and 40 CFR part 61, subpart FF). This proposal eliminates cross-references to the General Provisions and instead specifies all operational and monitoring requirements that are intended to apply to flares used as APCDs in the EMACT standards.

a. Pilot Flames

The EMACT standards reference the flare requirements in 40 CFR 60.18(b) and 40 CFR 63.11(b) (through reference of 40 CFR part 63, subpart SS, and 40 CFR part 61, subpart FF), which specify that a flare used as an APCD should operate with a pilot flame present at all times. Pilot flames are proven to improve flare flame stability and even short durations of an extinguished pilot could cause a significant reduction in flare destruction efficiency. In this action, we are proposing to remove the cross-reference to the General Provisions and instead include the existing provision that flares operate with a pilot flame at all times and be continuously monitored for a pilot flame using a thermocouple or any other equivalent device directly in the EMACT standards. We are also proposing to add a continuous compliance measure that would consider each 15-minute block when there is at least 1 minute where no pilot flame is present when regulated material is routed to the flare as a deviation of the standard. See section IV.A.1.e of this preamble for our rationale for proposing to use a 15-minute block averaging period for determining continuous compliance. We solicit comment on the proposed revisions for flare pilot flames.

b. Visible Emissions

The EMACT standards reference 40 CFR 60.18(b) and 40 CFR 63.11(b) (through reference of 40 CFR part 63, subpart SS and 40 CFR part 61, subpart FF), which specify that a flare used as an APCD should operate with visible emissions for no more than 5 minutes in a 2-hour period. Owners or operators of these flares are required to conduct an initial performance demonstration for visible emissions using EPA Method 22 of 40 CFR part 60, appendix A–7. We are proposing to remove the cross-reference to the General Provisions and include the limitation on visible emissions directly in the EMACT standards. We are also proposing to clarify that the initial 2-hour visible emissions demonstration should be conducted the first time regulated materials are routed to the flare.

With regard to continuous compliance with the visible emissions limitation, we are proposing daily visible emissions monitoring for whenever regulated material is routed to the flare and also visible emissions monitoring for whenever visible emissions are observed from the flare. On days the flare receives regulated material, we are proposing to require owners or operators of flares to monitor visible emissions at a minimum of once per day while the flare is receiving regulated material using an observation period of 5 minutes and EPA Method 22 of 40 CFR part 60, appendix A–7. Additionally, whenever regulated material is routed to the flare and there are visual emissions from the flare, we are proposing that another 5-minute visible emissions observation period be performed using EPA Method 22 of 40 CFR part 60, appendix A–7, even if the minimum required daily visible

[24] See technical memorandum titled *Flare Performance Data: Summary of Peer Review Comments and Additional Data Analysis for Steam-Assisted Flares,* in Docket ID No. EPA–HQ–OAR–2010–0682–0200 for a more detailed discussion of the data quality and analysis; the technical memorandum titled *Petroleum Refinery Sector Rule: Operating Limits for Flares,* in Docket ID No. EPA–HQ–OAR–2010–0682–0206 for a more detailed discussion of the failure analysis and the technical memorandum titled *Flare Control Option Impacts for Final Refinery Sector Rule,* in Docket ID No. EPA–HQ–OAR–2010–0682–0748 for additional analyses on flare performance standards based on public comments received on the proposed Refinery Sector Rule.

emission monitoring has already been performed. For example, if an employee observes visual emissions, the owner or operator of the flare would perform a 5-minute EPA Method 22 observation in order to check for compliance upon initial observation or notification of such event. In addition, in lieu of daily visible emissions observations performed using EPA Method 22 of 40 CFR part 60, appendix A–7, we are proposing that owners and operators be allowed to use video surveillance cameras. We believe that video surveillance cameras would be at least as effective as the proposed daily 5-minute visible emissions observations using EPA Method 22.

We are also proposing to extend the observation period for a flare to 2 hours whenever visible emissions are observed for greater than 1 continuous minute during any of the 5-minute observation periods. We acknowledge that operating a flare near the incipient smoke point (the point at which black smoke begins to form within the flame) results in good combustion at the flare tip; however, smoking flares can contribute significantly to emissions of particulate matter 2.5 micrometers in diameter and smaller ($PM_{2.5}$) emissions. Thus, while increasing the allowable period for visible emissions may be useful from an operational perspective, we do not believe the allowable period for visible emissions should be increased to more than 5 minutes in any 2-hour period. We solicit comment on the proposed allowable period for visible emissions from flares.

As discussed later in this section, we are proposing additional operational and monitoring requirements for flares used as APCDs in the Ethylene Production source category that we expect will result in owners or operators of ethylene production units installing equipment that can be used to fine-tune and control the amount of assist steam or air introduced at the flare tip such that combustion efficiency of the flare will be maximized. These monitoring and control systems will assist flare owners or operators to operate near the incipient smoke point without exceeding the visible emissions limit. While combustion efficiency may be highest at the incipient smoke point, it is not significantly higher than the combustion efficiency achieved by the proposed operating limits discussed in section IV.A.1.d of this preamble. As seen in the performance curves for flares, there is very limited improvement in flare performance beyond the performance achieved at the proposed operating limits (see technical memorandum titled *Petroleum Refinery Sector Rule: Operating Limits for Flares,* in Docket ID No. EPA–HQ–OAR–2010–0682–0206, which has been incorporated into the docket for this rulemaking). We solicit comments and data on appropriate periods of visible emissions that would encourage operation at the incipient smoke point.

In addition, we are proposing that the owner or operator establish the smokeless capacity of each flare based on design specification of the flare, and that the visible emissions limitation only apply when the flare vent gas flow rate is below its smokeless capacity. We are proposing a work practice standard for the limited times (*i.e.,* during emergency releases) when the flow to the flare exceeds the smokeless capacity of the flare, based on comments the EPA received on the proposed Petroleum Refinery Sector Rule. In the Petroleum Refinery Sector final rule, the EPA explained that numerous comments on the proposal suggested that flares are not designed to meet the visible emissions requirements when operated beyond their smokeless capacity (80 FR 75178, December 1, 2015). According to commenters, flares are typically designed to operate in a smokeless manner at 20- to 30-percent of full hydraulic load. Thus, they claimed, flares have two different design capacities: A ''smokeless capacity'' to handle normal operations and typical process variations and a ''hydraulic load capacity'' to handle very large volumes of gases discharged to the flare as a result of an emergency shutdown. According to commenters, this is inherent in all flare designs and has not previously been an issue because flare operating limits did not apply during malfunction events.

For this proposed work practice standard, owners or operators would need to develop a flare management plan that identifies procedures for limiting discharges to the flare as a result of process upsets or malfunctions that cause the flare to exceed its smokeless capacity. In addition, for any flare that exceeds both the smokeless design capacity and visible emissions limit, we are proposing that owners or operators would need to conduct a specific root cause analysis and take corrective action to prevent the recurrence of a similarly caused event (similar to the prevention measures we are proposing in this rule to minimize the likelihood of a PRD release, see section IV.A.2.a of this preamble). We are proposing that if the root cause analysis indicates that the exceedance of the visible emissions limit is caused by operator error or poor maintenance, then the exceedance would be considered a deviation from the work practice standard. We are also proposing that a second event within a rolling 3-year period from the same root cause on the same equipment would be considered a deviation from the standard. Further, we are proposing that events caused by force majeure would be excluded from a determination of whether there has been a second event. Finally, and again excluding force majeure events, we are proposing that a third visible emissions limit exceedance occurring from the same flare in a rolling 3-year period would be a deviation of the work practice standard, regardless of the cause. We are proposing to define a force majeure event as a release of HAP, either directly to the atmosphere from a PRD or discharge via a flare, that is demonstrated to the satisfaction of the Administrator to result from an event beyond the owner or operator's control, such as natural disasters; acts of war or terrorism; loss of a utility external to the ethylene production unit (*e.g.,* external power curtailment), excluding power curtailment due to an interruptible service agreement; and fire or explosion originating at a near or adjoining facility outside of the owner or operator's control that impacts the ethylene production unit's ability to operate.

With regard to the proposed rolling 3-year period for assessing a deviation of the work practice standard, the EPA evaluated the impacts of different frequencies and time periods to the number of events that would be the ''backstop'' (*i.e.,* a deviation of the standard) to ensure that corrective actions are meaningfully applied (see the memorandum, *Control Option Impacts for Flares Located in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). The EPA assumed, based on a survey of a subset of ethylene production flares and their visible emission events and velocity exceedances over a number of years, that the best performers would have no more than one event every 7 years, or a probability of 14.3 percent of having an event in any given year (see Appendix B of the memorandum, *Control Option Impacts for Flares Located in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357 for more information). The EPA found that, over a long period of time such as 20 years, about half of these best performers would have two events in a 3-year period, which would still result in about half of the ''best performing'' flares having a deviation of the work practice

standard if it was limited to two events in 3 years. Conversely, the EPA found that, over a long period of time such as 20 years, only 6 percent of the best performing flares would have three events in 3 years. Based on this analysis, three events in 3 years would appear to be ''achievable'' for the average of the best performing flares.

c. Flare Tip Velocity

The EMACT standards reference the flare provisions in 40 CFR 60.18(b) and 40 CFR 63.11(b) (through reference of 40 CFR part 63, subpart SS and 40 CFR part 61, subpart FF), which specify maximum flare tip velocities based on flare type (non-assisted, steam-assisted, or air-assisted) and the net heating value of the flare vent gas. (Based on responses to the CAA section 114 request previously discussed in section II.C of this preamble, approximately 95 percent of all flares used as APCDs in the Ethylene Production source category are either steam- or air-assisted.) These maximum flare tip velocities are required to ensure that the flame does not ''lift off'' the flare (*i.e.,* a condition where a flame separates from the tip of the flare and there is space between the flare tip and the bottom of the flame), which could cause flame instability and/or potentially result in a portion of the flare gas being released without proper combustion. We are proposing to remove the cross-reference to the General Provisions and consolidate the provisions for maximum flare tip velocity into the EMACT standards as a single equation, irrespective of flare type (*i.e.,* steam-assisted, air-assisted, or non-assisted).

Based on analysis conducted for the Petroleum Refinery Sector final rule, the EPA identified air-assisted test runs with high flare tip velocities that had high combustion efficiencies (see technical memorandum, Petroleum Refinery Sector Rule: Evaluation of Flare Tip Velocity Requirements, in Docket ID No. EPA–HQ–OAR–2010–0682–0212). These test runs exceeded the maximum flare tip velocity limits for air-assisted flares using the linear equation in 40 CFR 63.11(b)(8). When these test runs were compared with the test runs for non-assisted and steam-assisted flares, air-assisted flares appeared to have the same operating envelope as the non-assisted and steam-assisted flares. Therefore, for air-assisted flares used as APCDs in the Ethylene Production source category, we are proposing to require the use of the same equation that non-assisted and steam-assisted flares currently use to establish the flare tip velocity operating limit. We are also proposing that the owner or operator determine the flare tip velocity on a 15-minute block average basis. See section IV.A.1.e of this preamble for our rationale for proposing to use a 15-minute block averaging period for determining continuous compliance.

In addition, we are proposing the same work practice standard for flare tip velocity during emergency releases (when the flow to the flare exceeds the smokeless capacity of the flare) as we are proposing for visible emissions. Specifically, instead of owners and operators meeting the flare tip velocity operating limit at all times, we are proposing that the owner or operator establish the smokeless capacity of each flare based on design specification of the flare, and that the flare tip velocity operating limit would only apply when the flare vent gas flow rate is below its smokeless capacity. We are proposing a work practice standard for the limited times (*i.e.,* during emergency releases) when the flow to the flare exceeds the smokeless capacity of the flare, based on comments the EPA received on the proposed Petroleum Refinery Sector Rule. In the Petroleum Refinery Sector final rule, the EPA explained that numerous comments on the proposal suggested that flares are not designed to meet the flare tip velocity requirements when being operated beyond their smokeless capacity (80 FR 75178, December 1, 2015). According to commenters, flares are commonly operated during emergency releases at exit velocities greater than 400 feet per second (which is 270 miles per hour) and that this is inherent in all flare designs and has not previously been an issue because flare operating limits did not apply during malfunction events.

For the proposed work practice standard, owners or operators would develop a flare management plan identifying procedures that they intend to follow in order to limit discharges to the flare as a result of process upsets or malfunctions that cause the flare to exceed its flare tip velocity operating limit. In addition, we are proposing that owners or operators would conduct a specific root cause analysis and take corrective action to prevent the recurrence of a similarly caused event, similar to the prevention measures we are proposing in this rule to minimize the likelihood of a PRD release (see section IV.A.2.a of this preamble), for any flare event above smokeless design capacity that also exceeds the flare tip velocity operating limit. We are proposing that if the root cause analysis indicates that the exceedance is caused by operator error or poor maintenance, then the exceedance would be considered a deviation from the work practice standard. We are also proposing that a second event within a rolling 3-year period from the same root cause on the same equipment would be considered a deviation from the standard. Further, we are proposing that events caused by force majeure (see section IV.A.1.b of this preamble for a proposed definition of force majeure) would be excluded from a determination of whether there has been a second event. Finally, and again excluding force majeure events, we are proposing that a third opacity exceedance occurring from the same flare in a rolling 3-year period would be a deviation of the work practice standard, regardless of the cause. As previously explained in section IV.A.1.b of this preamble, we believe three events in 3 years appear to be ''achievable'' for the average of the best performing flares. We solicit comment on the proposed work practice standard for flare tip velocity during emergency releases (when the flow to the flare exceeds the smokeless capacity of the flare).

Finally, we are also proposing not to include the provision for the special flare tip velocity equation in the General Provisions at 40 CFR 63.18(c)(3)(i)(A) and 40 CFR 63.11(b)(6)(i)(A) for non-assisted flares with hydrogen content greater than 8 percent. This equation, which was developed based on limited data from a chemical manufacturer, has very limited applicability for flares used as APCDs in the Ethylene Production source category because it only provides an alternative for non-assisted flares with large quantities of hydrogen. Based on the response from the CAA section 114 request, approximately 95 percent of all flares (operated by the 21 facilities that responded to the CAA section 114 request) are either steam- or air-assisted. Furthermore, we are proposing other compliance alternatives that we believe provide a better way for flares used as APCDs in the Ethylene Production source category with high hydrogen content to comply with the rule while ensuring proper destruction performance of the flare (see section IV.A.1.d of this preamble for the proposed compliance alternatives). Therefore, for non-assisted flares with hydrogen content greater than 8 percent that are used as APCDs in the Ethylene Production source category, we are not proposing including this special flare tip velocity equation as a compliance alternative. We request comment on the need to include this equation.

d. Net Heating Value of the Combustion Zone Gas

The current provisions for flares in 40 CFR 60.18(b) and 40 CFR 63.11(b) specify that the flare vent gas meet a minimum net heating value of 200 British thermal units per standard cubic foot (Btu/scf) for non-assisted flares and 300 Btu/scf for air- and steam-assisted flares. The EMACT standards reference these provisions (through reference of 40 CFR part 63, subpart SS and 40 CFR part 61, subpart FF), but neither the General Provisions nor the EMACT standards include specific requirements for monitoring the net heating value of the flare vent gas. Moreover, recent flare testing results indicate that the minimum net heating value alone does not address instances when the flare may be over-assisted because it only considers the gas being combusted in the flare and nothing else (*e.g.,* no assist media). However, many industrial flares use steam or air as an assist medium to protect the design of the flare tip, promote turbulence for the mixing, induce air into the flame, and operate with no visible emissions. Using excessive steam or air results in dilution and cooling of flared gases and can lead to operating a flare outside its stable flame envelope, reducing the destruction efficiency of the flare. In extreme cases, over-steaming or excess aeration can snuff out a flame and allow regulated material to be released into the atmosphere without complete combustion. As previously noted, because approximately 95 percent of all flares used as APCDs in the Ethylene Production source category are either steam- or air-assisted (based on the 21 facilities that responded to the CAA section 114 request), it is critical that we ensure the assist media is accounted for in some form or fashion. Recent flare test data have shown that the best way to account for situations of over-assisting is to consider the properties of the mixture of all gases at the flare tip in the combustion zone when evaluating the ability to combust efficiently. As discussed in the introduction to this section, the external peer review panel concurred with our assessment that the combustion zone properties at the flare tip are critical parameters to know in determining whether a flare will achieve good combustion. The General Provisions, however, solely rely on the net heating value of the flare vent gas.

In this action, in lieu of requiring compliance with the operating limits for net heating value of the flare vent gas in the General Provisions, we are proposing a single minimum operating limit for the net heating value in the combustion zone gas (NHVcz) of 270 Btu/scf during any 15-minute period for steam-assisted, air-assisted, and non-assisted flares used as APCDs in the Ethylene Production source category. The Agency believes, given the results from the various data analyses conducted for the Petroleum Refinery Sector Rule, that this NHVcz operating limit promulgated for flares used in the Petroleum Refinery Sector source category is also appropriate, reasonable, and will ensure flares used as APCDs in the Ethylene Production source category meet 98-percent destruction efficiency at all times when operated in concert with the other proposed suite of requirements that flares need to comply with (*e.g.,* continuously lit pilot flame requirements, visible emissions requirements, and flare tip velocity requirements) (see the memoranda titled *Petroleum Refinery Sector Rule: Operating Limits for Flares* and *Flare Control Option Impacts for Final Refinery Sector Rule* in Docket ID Nos. EPA–HQ–OAR–2010–0682–0206 and EPA–HQ–OAR–2010–0682–0748, respectively). In addition, we are proposing that owners or operators may use a corrected heat content of 1,212 Btu/scf for hydrogen, instead of 274 Btu/scf, to demonstrate compliance with the NHVcz operating limit; however, owners or operators who wish to use the corrected hydrogen heat content must have a system capable of monitoring for the hydrogen content in the flare vent gas. The 1,212 Btu/scf value is based on a comparison between the lower flammability limit and net heating value of hydrogen compared to light organic compounds and has been used in several consent decrees to which the EPA is a party. Based on analyses conducted for the Petroleum Refinery Sector Rule (see the memorandum titled *Flare Control Option Impacts for Final Refinery Sector Rule,* in Docket ID No. EPA–HQ–OAR–2010–0682–0748), the EPA determined that using a 1,212 Btu/scf value for hydrogen greatly improves the correlation between combustion efficiency and the combustion zone net heating value over the entire array of data. Using the net heating value of 1,212 Btu/scf for hydrogen also greatly reduced the number of ''type 2 failures,'' which are instances when the combustion efficiency is high, but the gas does not meet the NHVcz limit.

Furthermore, in addition to the NHVcz operating limit, we are proposing a net heating value dilution parameter (NHVdil) for certain flares that operate with perimeter assist air. For air-assisted flares, use of too much perimeter assist air can lead to poor flare performance. Further, based on our analysis of the air-assisted flare dataset, (see technical memorandum, *Petroleum Refinery Sector Rule: Operating Limits for Flares,* in Docket ID No. EPA–HQ–OAR–2010–0682–0206), we determined a NHVdil of 22 British thermal units per square foot is necessary to ensure that there is enough combustible material available to adequately combust the gas and pass through the flammability region and also ensure that degradation of flare performance from excess aeration does not occur. We found that including the flow rate of perimeter assist air in the calculation of the NHVcz does not identify all instances of excess aeration and could (in some instances) even allow facilities to send very dilute vent gases to the flare that would not combust (*i.e.,* vent gases below their lower flammability limit could be sent to flare). Instead, the data suggest that the diameter of the flare tip, in concert with the amount of perimeter assist air (and other parameters used to determine NHVcz), provides inputs necessary to calculate whether this type of flare is over-assisted. This dilution parameter is consistent with the combustion theory that the more time the gas spends in the flammability region above the flare tip, the more likely it will combust. Also, because both the volume of the combustion zone (represented by the diameter here) and how quickly this gas is diluted to a point below the flammability region (represented by perimeter assist air flow rate) characterize this time, it is logical that we propose such a parameter.

We also found that some assist steam lines are purposely designed to entrain air into the lower or upper steam at the flare tip; and for flare tips with an effective tip diameter of 9 inches or more, there are no flare tip steam induction designs that can entrain enough assist air to cause a flare operator to have a deviation of the NHVdil operating limit without first deviating from the NHVcz operating limit. Therefore, we are proposing to allow owners or operators of flares whose only assist air is from perimeter assist air entrained in lower and upper steam at the flare tip and with a flare tip diameter of 9 inches or greater to comply only with the NHVcz operating limit. Steam-assisted flares with perimeter assist air and an effective tip diameter of less than 9 inches would remain subject to the requirement to account for the amount of assist air intentionally entrained within the calculation of NHVdil. However, we recognize that this assist air cannot be directly measured, but the quantity of

air entrained is dependent on the assist steam rate and the design of the steam tube's air entrainment system. Therefore, we are proposing provisions to specify that owners or operators of these smaller diameter steam-assisted flares use the steam flow rate and the maximum design air-to-steam ratio of the steam tube's air entrainment system for determining the flow rate of this assist air. Using the maximum design ratio will tend to over-estimate the assist air flow rate, which is conservative with respect to ensuring compliance with the NHVdil operating limit.

Finally, we are proposing to require owners or operators to record and calculate 15-minute block average values for these parameters. Our rationale for selecting a 15-minute block averaging period is provided in section IV.A.1.e of this preamble.

e. Data Averaging Periods for Flare Gas Operating Limits

We are proposing to use a 15-minute block averaging period for each proposed flare operating parameter to ensure that the flare is operated within the appropriate operating conditions. We consider a short averaging time to be the most appropriate for assessing proper flare performance because flare vent gas flow rates and composition can change significantly over short periods of time. Furthermore, because destruction efficiency can fall precipitously when a flare is controlling vent gases below (or outside) the proposed operating limits, short time periods where the operating limits are not met could seriously impact the overall performance of the flare.

Moreover, a 15-minute averaging period is consistent with the test data and the analysis used to establish the operating limits in this proposed rule. Ninety-three percent of the flare test runs used as bases for establishing the proposed operating limits ranged in duration from 5 to 30 minutes, and 77 percent of the runs ranged in duration from 5 to 20 minutes. As previously explained, the failure analysis considered minute-by-minute test run data, but gas chromatography compositional analyses generally require 10 to 15 minutes to conduct. Therefore, many of the compositional data still reflect set values over 10- to 15-minute time intervals and shorter averaging times are not practical. To be consistent with the available test data and to ensure there are no short periods of significantly poor destruction efficiencies, we are proposing 15-minute block averaging times.

In addition, the EPA conducted a Monte Carlo analysis (based on comments the EPA received on the proposed Petroleum Refinery Sector Rule) to help assess the impacts of extending the averaging time on the test average flare dataset of 15-minute runs to 1-hour or 3-hour averaging time alternatives (see the memorandum, *Flare Control Option Impacts for Final Refinery Sector Rule,* in Docket ID No. EPA–HQ–OAR–2010–0682–0748). While the EPA considered it reasonable to provide a longer averaging time for logistical reasons, the Monte Carlo analysis demonstrated that short periods of poor flare performance can affect the ability of a flare to achieve the desired control efficiency. Consequently, the EPA promulgated a 15-minute averaging period requirement to ensure that the 98-percent control efficiency for flares is achieved at all times (80 FR 75178, December 1, 2015).

Given the short averaging times for the operating limits, we are proposing special calculation methodologies to enable owners or operators to use ''feed forward'' calculations to ensure compliance with the operating limits on a 15-minute block average. Specifically, we propose using the results of the compositional analysis determined just prior to a 15-minute block period for the next 15-minute block average. Owners or operators of flares will then know the vent gas properties for the upcoming 15-minute block period and can adjust assist gas flow rates relative to vent gas flow rates to comply with the proposed operating limits. In other words, ''feed forward'' means that owners or operators would use the net heating value in the vent gas (NHVvg) going into the flare in one 15-minute period to adjust the assist media (*i.e.,* steam or air) and/or the supplemental gas in the next 15-minute period, as necessary, to calculate an NHVcz limit of 270 Btu/scf or greater using the proposed equation. We recognize that when a subsequent measurement value is determined, the instantaneous NHVcz based on that compositional analysis and the flow rates that exist at the time may not be above 270 Btu/scf. We are proposing that this is not a deviation of the operating limit. Rather, we propose that the owner or operator is only required to make operational adjustments based on that information to achieve, at a minimum, the net heating value limit for the subsequent 15-minute block average. We are, however, proposing that failure to make adjustments to assist media or supplemental natural gas using the NHVvg from the previous period in the equation provided for calculating an NHVcz limit of 270 Btu/scf, would be a deviation of the operating limit. Alternatively, because the owner or operator could directly measure the NHVvg on a more frequent basis, such as with a calorimeter (and optional hydrogen analyzer), the process control system is able to adjust more quickly, and the owner or operator can make adjustments to assist media or supplemental natural gas more quickly. In this manner, the owner or operator is not limited by relying on NHVvg data that may not represent the current conditions. We are, therefore, also proposing that the owner or operator may opt to use the NHVvg in such instances from the same period to comply with the operating limit. For examples of ''feed forward'' calculations, please see Attachment 3 of the memorandum titled *Flare Control Option Impacts for Final Refinery Sector Rule,* in Docket ID No. EPA–HQ–OAR–2010–0682–0748.

In addition, we are also proposing that owners or operators of flares that elect to use grab sampling and engineering calculations to determine compliance must still assess compliance on a 15-minute block average. The composition of each grab sample is to be used for the duration of the episode or until the next grab sample is taken. We are soliciting comment on whether this approach is appropriate, and whether grab samples are needed on a more frequent basis to ensure compliance with the operating limits.

Finally, we are proposing to clarify at 40 CFR 63.1103(e)(4)(xiii) that when determining compliance with the flare tip velocity and combustion zone operating limits specified in 40 CFR 63.670(d) and (e), the initial 15-minute block period starts with the 15-minute block that includes a full 15 minutes of the flaring event. In other words, we are proposing to clarify that the owner or operator demonstrate compliance with the velocity and NHVcz requirements starting with the block that contains the fifteenth minute of a flaring event; and the owner or operator is not required to demonstrate compliance for the previous 15-minute block in which the event started and contained only a fraction of flow.

f. Flares in Dedicated Service

We are proposing an alternative monitoring approach for flares in dedicated service that have consistent composition and flow. We believe that these types of flares, which have limited flare vent gas streams, do not need to have the same type of ongoing monitoring requirements as those with more variable waste streams. Thus, we are proposing an option that owners or operators can use to demonstrate

compliance with the operating requirements for flares that are in dedicated service to a specific emission source, such as a transfer rack operation consistently loading the same material. We are proposing that owners or operators will need to submit an application for the use of this alternative compliance option. We are proposing that the application must include a description of the system, characterization of the vent gases that could be routed to the flare based on a minimum of seven grab samples (14 daily grab samples for continuously operated flares), and specification of the net heating value that will be used for all flaring events (based on the minimum net heating value of the grab samples). We are also proposing to allow engineering estimates to characterize the amount of gas flared and the amount of assist gas introduced into the system. For example, we believe that the use of fan curves to estimate air assist rates would be acceptable. We propose that flare owners or operators would use the net heating value determined from the initial sampling phase and measured or estimated flare vent gas and assist gas flow rates, if applicable, to demonstrate compliance with the standards.

g. Pressure-Assisted Multi-Point Flares

Pressure-assisted flares are conceptually similar, yet technically different in both design and operation compared to more traditional elevated flare tip designs (*e.g.,* steam-assisted, air-assisted, and non-assisted flare tips). Pressure-assisted flares operate by taking advantage of the pressure upstream of the flare tip to create a condition whereby air is drawn into contact and mixed with high exit velocity flared gas, resulting in smokeless flare operation and emissions reductions at least as equivalent to those of traditional flares types, if properly designed and operated. Pressure-assisted flares can be used in a single flare burner type layout or in staged arrays with many identical flare burners. These staged arrays can either be elevated or at ground level. In the Ethylene Production source category, we are only aware of ground level staged array systems that are commonly referred to as multi-point ground flares (MPGF) given that they have multiple (*e.g.,* hundreds) of flare burners at ground level. The flare burners in a MPGF are designed with a staging system that opens and closes staging valves according to gas pressure in the flare header with the result that stages, and accompanying flare burners for those stages, are either activated to control emissions as the flare vent gas flow and pressure increase in the flare header or deactivated as the flare vent gas flow and pressure decrease in the flare header. The flare burners in a MPGF are typically lit with a pilot flame system where the first burners on a stage are lit by the pilot flame and the flame propagates (*i.e.,* cross-lights) down the stage to the remaining burners on the stage. The MPGF system is typically surrounded by a panel type fence to allow air in for combustion as well as to protect nearby workers from the radiant heat of the flare system.

In the Ethylene Production source category, MPGF are currently used as secondary flares to control large emissions events that result during periods of SSM. With the elimination of the SSM exemption (see section IV.E.1 of this preamble for additional discussion), proposing requirements for this unique flare type is an important consideration given that some facilities currently use them as APCD. Based on our review of recently approved AMEL requests for MPGF and the underlying data analyses that supported those decisions (see section II.D of this preamble), MPGF can achieve at least equivalent reductions in volatile organic compounds (VOC) and organic HAP as traditional elevated flares, however, different operating requirements are needed for these flare types to ensure a high level of control is achieved given that the individual flare burners are designed to operate at high velocities (*i.e.,* up to sonic velocity).

In reviewing the initial MPGF AMEL requests by Dow Chemical and ExxonMobil (80 FR 8023–8030, February 13, 2015), the Agency noted two general conclusions from the test data supporting the AMEL requests that were consistent with 1985 studies [25] conducted by the EPA on pressure-assisted flares. The first general conclusion was that ''flare head design can influence the flame stability curve.'' The second general conclusion was that ''stable flare flames and high (>98–99%) combustion and destruction efficiencies are attained when flares are operated within operating envelopes specific to each flare burner and gas mixture tested. Operation beyond the edge of the operating envelope can result in rapid flame de-stabilization and a decrease in combustion and destruction efficiencies.'' In reviewing all the available data in the MPGF AMEL docket (*i.e.,* Docket ID No. EPA–HQ–OAR–2014–0738), we found these two general observations were still valid conclusions and focused our analyses of the test data on tests where olefinic waste gas mixtures were being combusted. This was done because, as discussed earlier, waste gas characteristics (along with flare burner design) can influence the flame stability curve. Thus, since these tests are representative of waste gas mixtures expected to be controlled at ethylene production facilities, we focused our review on these specific data. The data clearly show that for some test runs flare flameouts occurred, meaning the flares were not operated within the proper envelope to produce a stable flame. The data from the AMEL requests also show flare flameouts occur from various burners when the NHVcz of the olefin waste gas mixture are less than 800 Btu/scf. Thus, we selected a minimum NHVcz of 800 Btu/scf to ensure the MPGF is operated within the proper envelope to produce a stable flame and achieve high destruction efficiencies at least equivalent to those as the underlying Ethylene Production MACT standards. Also, given that rapid flame de-stabilization can occur when pressure-assisted multi-point flares are operated outside their proper operating envelope, ensuring there is always enough heat content in the vent gases sent to these types of flares so that flare flameouts will not occur is critically important. Thus, to that end, we are proposing to not allow use of the ''feed forward'' calculation approach (discussed in section IV.A.1.e of this preamble) to demonstrate compliance with the NHVcz limit of 800 Btu/scf. We are only proposing allowance of complying with a straight 15-minute block average for these flare types.

Another unique characteristic of MPGF is that they may use a cross-lighting pilot flame system as a means of ignition to initially combust the waste gases sent to the flare burners on a particular staged array. Thus, we also reviewed the equipment specific set-ups in the test data that allowed for successful cross-lighting of MPGF. Based on our review of the data, it appears that one option would be for facilities to conduct performance demonstrations to demonstrate successful cross-lighting on a minimum of three burners (*i.e.,* as outlined in the *Framework for Streamlining Approval of Future Pressure-Assisted MPGF AMEL Requests,* 81 FR 23480, April 21, 2016). However, given the data before us in the MPGF AMEL docket, and rather than requiring facilities to conduct a performance demonstration, it appears

[25] Pohl, J. and N. Soelberg. 1985. *Evaluation of the efficiency of industrial flares: Flare head design and gas composition.* EPA–600/2–85–106. Prepared for U.S. EPA Office of Air Quality Planning and Standards.

that an equipment standard that sets an upper end on the distance between burners of 6 feet is adequate to ensure a successful cross-lighting on a stage of burners in a MPGF.

Furthermore, in reviewing the site-specific AMEL standards that facilities are complying with for MPGF,[26] we believe that if these same site-specific standards are applied to all MPGF at ethylene production facilities, owners or operators would demonstrate at least equivalent emissions reductions as the underlying Ethylene Production MACT standards as well as demonstrate at least equivalent reductions with the operational and monitoring requirements we are proposing for more traditional, elevated flare tips. Therefore, we are proposing that owners or operators of MPGF: (1) Maintain an NHVcz ≥ 800 Btu/scf; (2) continuously monitor the NHVcz and flare vent gas flow rate; (3) continuously monitor for the presence of a pilot flame, and if cross-lighting is used on a particular stage of burners, then continuously monitor to ensure that the stage has a minimum of two pilots per stage that will ignite all flare vent gases sent to that stage; (4) operate the MPGF with no visible emissions (except for 5 minutes during any 2 consecutive hours); (5) maintain a distance of no greater than 6 feet between any two burners in series on a stage of burners that use cross-lighting; and (6) monitor to ensure staging valves for each stage of the MPGF operate properly so that the flare will control vent gases within the proper flow and pressure ranges based on the flare manufacturer's recommendations.

Finally, although we are unaware of any ethylene production facilities that use multi-point elevated flares, we recognize that an owner or operator may elect to use this type of flare design in the future. Given the design similarities of a multi-point elevated flare when compared to a MPGF (*i.e.,* each flare type uses pressure-assisted burners with staged arrays), we determined that our analyses of the test data (including our review of approved AMEL requests) related to MPGF that control olefin waste gases, could also apply to multi-point elevated flares that combust olefin waste gases. Therefore, we are proposing that owners and operators of multi-point elevated flares must meet the same requirements that we are proposing for MPGF. In other words, the proposed requirements discussed in this section of the preamble would apply to all pressure-assisted multi-point flares (*i.e.,* MPGF and multi-point elevated flares). We are soliciting comment on whether this approach is appropriate, and whether test data are available for multi-point elevated flares that control olefin waste gases. We are also soliciting comment on whether the proposed requirements for pressure-assisted multi-point flares should ultimately supersede the currently approved MPGF AMEL requests at ethylene production facilities.

h. Impacts of the Flare Operating and Monitoring Requirements

The EPA expects that the newly proposed requirements for flares used as APCDs in the Ethylene Production source category discussed in this section will affect all flares at ethylene production units. Based on facility responses to our CAA section 114 request, we estimate that there are 96 flares of traditional elevated flare tip designs (*e.g.,* steam-assisted, air-assisted, and non-assisted flare tips) operating at ethylene production units that receive flare vent gas flow on a regular basis (*i.e.,* other than during periods of SSM). Also, based on information received from AMEL requests (see section II.D of this preamble), we estimate there are six pressure-assisted MPGF in the source category. Costs were estimated for each flare for a given facility, considering current monitoring systems already installed on each individual flare. Given that the same type of equipment is used for flares in the Ethylene Production source category and for the petroleum refinery sector, costs for any additional monitoring systems needed were estimated based on installed costs received from petroleum refineries and, if installed costs were unavailable, costs were estimated based on vendor-purchased equipment. The baseline emission estimate and the emission reductions achieved by the proposed rule were estimated based on current vent gas and steam flow data submitted by industry representatives. The results of the impact estimates are summarized in Table 2 of this preamble. We note that the requirements for flares we are proposing in this action will ensure compliance with the EMACT standards when flares are used as an APCD. Because we are not changing the underlying EMACT standards, we did not include any of the estimated excess emissions from flares in the summary of total estimated emissions reductions for this action (*i.e.,* 62 tpy of HAP). However, we estimate that the proposed operational and monitoring requirements have the potential to reduce excess emissions from flares by approximately 1,430 tpy of HAP and 13,020 tpy of VOC. The VOC compounds are non-methane, non-ethane total hydrocarbons. According to the modeling file we used to assess residual risk (see section III.C.1 of this preamble), there are approximately 30 individual HAP compounds included in the emission inventory for flares, but many of these are emitted in trace quantities. A little more than half of the HAP emissions from flares are attributable to 1,3-butadiene and benzene, followed by hexane, toluene, and xylenes. For more detail on the impact estimates, see the technical memorandum titled *Control Option Impacts for Flares Located in the Ethylene Production Source Category* in Docket ID No. EPA–HQ–OAR–2017–0357.

TABLE 2—NATIONWIDE COST IMPACTS OF PROPOSED AMENDMENTS TO ENSURE PROPER FLARE PERFORMANCE

Control description	Total capital investment (million $)	Total annualized costs (million $/yr)
Flare Operational and Monitoring Requirements	44.8	9.8
Work Practice Standards for Flares Operating Above Their Smokeless Capacity	0.75	0.18
Total	45.6	9.98

[26] 80 FR 52426, August 31, 2015; 81 FR 23480, April 21, 2016; and 82 FR 27822, June 19, 2017.

2. Vent Control Bypasses

a. Pressure Relief Devices

The current definition of ''ethylene process vent'' at 40 CFR 63.1103(e)(2) states that ''relief valve discharges'' are not ethylene process vents. Instead, the EMACT standard recognizes relief valve discharges to be the result of malfunctions. The acronym ''PRD'' means pressure relief device and is common vernacular to describe the variety of devices regulated as pressure relief valves (see the end of this section for our proposed revisions to the definitions of pressure relief device and relief valve, to provide clarity). PRDs are designed to remain closed during normal operation. Typically, the Agency considers PRD releases as the result of an overpressure in the system caused by operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that results in immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage. For the Ethylene Production source category, emissions vented directly to the atmosphere by a PRD in organic HAP service contain HAP that are otherwise regulated under the EMACT standards.

The EMACT standards regulate PRDs when they are seated through equipment leak provisions (*i.e.,* conduct EPA Method 21 monitoring after each pressure release using a leak definition of 500 ppm); however, these provisions do not apply to an emissions release from a PRD. In addition, the EMACT standards follow the EPA's previous practice of exempting SSM events from otherwise applicable emission standards. Consequently, with PRD releases defined as unplanned, nonroutine, and the result of malfunctions, the EMACT standards did not restrict PRD releases to the atmosphere but instead treated them similar to all malfunctions that are subject to the SSM exemption provision. In *Sierra Club* v. *EPA, 551 F.3d 1019* (D.C. Cir. 2008), the Court determined SSM exemptions in section 112 standards violate the CAA. Section IV.E.1 of this preamble contains additional discussions on the removal of the SSM exemption provision for this source category. As a result, we evaluated the EMACT standard for PRDs to ensure a standard continuously applies, consistent with the *Sierra Club* v. *EPA* decision.

CAA section 112(d)(1) specifies that the EPA may ''distinguish among classes, types, and sizes of sources'' when establishing standards. (In establishing standards under CAA section 112(d), the EPA may ''distinguish among classes, types, and sizes of sources within a category or sub-category.'' CAA section 112(d)(1). See *Sierra Club* v. *EPA,* 479 F.3d 875, 885 (D.C. Cir. 2007). We are proposing two subcategories of PRDs for the EMACT standard to distinguish between classes of PRDs: (1) PRDs designed to vent through a closed vent system to a control device or to a process, fuel gas system, or drain system (referred to as PRDs that vent to a control system); and (2) PRDs designed to vent to the atmosphere. We are proposing to subcategorize PRDs by class because of design differences between the numerous PRDs at ethylene production facilities that are vented to a control system and PRDs that vent to the atmosphere. Ethylene production facilities are currently required to evaluate PRDs as part of their risk management and process safety management programs. When implementing these programs, facilities identify PRDs that they intend to control as compared to those they elect not to control (and that are vented to the atmosphere). Facilities do not control certain PRDs because of technical or site-specific safety considerations, such as PRDs that release chemicals that could result in freezing or plugging the vent to the control system.

We evaluated each subcategory of PRDs separately to ensure that a standard would apply continuously. Essentially, PRDs that vent to a control system are already complying with the process vent standards (see section IV.D.2 of this preamble for a summary of the EMACT standards for ethylene process vents) and are, thus, already appropriately regulated. Therefore, minimal revisions to the EMACT standard for PRDs that vent to a control system are warranted as a result of removing the SSM exemption. We are proposing at 40 CFR 63.1107(h)(4) that PRDs that vent through a closed vent system to a control device or to a process, fuel gas system, or drain system must meet minimum requirements for the applicable control system. However, PRDs that vent to atmosphere cannot meet the current ethylene process vent standards. Therefore, we examined whether it would be feasible to regulate PRDs that vent to atmosphere under CAA section 112(d)(2) and (3). As detailed here, we determined it was feasible to regulate PRDs that vent to atmosphere under CAA section 112(h) and are proposing work practice standards at 40 CFR 63.1107(h)(3) that are intended to reduce the number of PRD releases and will incentivize owners or operators to eliminate the causes of PRD releases to the atmosphere.

No ethylene production facility is subject to numeric emission limits for PRDs that vent to the atmosphere. In addition, we do not believe it is appropriate to subject PRDs that vent to the atmosphere to numeric emission limits due to technological and economical limitations that make it impracticable to measure emissions from such PRDs. CAA section 112(h)(1) states that the EPA may prescribe a work practice standard or other requirement, consistent with the provisions of CAA sections 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. CAA section 112(h)(2)(B) further defines the term ''not feasible'' in this context as meaning that ''the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations.'' We consider it appropriate to establish a work practice standard for PRDs that vent to atmosphere as provided in CAA section 112(h), because the application of a measurement methodology for PRDs that vent to atmosphere is not practicable due to technological and economic limitations. First, it is not practicable to use a measurement methodology for PRD releases that vent to atmosphere. PRDs are designed to remain closed during normal operations and release emissions only during nonroutine and unplanned events, and the venting time can be very short and may vary widely in composition and flow rate. These unique event characteristics make it infeasible to collect a grab sample of the gases when a PRD release occurs, and a single grab sample would also likely not account for potential variation in vent gas composition. Additionally, it would be economically prohibitive to construct an appropriate conveyance and install and operate continuous monitoring systems for each individual PRD that vents to atmosphere in order to attempt to quantitatively measure a release event that may occur only a few times in a 3-year period. See *U.S.* v. *Sugar Corp.,* 830 F.3d 579, 664–67 (D.C. Cir. 2016). Further, we have not identified any available, technically feasible continuous emission monitoring system (CEMS) that can accurately determine a mass release quantity of VOC or HAP given the flow, composition, and composition variability of potential PRD releases that vent to the atmosphere from ethylene production units. Rather, we have identified only monitoring

systems capable of alerting an owner or operator of when a PRD release occurs. Consequently, we propose to conclude that it is appropriate to establish a work practice standard for PRDs that vent to atmosphere as provided in CAA section 112(h).

We also reviewed information about ethylene production facilities to determine how the best performers are minimizing emissions from PRDs that vent to atmosphere. We first reviewed the requirements in EPA's Chemical Accident Prevention Provisions (40 CFR part 68) and Occupational Safety and Health Administration's (OSHA) Process Safety Management rule (29 CFR 1910.119). These rules focus on planning for and minimizing or preventing scenarios which would result in releases of chemicals. For example, as stated in appendix C to the OSHA rule: ''Process safety management is the proactive identification, evaluation and mitigation or prevention of chemical releases that could occur as a result of failures in process, procedures or equipment.'' The rules are applicable to any equipment in the process, and relief valves are identified in each rule as an applicable source to evaluate. The EPA and OSHA rules have similar requirements, except that applicability determination is unique to each rule. Owners or operators are subject to the EPA's Chemical Accident Prevention Provisions at 40 CFR part 68 if a process has more than a threshold quantity of a regulated substance. Regulated substances and their thresholds are listed at 40 CFR 68.130. Owners or operators are subject to OSHA's Process Safety Management rule at 29 CFR 1910.119 if a process involves either a chemical that is above specified threshold quantities (listed in appendix A to 29 CFR 1910.119) or a Category 1 flammable gas or liquid. Ethylene production facilities are subject to the Chemical Accident Prevention Provisions rule, as identified in their title V permit (40 CFR 68.215 requires permits to list part 68 as an applicable requirement, if subject). As a result, we further reviewed this rule for consideration in developing the work practice standard.

The EPA's Chemical Accident Prevention Provisions require a prevention program. Ethylene production facilities would fall under either prevention program 1 or 3 (due to the NAICS code). We evaluated program 3, which is more stringent, because it is our understanding that ethylene production facilities would not meet the program 1 criteria, based on a review of the rule's applicability requirements and preamble rationale. Furthermore, since program 3 is the most stringent program, we believe the best performers in the source category are following this program. The program 3 prevention program includes: Documentation of process safety information, conducting a hazard analysis, documentation of operating procedures, employee training, on-going maintenance, and incident investigations. The process safety information documented must include information pertaining to the hazards of the regulated substances in the process, the technology of the process, and the process equipment (including relief valves). When conducting the hazard analysis, facilities must identify, evaluate, and control the hazards in the process; controls may consider the application of detection methodologies (*e.g.,* process monitoring and control instrumentation) to provide early warning of releases. The operating procedures must address multiple operating scenarios (*e.g.,* normal operations, startup, emergency shutdown) and provide instructions for safely conducting process activities. The acts of conducting the hazard analysis and documenting operating procedures are similar to prevention measures, discussed below, though we note a specific number of measures or controls is not specified for the program 3 prevention program. Incident investigations must document the factors that contributed to an incident and any resolutions and corrective actions (incident investigations are consistent with root cause analysis and corrective action, discussed below). Facilities are also required to document this information in a Risk Management Plan that must be updated at least every 5 years.

Next, we considered that some companies operating ethylene production facilities also own and operate petroleum refineries and may have established company-wide best practices as a result of specific state and Federal requirements. For example, petroleum refineries located in certain counties in California are subject to and complying with specific requirements for PRDs such as the Bay Area Air Quality Management District (BAAQMD) Rule 8–28–304 and South Coast Air Quality Management District (SCAQMD) Rule 1173. The BAAQMD rule requires implementation of three prevention measures and both rules require root cause analysis and corrective action for certain PRDs. These rules also formed the basis of the work practice standards promulgated for PRD releases at petroleum refineries in the Petroleum Refinery Sector RTR performed by the EPA (80 FR 75178, December 1, 2015).

Considering our review of the EPA's Chemical Accident Prevention Provisions and company-wide best practices that ethylene facilities may have implemented, we expect that the best performing ethylene production facilities have implemented a program for PRDs that vent to atmosphere that consists of using at least three prevention measures and performing root cause analysis and corrective action in the event that a PRD does release emissions directly to the atmosphere. We used this information as the basis of the work practice standards that we are proposing at 40 CFR 63.1107(h)(3). Examples of prevention measures include: Flow indicators, level indicators, temperature indicators, pressure indicators, routine inspection and maintenance programs or operator training, inherently safer designs or safety instrumentation systems, deluge systems, and staged relief systems where the initial PRD discharges to a control system.

We are also proposing a limit on the number of PRD releases that would result in a deviation to the work practice standard for PRDs that vent to atmosphere. We believe setting criteria to determine a deviation is necessary for the work practice to be effective. We considered limits on the number of PRD releases in both 3- and 5-year periods. Based on a Monte Carlo analysis of random rare events (as conducted for the Petroleum Refinery Sector MACT),[27] we note that it is quite likely to have two or three events in a 5-year period when a long time horizon (*e.g.,* 20 years) is considered. Therefore, we are proposing to limit the number of PRD releases from a single PRD to either two or three (depending on the root cause) in a 3-year period as the basis of a deviation of the work practice standard. We considered it reasonable to use a 3-year period rather than a 5-year period given that company-wide best practices forming the basis of the work practice standards promulgated for PRD releases at petroleum refineries are also our underlying basis for the proposed work practice standards at ethylene production facilities. We are proposing that it is a deviation of the work practice standard if a single PRD that vents to atmosphere has two releases within a 3-year period due to the same root cause. We believe that this provision will help ensure that root cause/corrective action are conducted effectively. Otherwise, we are proposing that it is a deviation of the work practice standard if a single

[27] See 80 FR 75217, December 1, 2015.

PRD that vents to atmosphere has three releases within a 3-year period for any reason. In addition, we are proposing that any PRD release for which the root cause was determined to be operator error or poor maintenance is a deviation of the work practice standard. We are proposing that ''force majeure'' events would not be included when counting the number of releases. As previously discussed in section IV.A.1.b of this preamble, we are proposing to define ''Force majeure'' as including events resulting from natural disasters, acts of war or terrorism, or external power curtailment beyond the facility's control. These types of events are beyond the control of the owner or operator. We are providing that these events should not be included in the event count, but that they would be subject to the root cause analysis in order to confirm whether the release was caused by a force majeure event.

In addition, consistent with our treatment of ethylene process vents (in general, an open PRD is essentially the same as an ethylene process vent that is vented directly to the atmosphere), we believe that it is appropriate to exclude certain types of PRDs that have very low potential to emit based on their type of service, size, and/or pressure from the proposed work practice standard for PRD releases that vent to atmosphere. Both the Chemical Accident Prevention Provisions and the California Petroleum Refinery PRD rules also exempt or impose simpler requirements for certain PRDs. We are proposing at 40 CFR 63.1107(h)(5) that the following types of PRDs would not be subject to the work practice standard for PRDs that vent to the atmosphere: (1) PRDs with a design release pressure of less than 2.5 pounds per square inch gauge (psig); (2) PRDs in heavy liquid service; (3) PRDs that are designed solely to release due to liquid thermal expansion; and (4) pilot-operated and balanced bellows PRDs if the primary release valve associated with the PRD is vented through a control system. Each of the types of PRDs that we are proposing are not subject to the work practice standard are discussed in greater detail here. With regard to PRDs with a design release pressure of less than 2.5 psig, it is technically infeasible to pipe sources with a release pressure of less than 2.5 psig to a flare (or other similar control system) because the back pressure in the flare header system generally exceeds 2.5 psig. Therefore, we are proposing that PRDs with a design release pressure of less than 2.5 psig are not subject to the work practice standard. With regard to PRDs in heavy liquid service, any release from a PRD in heavy liquid service would have a visual indication of a leak and any repairs to the valve would have to be further inspected and, if necessary, repaired under the existing equipment leak provisions. Therefore, we are proposing that PRDs in heavy liquid service are not subject to the work practice standard. In addition, we are proposing that PRDs designed solely to release due to liquid thermal expansion are not subject to the work practice standard. We expect that releases from these thermal relief valves would be small. Finally, we are also proposing that pilot-operated PRDs (where emissions can be released to the atmosphere through a pilot discharge vent) and balanced bellow PRDs (where emissions can be released to the atmosphere through a bonnet vent) are not subject to the work practice standard, if the primary release valve associated with the pilot-operated or balanced bellows PRD is vented through a control system. Pilot-operated and balanced bellows PRDs are primarily used for pressure relief when the back pressure of the discharge vent may be high or variable. Conventional pressure relief devices act on a differential pressure between the process gas and the discharge vent. If the discharge vent pressure increases, the vessel pressure at which the PRD will open increases, potentially leading to vessel over-pressurization that could cause vessel failure. Balanced bellows PRDs use a bellow to shield the pressure relief stem and top portion of the valve seat from the discharge vent pressure. A balanced bellows PRD will not discharge gas to the atmosphere during a release event, except for leaks through the bonnet vent due to bellows failure or fatigue. Pilot-operated PRDs use a small pilot safety valve that discharges to the atmosphere to effect actuation of the primary valve or piston, which then discharges to a control system. Balanced bellows or pilot operated PRDs are considered a reasonable and necessary means to safely control the primary PRD release.

For all PRDs in organic HAP service, owners or operators would still be required to comply with the LDAR provisions, as they are currently applicable. Therefore, all PRDs that vent to the atmosphere would still perform LDAR to ensure the PRD properly reseats if a release does occur, and PRDs that vent to control systems would still be exempt from LDAR requirements given that if a release were to occur from these specific class of PRDs, it would vent to a closed vent system and control device.

Finally, to ensure compliance with the proposed work practice standard for PRDs that vent to the atmosphere, we are also proposing to require that sources monitor these PRDs using a system that is capable of identifying and recording the time and duration of each pressure release and of notifying operators that a pressure release has occurred. Pressure release events from PRDs that vent to atmosphere have the potential to emit large quantities of HAP. Where a pressure release occurs, it is important to identify and mitigate it as quickly as possible. For purposes of estimating the costs of this requirement, we assumed that operators would install electronic monitors on PRDs that vent to atmosphere to identify and record the time and duration of each pressure release. However, we are proposing to allow owners and operators to use a range of methods to satisfy these requirements, including the use of a parameter monitoring system (that may already be in place) on the process operating pressure that is sufficient to indicate that a pressure release has occurred as well as record the time and duration of that pressure release. Based on our cost assumptions, the nationwide capital cost of installing these electronic monitors is $966,000 and the annualized capital cost is $130,000 per year.

We also considered requiring all PRDs to be vented to a control device as a beyond-the-floor requirement. While this would provide additional emission reductions beyond those we are establishing as the MACT floor, these reductions come at significant costs. Capital costs for requiring control of all PRDs that vent to atmosphere is estimated to be approximately $13.1 million compared to $1.43 million for the requirements described above. The total annualized cost for requiring control of all PRDs that vent to atmosphere is estimated to be approximately $2.58 million/year compared to $270,000 per year for the requirements described above. We estimate that the incremental cost-effectiveness of requiring control of all PRDs that vent to atmosphere compared to the requirements described above exceeds $40 million per ton of HAP reduced. Consequently, we conclude that this is not a cost-effective option.

The EPA is also proposing a requirement that any future installed pilot-operated PRDs be the non-flowing type. As previously noted, under CAA section 112(d)(1), the EPA may ''distinguish among classes, types, and sizes of sources'' when establishing standards. There are two designs of pilot-operated PRDs: Flowing and non-flowing. When a flowing pilot-operated PRD is actuated, the pilot discharge vent

continuously releases emissions; however, when a non-flowing pilot-operated PRD is actuated, the pilot discharge vent does not vent continuously. Although we expect pilot discharge vent emissions to be minimal for both designs, limiting the future use of flowing pilot-operated PRDs is warranted to prevent continuous release of emissions. Therefore, we are proposing at 40 CFR 63.1107(h)(8) to require future installation and operation of non-flowing pilot-operated PRDs at all affected sources.

Although ''pressure relief device'' is defined in 40 CFR part 63, subpart YY (and applies to the other source categories regulated under the NESHAP, including Acetal Resins Production, Acrylic and Modacrylic Fiber Production, Carbon Black Production, Cyanide Chemicals Manufacturing, Hydrogen Fluoride Production, Polycarbonate Production, and Spandex Production source categories), ''relief valve'' is not defined. Therefore, we are proposing a definition of ''pressure relief device'' and ''relief valve'' that would only apply to the EMACT standards. We are proposing to define ''pressure relief device'' as a valve, rupture disk, or similar device used only to release an unplanned, nonroutine discharge of gas from process equipment in order to avoid safety hazards or equipment damage. A pressure relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause. Such devices include conventional, spring-actuated relief valves, balanced bellows relief valves, pilot-operated relief valves, rupture disks, and breaking, buckling, or shearing pin devices. We are proposing to define ''relief valve'' as a type of pressure relief device that is designed to re-close after the pressure relief.

For details on the assumptions and methodologies used in this analysis, see the technical memorandum titled *Review of Regulatory Alternatives for Certain Vent Streams in the Ethylene Production Source Category,* which is in Docket ID No. EPA–HQ–OAR–2017–0357.

b. Closed Vent System Containing Bypass Lines

The EMACT standards require ethylene process vents to vent through a closed vent system and APCD that meet the requirements of 40 CFR part 63, subpart SS. For a closed vent system containing bypass lines that can divert the stream away from the APCD to the atmosphere, the EMACT standards require the owner or operator to either: (1) Install, maintain, and operate a continuous parametric monitoring system (CPMS) for flow on the bypass line that is capable of detecting whether a vent stream flow is present at least once every hour, or (2) secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration (These bypass line requirements are in 40 CFR part 63, subpart SS.) Under option 2, the owner or operator is also required to inspect the seal or closure mechanism at least once per month to verify the valve is maintained in the non-diverting position (see 40 CFR 63.998(d)(1)(ii)(B) for more details). To ensure standards apply to ethylene process vents at all times, we are proposing at 40 CFR 63.1103(e)(6) that an owner or operator may not bypass the APCD at any time, and if a bypass is used, then we are proposing that owners or operators estimate and report the quantity of organic HAP released. We are proposing this revision because bypassing APCD could result in a release of regulated organic HAP to the atmosphere to be consistent with *Sierra Club* v. *EPA, 551 F.3d 1019* (D.C. Cir. 2008), where the Court determined that standards under CAA section 112(d) must provide for compliance at all times. We are also proposing that the use of a cap, blind flange, plug, or second valve on an open-ended valve or line is sufficient to prevent a bypass.

c. In Situ Sampling Systems (Online Analyzers)

The current definition of ''ethylene process vent'' at 40 CFR 63.1103(e)(2) states that ''in situ sampling systems (online analyzers)'' are not ethylene process vents. For several reasons, we are proposing to remove ''in situ sampling systems (online analyzers)'' from the list of vents not considered ethylene process vents. First, the language used in this exclusion is inconsistent. We generally consider ''in situ sampling systems'' to be non-extractive samplers or in-line samplers. There are certain in situ sampling systems where the measurement is determined directly through a probe placed in the process stream line. Such sampling systems do not have an atmospheric vent, so excluding these from the definition of ''ethylene process vent'' is not meaningful. The parenthetical term ''online analyzers'' generally refers to sampling systems that feed directly to an analyzer located at the process unit and has been interpreted to exclude the ''online'' analyzer's vent from the definition of ethylene process vent. As these two terms do not consistently refer to the same type of analyzer, the provision is ambiguous.

Second, we find that there is no technical reason to include analyzer vents in a list of vents not considered ethylene process vents. For extractive sampling systems and systems with purges, the equipment leak provisions in the EMACT standards require that the material be returned to the process or controlled. Thus, the only potential emissions from any sampling system compliant with the EMACT equipment leak provisions would be from the analyzer's ''exhaust gas'' vent. The parenthetical term ''online analyzers'' indicates that the focus of the exemption is primarily on the analyzer (or analyzer vent) rather than the sampling system. This phrase has been interpreted to exclude the ''online'' analyzer's vent from the definition of ethylene process vents. Analyzer venting is expected to be routine (continuous or daily intermittent venting).

We are proposing to delete this exclusion from the definition of ''ethylene process vent'' and to require these vents to meet the standards applicable to ethylene process vents at all times. We solicit comment on the existence of any online analyzers and why such vents are not amenable to control.

d. Maintenance Activities

The current definition of ''ethylene process vent'' at 40 CFR 63.1103(e)(2) states that ''episodic or nonroutine releases such as those associated with startup, shutdown, and malfunction'' are not ethylene process vents. We are proposing to remove ''episodic or nonroutine releases'' from the list of vents not considered ethylene process vents in order to ensure that the EMACT standard includes emission limits that apply at all times consistent with *Sierra Club* v. *EPA.* Because the definition of ''ethylene process vent'' only includes gas streams that are continuously discharged, clarification in this definition is also needed to ensure ''episodic or nonroutine releases'' are also covered. Thus, we are proposing that gas streams that are ''periodically discharged'' be included in the definition of ethylene process vent, and we are proposing a definition for ''periodically discharged'' at 40 CFR 63.1103(e)(2). Since vent streams that are ''periodically discharged'' were previously excluded from control requirements, we determined that the best performers would be controlling vent streams that had concentrations greater than 20 parts per million by volume HAP (*i.e.,* the control level

currently for ethylene process vents) and total volatile organic compound emissions of 50 lbs per day or more (*i.e.,* the control level of mass emissions for vent streams during periods of startup, shutdown, and maintenance from state permits for the best performing sources discussed further in this section).

We recognize that this proposed change for vent streams that are ''periodically discharged'' will affect certain maintenance activities such as those that require equipment openings, and we consider maintenance activities a separate class of startup and shutdown emissions because there must be a point in time when the equipment can be opened and any emissions are vented to the atmosphere. We also acknowledge that it would require a significant effort to identify and characterize each of these potential release points (*e.g.,* for permitting purposes).

We reviewed state permit conditions and determined the best performers permits specify that they meet certain conditions before they open equipment to the atmosphere. The conditions include thresholds regarding the lower explosive limit (LEL) and the mass of gas that may be emitted. Therefore, we are proposing a work practice standard at 40 CFR 63.1103(e)(5) that prior to opening process equipment to the atmosphere during maintenance events, the equipment first be drained and purged to a closed system so that the hydrocarbon content is less than or equal to 10 percent of the LEL. For those situations where 10-percent LEL cannot be demonstrated, we are proposing that the equipment may be opened and vented to the atmosphere if the pressure is less than or equal to 5 psig, provided there is no active purging of the equipment to the atmosphere until the LEL criterion is met. We are proposing this 5 psig threshold to acknowledge a certain minimum pressure must exist for the flare header system (or other similar control system) to operate properly. We are also proposing that equipment may be opened when there is less than 50 lbs of VOC that may be emitted to the atmosphere.

We also acknowledge that installing a blind to prepare equipment for maintenance may be necessary and by doing so, the owner or operator may not be able to meet the proposed maintenance vent conditions mentioned above (*e.g.,* a valve used to isolate the equipment will not seat fully so organic material may continually leak into the isolated equipment). To limit the emissions during the blind installation, we are proposing to require depressurizing the equipment to 2 psig or less prior to equipment opening and maintaining pressure of the equipment where purge gas enters the equipment at or below 2 psig during the blind flange installation. The low allowable pressure limit will reduce the amount of process gas that will be released during the initial equipment opening and the ongoing 2 psig pressure requirement will limit the rate of purge gas use. Together, these proposed provisions will limit the emissions during blind flange installation and will result in comparable emissions allowed under the proposed maintenance vent conditions mentioned above. We expect these situations to be rare and that the owner or operator would remedy the situation as soon as practical (*e.g.,* replace the isolation valve or valve seat during the next turnaround in the example provided above). Therefore, we are only proposing that this alternative maintenance vent limit be used under those situations where the proposed primary limits (*i.e.,* hydrocarbon content is less than or equal to 10 percent of the LEL, pressure is less than or equal to 5 psig, or VOC is less than 50 lbs) are not achievable and blinding of the equipment is necessary.

To demonstrate compliance with this work practice standard, we are proposing provisions that include documenting procedures for equipment openings and verifying that events meet the specific conditions above using site procedures for de-inventorying of equipment for safety purposes (*i.e.,* hot work or vessel entry procedures). We are also proposing that owners or operators document each circumstance where the alternative maintenance vent limit is used, providing an explanation why other criteria could not be met prior to equipment blinding and an estimate of the emissions that occurred during the equipment blinding process. We calculated the capital costs for this work practice to be $26,000, with annualized capital costs of $16,000.

See the technical memorandum titled *Review of Regulatory Alternatives for Certain Vent Streams in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357, for additional details and discussion.

e. Flares and Fuel Gas Systems

The current definition of ''ethylene process vent'' at 40 CFR 63.1103(e)(2) states that ''gaseous streams routed to a fuel gas system'' are not ethylene process vents because the combustion device (typically a boiler or process heater) burning these gaseous streams as fuel effectively achieve the most stringent level of control (*i.e.,* 98-percent organic HAP reduction or an outlet organic HAP concentration of 20 parts per million by volume (ppmv) for all vent streams). In addition, other EMACT standards (*e.g.,* standards for transfer racks) also allow emissions to be routed to a fuel gas system for compliance purposes. However, there can be instances when gaseous streams from the fuel gas system that would otherwise be combusted in a boiler or process heater are instead routed to a flare (*e.g.,* overpressure in the fuel gas system, used as flare sweep gas, used as flare purge gas). In cases where an emission source is required to be controlled in the EMACT standards but is routed to a fuel gas system, we are proposing that any flare receiving gases from that fuel gas system comply with the flare operating and monitoring requirements discussed in section IV.A.1 of this preamble. We recognize that this proposed provision may require owners or operators that use fuel gas for any purpose (*e.g.,* flare sweep gas, flare purge gas, flare supplemental gas) in other flare APCDs that predominately control emissions from other source categories to comply with the proposed flare revisions discussed in section IV.A.1 of this preamble. Thus, in order to minimize this impact, we are proposing that any flare that utilizes fuel gas whereby the majority (*i.e.,* 50 percent or more) of the fuel gas in the fuel gas system is derived from an ethylene production unit comply with the flare operating and monitoring requirements discussed in section IV.A.1 of this preamble.

3. Ethylene Cracking Furnace Decoking Operations

During normal operation, an ethylene cracking furnace is designed to subject certain hydrocarbon feedstocks (*i.e.,* ethane, propane, butane, naptha, or gas oils) to high temperatures in the presence of steam to ''crack'' the feedstock (*i.e.,* break the feedstock molecules apart). The feedstock travels through the furnace through piping (or tubing) and is designed such that the feedstock (and subsequent products formed from the ''cracking'' of the feedstock) should never come into direct contact with the fuel being burned in the furnace. The feedstock first passes through piping in the top portion of the furnace (called the ''convection'' section) for preheating; steam is then added after the feedstock has traveled through a portion of the piping. This steam is called diluted steam because it acts as a diluting agent that lowers the partial pressure of the feedstock and keeps the feedstock molecules from recombining once broken apart. The feedstock/steam mixture then passes through piping in

the bottom portion of the furnace (called the ''radiant'' section or ''firebox'') where the ''cracking'' of the hydrocarbon feedstock occurs inside the piping (or ''radiant tube''). The cracked gas products formed from the ''cracking'' of the hydrocarbon feedstock in each furnace are passed through one or more heat exchangers and aggregated into a cracked gas header via a system of transfer line valves prior to downstream operations.

As hydrocarbon feedstock and steam passes through the radiant tubes of an ethylene cracking furnace, over time, a layer of carbon (*i.e.,* coke) builds up on the interior of the tubing forming a physical restrictive barrier. Because of this buildup, the tubing gradually gets hotter during the cracking process (*i.e.,* the temperature of the tubing typically increases by 3 to 4 degrees Fahrenheit per day even with a constant firebox temperature, because the coke acts as an insulator on the tubing). Eventually, the ethylene cracking furnace must be taken out of production, so that coke buildup can be removed from the tubing. This removal of coke buildup is done through combustion and is known as a decoking operation. The EPA considers the coke combustion activity that occurs within the process (*i.e.,* inside the radiant tubes) the emission source from decoking operations, whereas the emissions generated from the fuel combustion activity in the ethylene cracking furnace radiant section (or firebox) a different emission source part of normal operations (65 FR 76408, December 6, 2000).

Prior to decoking, the fuel firing rate of the ethylene cracking furnace is reduced, and the hydrocarbon feedstock that would otherwise be thermally cracked is stopped, leaving steam as the only stream being sent through the piping (or ''radiant tubes''). During this time the radiant tube(s) continues to be purged of any remaining feedstock using steam, and this purge stream is sent downstream through the cracked gas header and into the ethylene production process. After all hydrocarbon feedstock is purged from the radiant tube(s), the steam is stopped, and the radiant tube(s) is isolated from the process using transfer line and decoking valves. Once isolated, oxygen (*i.e.,* air) and steam is gradually added inside the radiant tube(s) until the coke ignites, and the exhaust is diverted through a decoke header to either a large cyclone separation device called a ''decoking pot'' or back into the ethylene cracking furnace firebox. In the current EMACT standards, decoking an ethylene cracking furnace is specifically listed in the definition of ''shutdown,'' and procedures to minimize emissions from decoking are required to be addressed in a facility's SSM plan.[28] However, with the elimination of the SSM exemption (see section IV.E.1 of this preamble for additional discussion), we are proposing work practice standards to control HAP emissions from decoking operations. The work practices would apply to the decoking of any ethylene cracking furnace at a new or existing affected source subject to this subpart.

We are proposing work practices for decoking operations instead of emission limits due to technological and economic limitations. CAA section 112(h)(1) states that the Administrator may prescribe a work practice standard or other requirements, consistent with the provisions of CAA sections 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. CAA section 112(h)(2)(B) further defines the term ''not feasible'' in this context to apply when ''the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations.''

The emissions stream generated from decoking operations (*i.e.,* the combination of coke combustion constituents, air, and steam from the radiant tube(s)) is very dilute with a high moisture content (*e.g.,* generally >95 percent water). As part of our CAA section 114 request, we required companies to perform testing for HAP from this emissions source at certain ethylene cracking furnaces (see section II.C of this preamble for details about our CAA section 114 request). A minimum of three decoking cycles were required to be tested; and emissions data were obtained for three test runs spaced over the entire duration of each decoking cycle. The test data collected from industry confirm that HAP emissions, such as non-PAH organic HAP, occur during decoking operations. However, the majority (*i.e.,* 88 percent) of non-PAH organic HAP were found to be below detection levels (BDL). We regard situations where, as here, the majority of measurements are below detection limits, as measurements that are not ''technologically practicable'' within the meaning of CAA section 112(h). We have also previously reasoned that ''application of measurement methodologies'' under CAA section 112(h) must also mean that a measurement has some reasonable relation to what the source is emitting (*i.e.,* that the measurement yields a meaningful value). We have further explained that unreliable measurements raise issues of practicability, feasibility, and enforceability. Additionally, we have posited that the application of measurement methodology would also not be ''practicable due to. . . economic limitation'' within the meaning of CAA section 112(h) because it would result in cost expended to produce analytically suspect measurements. Refer to area source Boiler Rule (75 FR 31906, June 4, 2010) and the NESHAP for the Wool Fiberglass Manufacturing source category (80 FR 45280 and 45312, July 29, 2015).

While the CAA section 114 test data show that PAHs and metal HAP are emitted during decoking operations, the majority of the test runs do not meet the underlying requirements of the test methods to be within +/−10 percent of isokinetic. Isokinetic sampling is required for any method where compounds may exist in a particle or aerosol phase in order to collect a representative sample with respect to a flow weighted average concentration and particle or aerosol size distribution. Without an appropriate isokinetic sample, the data may be biased and unreliable for compliance demonstrations. The EPA was aware that it would be extremely difficult for facilities to meet the +/−10-percent isokinetic requirement of the sampling methods during the majority of a decoking cycle; however, data were still gathered so that the Agency could better understand the types of HAP that may be potentially emitted from decoking operations. In order to pull a sample in an isokinetic manner, the tester must have knowledge of the large components of the gas stream such as moisture, oxygen, and carbon dioxide (CO_2). When a gas stream is nearly pure moisture (greater than 90-percent moisture), even slight deviations in the assumed moisture can cause large changes in the flow through the sampling nozzle, which is controlled through dry gas measurements. For example, an assumed gas stream moisture content of 97 percent with a true gas stream moisture content of 98 percent would cause the isokinetic rate to be off by around 30 percent. The same margin of error in moisture assumption at 10- to 20-percent gas stream moisture content (normal combustion levels) would only cause

[28] In other words, the EPA considered only the coke removal activity that takes place inside the radiant tube(s) as the ''decoking'' operation regulated as a shutdown activity. Ethylene cracking furnaces also experience complete shutdowns (where the furnace firebox is taken completely off-line for maintenance or a scheduled turnaround), and cold startups (where the furnace firebox is initially started up following off-line maintenance or a scheduled turnaround).

the isokinetic rate to be off by a couple of percent. This thin margin of error for moisture assumption makes it extremely difficult to achieve required isokinetic rates at these high moisture conditions. Because it is technically and economically impracticable to achieve representative and precise samples for PAHs and metal HAP for all decoking operations, work practice standards are appropriate. Refer to *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 666–667 (2016).

As coke builds up in radiant tubes, ethylene yield from cracking furnaces decreases and decoking becomes inevitable. Decoking events are undesirable primarily because owners and operators must take the ethylene cracking furnace completely out of ethylene production service; and radiant tube life is shortened from thermal stresses during decoking. Therefore, there is already incentive to minimize coke formation and decoking events. Based on discussions with industry, as well as a review of facility-specific SSM plans that were submitted to the EPA in response to the CAA section 114 request, we determined that owners and operators already conduct work practices to minimize emissions due to coke combustion. In the next few paragraphs below, we discuss the work practices we identified, and explain how each are feasible and effective in reducing coke combustion emissions.

Ethylene cracking furnace flame impingement occurs when flames from the firebox burners make direct contact with the radiant tube(s), creating hot spots on the interior wall of the radiant tube(s) which can lead to coke buildup and eventual tube failure. Generally, during normal operations, owners and operators visually inspect their firebox burners daily for flame impingement. An inspection may include, but is not limited to, visual inspection of the radiant tube(s) for localized bright spots (this may be confirmed with a temperature gun), use of luminescent powders injected into the burner to illuminate the flame pattern, or continued localized coke build-up causing short runtimes between decoking cycles. During the inspection, if the owner or operator finds flame impingement is occurring, then the burner creating the flame impingement on the radiant tube(s) is taken out of service or the alignment of the burner is adjusted such that it no longer impinges on the radiant tube(s). Other actions taken to correct the flame impingement include: Replacing the burner, adjusting burner configuration, making burner air corrections, repairing a malfunction of the fuel liquid removal equipment, or adding insulation around the radiant tube(s). By preventing flame impingement during normal operations, thermal stress on the radiant tube(s) is reduced (thus, prolonging radiant tube life) and coke formation inside the radiant tube(s) is minimized, which ultimately leads to less frequent decoking and lower coke combustion emissions.

During decoking operations, some owners and operators also continuously monitor (or use grab samples to monitor) the CO_2 concentration at the radiant tube outlet for indication that the coke combustion in the ethylene cracking furnace radiant tube(s) is complete or near completion. A decrease in CO_2 concentration level indicates that there is less coke buildup inside the radiant tube(s) and the majority of the coke has been removed. By identifying when combustion of the coke inside the radiant tube(s) is slowing or stopping; owners and operators can more accurately predict when to stop decoking operations, thus, reducing thermal stress on the radiant tube(s) (prolonging radiant tube life) and preventing unnecessary coke combustion emissions.

In addition to monitoring the CO_2 concentration, some owners and operators continuously monitor the radiant tube(s) outlet temperature (or coil outlet temperature) during decoking operations to ensure the coke combustion occurring inside the radiant tube(s) is not so aggressive (*i.e.,* too hot) that it damages either the radiant tube(s) or ethylene cracking furnace isolation valve(s). If the radiant tube(s) or ethylene cracking furnace isolation valve(s) is damaged, then coke combustion emissions could leak downstream, upsetting the ethylene production process, instead of being routed through the decoking pot and/or cracking furnace firebox.

Furthermore, after decoking operations are complete, but before returning the ethylene cracking furnace back to normal operations, owners and operators may perform the following two additional maintenance steps: Owners and operators purge the radiant tube(s) with steam and verify that all air is removed. This purge step ensures coke formation is minimized once a feedstock is placed back into the radiant tube(s) during normal operations. Also, some owners and operators apply a coating material to the interior of the radiant tube(s) to protect against coke formation inside the radiant tube(s) during normal operation. As mentioned earlier, minimizing coke formation inside the radiant tube(s) ultimately leads to less frequent decoking and less coke combustion emissions.

Based on our review of the SSM plans as well as discussions with stakeholders, we determined that the best performers conduct daily inspections for flame impingement, while also conducting at least two of the other work practices identified above for reducing coke combustion emissions. Based on this information, we are proposing at 40 CFR 63.1103(e)(7) that owners and operators conduct daily inspections for flame impingement and implement at least two of the other work practices we identified above to minimize coke combustion emissions from the decoking of the radiant tube(s) in each ethylene cracking furnace. If the owner or operator chooses to conduct daily firebox flame impingement inspections during normal operations, we are proposing that records be kept that document the day and time each inspection took place, the results of each inspection, and any repairs made to correct the flame impingement. If the owner or operator chooses to monitor the CO_2 concentration during decoking, we are proposing that records be kept for all measured CO_2 concentration values and the target used to indicate combustion is complete. If the owner or operator chooses to monitor the temperature at the radiant tube(s) outlet during decoking, we are proposing that records be kept for all measured temperature values and the target used to indicate a reduction in temperature of the inside of the radiant tube(s) is necessary. If the owner or operator chooses to purge the radiant tube(s) with steam after decoking, but before returning the ethylene cracking furnace back to normal operations, we are proposing that records be kept to document the verification that all air is removed (*e.g.,* some owners and operators monitor the lower explosive limit). If the owner or operator chooses to apply a coating material to the interior of the radiant tube(s) after decoking, but before returning the ethylene cracking furnace back to normal operations, we are proposing that records be kept to document when the coating was applied. In addition, we are proposing that owners and operators include in the periodic report (already required under this rule), instances where the control measures that the owner or operator selected were not followed. We also did not identify any additional options beyond those identified above (*i.e.,* beyond-the-floor options) for minimizing coke formation and minimizing coke combustion emissions.

Finally, we also identified a work practice that the best performers use to

prevent non-coke combustion HAP emissions from escaping to the atmosphere caused by leaks in the transfer line and decoking valves. To minimize the introduction of additional sources of HAP into the ethylene production process or into the atmosphere, some owners and operators conduct inspections of ethylene cracking furnace isolation valves both prior to decoking the radiant tube(s) (to prevent leaks into the ethylene production process which could lead to unnecessary flare activity) and also prior to returning the ethylene cracking furnace to normal operations (to prevent product from escaping to the atmosphere through the decoking pot or furnace firebox). We note that during a 2013 investigation (see Appendix D of the memorandum titled *Assessment of Work Practice Standards for Ethylene Cracking Furnace Decoking Operations Located in the Ethylene Production Source Category,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357), TCEQ staff documented that a facility released more than 800 tons of VOC (including more than 20 tons of 1,3-butadiene) to the atmosphere through a decoking pot because two motor operated valves remained partially open following a decoking cycle. This release allowed loss of process gases during normal operations. We believe that routine inspections of the ethylene cracking furnace isolation valve could have prevented this incident. Based on this information, we are proposing at 40 CFR 63.1103(e)(8) that owners and operators inspect the applicable ethylene cracking furnace isolation valve(s) prior to decoking the radiant tube(s) to confirm that the radiant tube(s) being decoked is completely isolated from the ethylene production process. Additionally, prior to returning the ethylene cracking furnace to normal operation, we are proposing owners and operators inspect the applicable ethylene cracking furnace isolation valve(s) to confirm that the radiant tube(s) that was decoked is completely isolated from the decoking pot or furnace firebox. We are also proposing that records documenting the day and time each inspection took place be kept, along with the results of each inspection, and any repairs made to correct any isolation issues that were identified. In addition, we are proposing that owners and operators include in the periodic report (already required under this rule), instances where an isolation valve inspection was not conducted. We did not identify any additional options beyond those identified above (*i.e.,* beyond-the-floor options) that would limit non-coke combustion HAP emissions from escaping to the atmosphere when the ethylene cracking furnaces are taken offline for decoking operations and put back online after decoking operations.

We estimate the nationwide annual cost for implementing these proposed work practices is $151,300 per year. Further discussion on the proposed work practices is provided in the memorandum titled *Assessment of Work Practice Standards for Ethylene Cracking Furnace Decoking Operations Located in the Ethylene Production Source Category,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357. We solicit comment on the proposal to implement the work practices we identified above to minimize coke combustion emissions from the decoking of the radiant tube(s) in each ethylene cracking furnace, and whether facilities already have these work practices in place or will need to implement one or more for minimizing emissions from decoking operations from ethylene cracking furnaces. We are also seeking comment on the proposal to inspect isolation valves both prior to decoking and prior to returning the ethylene cracking furnace to normal operations, and on other approaches for minimizing emissions from decoking operations.

B. What are the results of the risk assessment and analyses?

As described above, for the Ethylene Production source category, we conducted an inhalation risk assessment for all HAP emitted, and multipathway and environmental risk screening assessments on the PB–HAP emitted. We present results of the risk assessment briefly below and in more detail in the document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

1. Inhalation Risk Assessment Results

Table 3 of this preamble provides a summary of the results of the inhalation risk assessment for the source category.

TABLE 3—ETHYLENE PRODUCTION INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at increased risk of cancer ≥ 1-in-1 million		Annual cancer Incidence (cases per year)		Maximum chronic noncancer TOSHI [3]		Maximum screening acute noncancer HQ [4]
	Based on . . .		Based on . . .		Based on . . .		Based on . . .		Based on actual emissions level
	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Actual emissions level	Allowable emissions level	
31	100	100	2.8 million ...	4.6 million ...	0.1	0.2	1	1	HQ_{REL} = <1

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum TOSHI. The target organ systems with the highest TOSHI for the source category are neurological and reproductive. The respiratory TOSHI was calculated using the CalEPA chronic REL for acrolein. The EPA is in the process of updating the IRIS RfC for acrolein.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 3 of this preamble, indicate the estimated cancer MIR is 100-in-1 million, with naphthalene and benzene as the major contributors to the risk. The total estimated cancer incidence from this source category is 0.1 excess cancer cases per year, or one excess case in every 10 years. Approximately 2.8 million people were estimated to have cancer risks above 1-in-1 million from HAP emitted from the facilities in this source category. The estimated maximum chronic noncancer TOSHI for the source category is 1 (neurological and respiratory) driven by emissions of manganese and epichlorohydrin. No one is exposed to TOSHI levels above 1.

Risk results from the inhalation risk assessment using the MACT-allowable emissions indicate that the estimated cancer MIR is 100-in-1 million with naphthalene and benzene emissions driving the risks, and that the estimated maximum chronic noncancer TOSHI is

1 with manganese and epichlorohydrin as the major contributors to the TOSHI. The total estimated cancer incidence from this source category considering allowable emissions is 0.2 excess cancer cases per year or 1 excess case in every 5 years. Based on allowable emission rates, 4.6 million people were estimated to have cancer risks above 1-in-1 million.

2. Acute Risk Results

As shown in Table 3 of this preamble, the worst-case acute HQ (based on the REL) is less than 1. This value is the highest HQ that is outside facility boundaries. No facilities are estimated to have an HQ greater or equal to than 1 based on any benchmark (REL, AEGL, or EPRG). Acute risk estimates for each facility and pollutant are provided in the risk document titled *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

3. Multipathway Risk Screening Results

Potential multipathway health risks under a fisher and farmer/gardener scenario were identified using a three-tier screening assessment of the PB–HAP emitted by facilities in this source category. All 31 of the ethylene production facilities have reported emissions of carcinogenic PB–HAP (arsenic and POM). All 31 facilities exceeded a Tier 1 cancer screening value for arsenic, and all but five exceeded a Tier 1 cancer screening value for POM. All 31 facilities have reported emissions of non-carcinogenic PB–HAP (cadmium and mercury). Nineteen facilities exceeded a Tier 1 cancer screening value for mercury, and four exceeded a Tier 1 noncancer screening value for cadmium. For facilities that exceeded the Tier 1 multipathway screening values for one or more PB–HAP, we used additional facility site-specific information to perform an assessment through Tiers 2 and 3, as necessary, to determine the maximum chronic cancer and noncancer impacts for the source category. For cancer, the highest exceedance of a Tier 2 screening value was by a factor of 30, and further analyses were not performed. For noncancer, there are two facilities that exceed a Tier 3 screening value by a factor of 2 for mercury. In other RTRs where we have exceeded either Tier 2 or Tier 3 screening values of 1 and performed refined facility-specific assessments, the refined estimates have always been at least 80 percent lower than those estimated by the Tier 2 or Tier 3 screening values. For example, in the petroleum refinery RTR, a refined facility-specific assessment was performed for noncancer risk from mercury. The results of this analysis showed that estimated noncancer risk for mercury from the refined assessment was 7 times lower than that predicted by the screening approach (79 FR 36936, June 30, 2014). Given that only an estimated 15-percent reduction in media concentrations for mercury are needed in a refined facility-specific risk assessment to lower the values to 1 (to one significant figure) compared to the Tier 3 screen, and given the fact that results from facility-specific assessments performed for other source categories always have significant trends down in risk, we conclude that a refined facility-specific assessment for the Ethylene Production source category would show a reduction of noncancer risk by at least 15-percent to result in a value of 1 or lower. For this reason and considering the conservative nature of the multipathway exposure screening scenario, further analyses were not performed.

4. Environmental Risk Screening Results

A screening-level evaluation of the potential adverse environmental risk associated with emissions of arsenic, cadmium, hydrochloric acid, hydrofluoric acid, lead, mercury, and POMs indicated that no ecological benchmarks are exceeded.

5. Facility-Wide Risk Results

The results of the inhalation risk modeling using facility-wide emissions data indicate that the estimated cancer MIR is 2,000-in-1 million, with the major contributor to the risk being ethylene oxide emissions from sources outside the source category (non-ethylene production processes). The total estimated cancer incidence is 1 excess cancer case per year. Approximately 6.5 million people are estimated to have cancer risks above 1-in-1 million. The estimated maximum chronic noncancer TOSHI value is 4 (for the respiratory HI), driven by emissions of chlorine from non-category (non-ethylene production) processes. Approximately 200 people are estimated to be exposed to noncancer HI levels above 1.

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Ethylene Production source category across different demographic groups within the populations living near facilities.[29]

The results of the demographic analysis are summarized in Table 4 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

TABLE 4—ETHYLENE PRODUCTION DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to ethylene production	Population with chronic HI above 1 due to ethylene production
Total Population	317,746,049	2,780,122	0
White and Minority by Percent			
White	62	38	0
All Other Races	38	62	0

[29] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living two times the poverty level, and linguistically isolated people.

TABLE 4—ETHYLENE PRODUCTION DEMOGRAPHIC RISK ANALYSIS RESULTS—Continued

	Nationwide	Population with cancer risk at or above 1-in-1 million due to ethylene production	Population with chronic HI above 1 due to ethylene production
Minority Detail by Percent			
African American	12	21	0
Native American	0.8	0.2	0
Hispanic or Latino (includes white and nonwhite)	18	37	0
Other and Multiracial	7	4	0
Income by Percent			
Below Poverty Level	14	18	0
Above Poverty Level	86	82	0
Education by Percent			
Over 25 and without High School Diploma	14	23	0
Over 25 and with a High School Diploma	86	77	0

The results of the Ethylene Production source category demographic analysis indicate that emissions from the source category expose approximately 2.8 million people to a cancer risk at or above 1-in-1 million and no people to a chronic noncancer TOSHI greater than 1. The percentages of the at-risk population in the African American and the Hispanic or Latino demographic groups are higher than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors For Populations Living Near Ethylene Production Source Category Operations,* available in the docket for this action.

C. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

1. Risk Acceptability

As noted in section II.A of this preamble, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) of approximately 1-in-10 thousand.'' 54 FR 38045, September 14, 1989. In this proposal, the EPA estimated risks based on actual and allowable emissions from ethylene production sources, and we considered these in determining acceptability.

The estimated inhalation cancer risk to the individual most exposed to actual emissions from the source category is 100-in-1 million. The estimated incidence of cancer due to inhalation exposures is 0.1 excess cancer cases per year, or one excess case every 10 years. Approximately 2.8 million people face an increased cancer risk greater than 1-in-1 million due to inhalation exposure to HAP emissions from this source category. The Agency estimates that the maximum chronic noncancer TOSHI from inhalation exposure for this source category is 1. Based on allowable emissions, the estimated inhalation cancer risk to the individual most exposed to actual emissions from the source category is also 100-in-1 million, but the estimated incidence of cancer due to inhalation exposures is 0.2 excess cancer cases per year, or one excess case every 5 years. Approximately 4.6 million people face an increased cancer risk greater than 1-in-1 million due to inhalation exposure to allowable HAP emissions from this source category. The maximum chronic noncancer TOSHI from inhalation exposure is 1 based on allowable emissions. The screening assessment of worst-case acute inhalation impacts indicates no facility is estimated to have an HQ greater than 1 based on the REL, AEGL–1 or ERPG–1.

Potential multipathway human health risks were estimated using a three-tier screening assessment of the PB–HAP emitted by facilities in this source category, where the highest exceedance of a Tier 2 screening value is by a factor of 30. For noncancer, the highest exceedance of a Tier 3 screening value is by a factor of 2 for mercury. In evaluating the potential for multipathway effects from emissions of lead from the source category, we compared modeled maximum annual lead concentrations to the primary NAAQS for lead (0.15 $\mu g/m^3$). Results of this analysis estimate that the NAAQS for lead would not be exceeded at any off-site locations.

For a summary of risk assessment report results for the source category and facility-wide emission impacts, refer to Table 3 of this preamble.

In determining whether risks are acceptable for this source category, the EPA considered all available health information and risk estimation uncertainty as described above. The risk results indicate that the inhalation cancer risks to the individual most exposed are no greater than approximately 100-in-1 million, which is at the presumptive limit of acceptability (see, for example, 54 FR 38045, September 14, 1989). There is only one facility at this risk level and only one person estimated to be exposed at this risk level based on actual emissions, and only one facility and 60 people estimated to be exposed at this risk level based on allowable emissions. The remaining facilities have much lower estimated cancer risks, 30-in-1 million or lower based on actual emissions and 80-in-1 million or lower based on allowable emissions. There are no facilities with an estimated maximum chronic noncancer HI greater than 1. There are no facilities with an acute HQ >1 based on the REL, AEGL–1 or ERPG–1.

Multipathway human health risks are also within limits of acceptability. For cancer, the highest exceedance of a Tier 2 screening value was by a factor of 30, which is well below the presumptive

limit of acceptability. For noncancer, there are two facilities that exceed a Tier 3 screening value by a factor of 2 for mercury. In other RTRs where we have exceeded either Tier 2 or Tier 3 screening values of 1 and performed refined facility-specific assessments, the refined estimates have always been at least 80 percent lower than those estimated by the Tier 2 or Tier 3 screening values. Given that only an estimated 15-percent reduction in media concentrations for mercury are needed in a refined facility-specific risk assessment to lower the values to 1 (to one significant figure) compared to the Tier 3 screen, and given the fact that results from facility-specific assessments performed for other source categories always have significant trends down in risk, we conclude that a refined facility-specific assessment for the Ethylene Production source category would show a reduction of noncancer risk by at least 15-percent to result in a value of 1 or lower. For this reason and considering the conservative nature of the multipathway exposure screening scenario, we conclude these levels are acceptable. The multipathway screening analysis indicates that emissions of lead do not result in concentrations that exceed the NAAQS value.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III of this preamble, the EPA proposes that the risks are acceptable because the cancer risks do not exceed the presumptive limit of acceptability and the noncancer results indicate there is minimal likelihood of adverse noncancer health effects due to HAP emissions from this source category.

2. Ample Margin of Safety Analysis

We next considered whether the existing MACT standards provide an ample margin of safety to protect public health. In addition to considering all of the health risks and other health information considered in the risk acceptability determination, in the ample margin of safety analysis we evaluated the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to the source category to further reduce the risks due to emissions of HAP. For purposes of the ample margin of safety analysis, we evaluated the changes in risk that would occur through adoption of a specific technology by looking at the changes to the risk due to both actual and allowable emissions.

As noted in our discussion of the technology review in section IV.D of this preamble, we identified several developments in practices, processes, or control technologies for reducing HAP emissions from emission sources in the Ethylene Production source category. As part of the risk review, we evaluated these developments to determine if any of them could reduce risks and whether it is necessary to require any of these developments to provide an ample margin of safety to protect public health.

We evaluated the health information and control options for all of the emission sources located at ethylene production facilities, including: storage vessels, heat exchange systems, ethylene process vents, transfer racks, equipment leaks, waste operations, ethylene cracking furnaces, flares, decoking operations of ethylene cracking furnaces, and PRDs. For each of these sources, we considered chronic cancer and noncancer risk metrics as well as acute risk. Regarding chronic noncancer risk, we note that no facility in the source category has a baseline TOSHI exceeding 1. Therefore, we did not quantitatively evaluate reductions in the chronic noncancer TOSHI for any emission source in the ample margin of safety analysis. Regarding our assessment of potential acute effects, we note that baseline emissions are unlikely to result in acute health effects because no facility is estimated to have an HQ >1 based on the REL, AEGL–1 or ERPG–1. Accordingly, the following paragraphs focus on cancer risk in the determination of whether the standards provide an ample margin of safety to protect public health.

For storage vessels, as discussed in section IV.D of this preamble, we identified three options that represent developments in practices, processes or control technologies as part of our technology review under CAA section 112(d)(6). We determined that only one of the options, which we call option 1, is cost effective. We evaluated those same control options to determine whether any of them are needed to provide an ample margin of safety as part of our CAA section 112(f)(2) risk analysis. Option 1 would affect only about 4 percent of the storage vessel population in the Ethylene Production source category (*i.e.,* 12 storage vessels at six ethylene production facilities would require additional controls resulting in approximately 34.6 tpy reduction in HAP). Given that only one storage vessel at the facility that is the cancer risk driver would be impacted and that all storage vessels at that facility only contribute to an estimated cancer risk of 5-in-1 million (for both actual emissions and allowable emissions), we estimate that option 1 would not change the cancer risk to the individual most exposed (rounded to one significant figure). Furthermore, given that all storage vessels account for only about 6 percent of the overall cancer incidence in the source category based on actual emissions (and 3 percent based on allowable emissions) and that option 1 will only impact a very small percentage of all storage vessels in the source category, we estimate option 1 would not change the cancer incidence and would have no discernible impact on the number of people with an estimated cancer risk greater than 1-in-1 million. For the same reasons mentioned above, we expect any reduction in cancer incidence and MIR that would result from options 2 or 3, and reduction in the number of people with a cancer risk greater than 1-in-1 million from implementation of options 2 or 3, would be minimal. Therefore, we are proposing that additional controls for storage vessels are not necessary to provide an ample margin of safety.

For heat exchange systems, as discussed in section IV.D of this preamble, we identified one control option that represents a development in practices, processes or control technologies as part of our technology review under CAA section 112(d)(6). We determined the control option is cost effective and would reduce HAP emissions by 25 tpy. We evaluated whether the control option would be needed to provide an ample margin of safety as part of our CAA section 112(f)(2) risk analysis. Given that heat exchange systems have a small contribution to cancer risk to the individual most exposed (*i.e.,* <1-in-1 million based on actual emissions and 6-in-1 million based on allowable emissions), we estimate that the control option would not change the cancer risk to the individual most exposed (rounded to one significant figure). In assessing the impacts of the control option on cancer incidence, given that heat exchange systems contribute only 3 percent to the overall cancer incidence based on actual emissions, and given that actual HAP emissions would be reduced by about 30 percent, we estimate that this reduction would not have a discernible impact on the cancer incidence or the number of people with an estimated cancer risk greater than 1-in-1 million. With respect to estimating the impacts of the control option on cancer incidence based on allowable emissions, heat exchange systems drive about half of the overall cancer

incidence, and we estimate that allowable emissions would be reduced by the control option evaluated, bringing the allowable cancer incidence down to a level approximately equal to that of the actual cancer incidence (within one significant figure). Thus, in considering all the health risks associated with emissions from heat exchange systems and the minimal risk impact of the control option based on actual emissions, we are proposing that additional controls for this emission source is not necessary to provide an ample margin of safety.

For ethylene process vents, we did not identify any additional control options. Therefore, we are proposing that additional controls for this emission source are not necessary to provide an ample margin of safety.

For transfer racks, we identified and evaluated one control option discussed in the technology review section of this preamble (section IV.D). We estimated that there would be no emission reductions associated with this change, and hence, no reduction in risk. Thus, we propose that this control option for transfer racks is not necessary to provide an ample margin of safety.

For equipment leaks and waste operations, we identified various control options discussed in the technology review section of this preamble (section IV.D). While we estimate that these control options would reduce emissions and that most options would reduce overall cancer risk, the control options evaluated for equipment leaks and waste operations are not cost effective. Thus, considering all of the health risks and other health information considered in the risk acceptability determination, and considering that no cost-effective options were identified for equipment leaks and waste operations, we propose that additional controls for these emissions sources are not necessary to provide an ample margin of safety.

For ethylene cracking furnaces, as previously explained, we requested under our CAA section 114 authority that ethylene production facilities stack test this emissions source. The results of these stack tests were then used to assess risk for the source category. We believe that there is already an inherent level of HAP emissions control realized for emissions generated from ethylene cracking furnaces given the operational characteristics needed for the steam cracking reaction to occur to produce ethylene and/or propylene. In particular, HAP emissions, which are generated because of fuel combustion activities in the ethylene cracking furnace firebox, are controlled as a result of the high temperatures (*i.e.,* in excess of 2,000 degrees Fahrenheit) needed in the furnace firebox in order to provide process heat to the steam cracking reaction. Thus, ethylene cracking furnaces effectively function like a combustion APCD as a general result of the operating parameters needed for the reaction kinetics driving the commercial production of ethylene and/or propylene. Also, the fuels predominately used in the ethylene cracking furnaces (*e.g.,* natural gas, refinery fuel gas, and/or tail gas from the production process (tail gas from an ethylene production process primarily contains hydrogen, methane, acetylene, and/or other olefins) contain little to no HAP. In addition, emissions from this source are generally released at an elevated height with high flow and high temperature, leading to better dispersion such that impacts on nearby communities are minimized. In assessing the baseline risk impacts from ethylene cracking furnaces, we note that while ethylene cracking furnaces are the largest source of emissions in the source category, these sources have a very small contribution to cancer risk to the individual most exposed (*i.e.,* <1-in-1 million) and contribute to about 20 percent of the overall cancer incidence based on actual emissions and to about 10 percent based on allowable emissions. Thus, in considering all of the health risks associated with emissions from ethylene cracking furnaces and the minimal risk impact of this emissions source, we are proposing that additional controls for this emission source are not necessary to provide an ample margin of safety.

For flares, which are control devices that control emissions from multiple emission source types within the Ethylene Production source category, under CAA sections 112(d)(2) and (3), we are proposing operating and monitoring requirements to ensure flares achieve the 98-percent HAP destruction efficiency identified as the MACT floor in the initial MACT rulemaking in 2002. Flares are critical safety devices that effectively reduce emissions during startup, shutdown, and process upsets or malfunctions, and in many cases, flares are the only means by which emissions from PRDs can be controlled. Thus, we find that properly functioning flares act to reduce HAP emissions, and thereby risk, from this source category. The changes to the flare requirements that we are proposing under CAA sections 112(d)(2) and (3) will result in sources meeting the level required by the original standards. We did not identify any control options that would further reduce the HAP emissions from flares. Therefore, we are proposing that additional controls for flares are not necessary to provide an ample margin of safety.

In summary, we propose that the existing EMACT standards provide an ample margin of safety to protect public health. We are also specifically requesting comment on whether there are additional control measures for emission sources subject to the EMACT standards that are necessary to provide an ample margin of safety to protect public health.

Further, we note that the decoking of ethylene cracking furnace radiant tubes and PRD releases are emission sources with respect to risk from ethylene production facilities. As described in section IV.A of this preamble, we are proposing requirements for the decoking of the ethylene cracking furnace radiant tube(s) and PRD releases. As part of our risk assessment for this source category, we also considered the risk reductions that would result from implementation of those standards. Because we anticipate some small level of unquantifiable emission reductions from decoking operations and PRD releases, these reductions would likely have no discernable impact on the cancer risk to the individual most exposed or cancer incidence. While our decisions on risk acceptability and ample margin of safety are supported even in the absence of these reductions, if we finalize the proposed requirements for decoking operations and PRD releases, these proposed requirements would further strengthen our conclusions that the standards provide an ample margin of safety to protect public health.

Lastly, regarding the facility-wide risks due to ethylene oxide (described above), which are due to emission sources that are not part of the Ethylene Production source category, we intend to evaluate those facility-wide estimated emissions and risks further and may address these in a separate future action, as appropriate. In particular, the EPA is addressing ethylene oxide based on the results of the latest NATA released in August 2018, which identified the chemical as a potential concern in several areas across the country (NATA is the Agency's nationwide air toxics screening tool, designed to help the EPA and state, local, and tribal air agencies identify areas, pollutants, or types of sources for further examination). The latest NATA estimates that ethylene oxide significantly contributes to potential elevated cancer risks in some census tracts across the U.S. (less than 1 percent of the total number of tracts).

These elevated risks are largely driven by an EPA risk value that was updated in late 2016. The EPA will work with industry and state, local, and tribal air agencies as the EPA takes a two-pronged approach to address ethylene oxide emissions: (1) Reviewing and, as appropriate, revising CAA regulations for facilities that emit ethylene oxide—starting with air toxics emissions standards for miscellaneous organic chemical manufacturing facilities and commercial sterilizers; and (2) conducting site-specific risk assessments and, as necessary, implementing emission control strategies for targeted high-risk facilities. The EPA will post updates on its work to address ethylene oxide on its website at: *https://www.epa.gov/ethylene-oxide.*

3. Adverse Environmental Effects

Based on the results of our environmental risk screening assessment, we are proposing that HAP emissions from the Ethylene Production source category do not present an adverse environmental effect. Thus, we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, safety, and other relevant factors, an adverse environmental effect.

D. What are the results and proposed decisions based on our technology review?

The ethylene production source category is composed of the following emission sources: Storage vessels, ethylene process vents, transfer racks, equipment leaks, waste streams, heat exchange systems, and ethylene cracking furnaces and associated decoking operations. To inform our technology reviews for these emissions sources, we reviewed the EPA's Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate (RACT/BACT/LAER) clearinghouse, subsequent regulatory development efforts, and facility responses to our CAA section 114 request. We then used information provided by facilities that responded to our CAA section 114 request to evaluate the impacts of requiring additional controls identified in the technology review for the Ethylene Production source category. For details about the information we requested under our CAA section 114 request from ethylene production facilities, see section II.C of this preamble. After reviewing information from the aforementioned sources, we have identified certain cost-effective developments in practices, processes, or control technologies to reduce emissions from some of the sources of HAP emissions regulated by the EMACT standards. Therefore, we are proposing revisions to the EMACT standards for storage vessels and heat exchange systems pursuant to CAA section 112(d)(6).

1. Storage Vessels

Storage vessels are used for storing liquid and gaseous feedstocks used in the ethylene production process, as well as to store liquid and gaseous products from the ethylene production process. Types of storage vessels used in the ethylene production process include atmospheric and high pressure storage vessels. Most storage vessels, which are used for storing process liquids and feedstocks, are designed for operation at atmospheric or near atmospheric pressures. High pressure vessels are used to store compressed gases and liquefied gases. Atmospheric storage vessels are typically cylindrical with a vertical orientation, and are constructed with either a fixed roof or a floating roof. Some, generally small, atmospheric storage vessels are oriented horizontally. High pressure vessels are either spherical or horizontal cylinders.

Under Table 7 to 40 CFR 63.1103(e)(3), the owner or operator of a storage vessel must reduce the organic HAP emissions by 98 weight-percent for storage vessels with a maximum true vapor pressure (MTVP) of total organic HAP of 76.6 kilopascals (kPa) or greater using a closed vent system routed to a flare, non-flare APCD, or fuel gas system or process meeting applicable requirements of 40 CFR part 63, subpart SS. Owners or operators of storage vessels with an MTVP of total organic HAP of 3.4 kPa or greater but less than 76.6 kPa and a capacity of 95 cubic meters (m^3) or greater can elect to comply with this same control requirement or install either an internal floating roof (IFR) with proper seals or an external floating roof (EFR) with proper seals, and install enhanced fitting controls meeting applicable requirements of 40 CFR part 63, subpart WW. Owners or operators of smaller storage vessels (*i.e.,* those with an MTVP of total organic HAP of 3.4 kPa or greater but less than 76.6 kPa and a capacity of 4 m^3 or greater but less than 95 m^3) must, at a minimum, fill the storage vessel through a submerged pipe.[30]

As part of our technology review for storage vessels, we identified the following emission reduction options: (1) Revising the capacity and MTVP thresholds of the EMACT standards to require storage vessels as small as 59 m^3 storing organic liquid with an MTVP of total organic HAP of 0.69 kPa or greater but less than 76.6 kPa to reduce organic HAP emissions by 98 weight-percent by routing emissions to closed vent system and APCD (or fuel gas system) meeting 40 CFR part 63, subpart SS, or controlling emissions through use of an EFR or IFR storage vessel according to the requirements of 40 CFR part 63, subpart WW. For storage vessels as small as 4 m^3 but less than 59 m^3 with an MTVP of total organic HAP of 0.69 kPa or greater but less than 76.6 kPa, they must either meet these same control requirements or fill the vessel through use of a submerged pipe; (2) in addition to requirements specified in option 1, requiring LDAR for fittings on fixed roof storage vessels (*e.g.,* access hatches) using EPA Method 21, and the use of liquid level overfill warning monitors and roof landing warning monitors on storage vessels with an IFR or EFR; and (3) in addition to requirements specified in option 1, the conversion of EFRs to IFRs through use of geodesic domes.

We identified option 1 as a development in practices, processes, and control technologies because it reflects requirements for similar storage vessels that are located at chemical manufacturing facilities subject to the new source Miscellaneous Organic Chemical Manufacturing NESHAP (MON). We believe that option 1 is technologically feasible for storage vessels used at ethylene production facilities. Option 2 is an improvement in practices because these monitoring methods have been required by other regulatory agencies since promulgation of the EMACT and are being used by some of the sources covered by the Ethylene Production source category. Finally, we consider option 3 to be a development in control technology because we found that some storage vessels with EFR have installed geodesic domes since promulgation of the 2002 EMACT standards. A VOC recovery credit for product not lost to the atmosphere from storage vessels was also considered for all three of the options presented.[31]

[30] These smaller storage vessels can also elect to comply with the more stringent control requirements of reducing organic HAP emissions by 98 weight-percent by routing emissions to closed vent system and APCD (or fuel gas system) meeting 40 CFR part 63, subpart SS or control emissions by using an EFR or IFR storage vessel that meets the requirements of 40 CFR part 63, subpart WW.

[31] A VOC recovery credit for storage vessels of $380 per ton (approximately $1.20/gallon) was used and is based on an August 2016 market price for naphtha. For more details, see the technical memorandum titled *Clean Air Act Section 112(d)(6)*

Under option 1, we considered the impacts of tightening the capacity and MTVP thresholds of the EMACT standards to reflect the capacity and MTVP threshold of the new source MON standards. This would require tightening both the threshold for MTVP of total organic HAP (*i.e.,* decreasing it from 3.4 kPa or greater to 0.69 kPa or greater) and the threshold for storage vessel capacity (*i.e.,* decreasing it from 95 m^3 to 38 m^3) specified in Table 7 at 40 CFR 63.1103(e)(3)(a)(1) and 40 CFR 63.1103(e)(3)(b)(1), respectively. However, upon further evaluation of our CAA section 114 Ethylene Production source category information specific to storage vessels, the smallest storage vessel that would be required to add additional controls is an infrequently used fixed roof storage vessel with a capacity of 58 m^3. Based on the response from the CAA section 114 request, this storage vessel reported using a form of submerged fill to minimize emissions but did not operate in 2013. We determined that it would not be cost effective for this particular storage vessel to add additional controls due to its infrequent use. Thus, in lieu of evaluating impacts for option 1 at the new source MON capacity threshold of 38 m^3, a threshold of 59 m^3 was chosen so that this storage vessel could continue to use submerged fill as a method of control. After reviewing the CAA section 114 request data, we identified only seven storage vessels that would be impacted by option 1. All of these storage vessels have capacities greater than or equal to 59 m^3 and store material with an MTVP of total organic HAP of 0.69 kPa or greater but less than 76.6 kPa. Therefore, these storage vessels would need to either install an IFR or EFR with proper seals and install enhanced fitting controls as required in 40 CFR part 63, subpart WW. In the alternative, they would need to reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of APCDs that meet the requirements of 40 CFR 63.982(a)(1).

For option 2, we evaluated the impacts of requiring leak detection monitoring of fittings (*e.g.,* access hatches) on fixed roof storage vessels using EPA Method 21 (annually) and to repair a leak if it is detected. A leak would be defined as an instrument reading greater than 500 ppmv using EPA Method 21. We also evaluated the impacts of enhanced monitoring of the liquid level in the storage vessel (*i.e.,* requiring liquid level overfill warning monitors and roof landing warning monitors on EFRs and IFRs). Levels below a low set point would provide warning of a potential floating roof landing, and levels above a high set point would provide warning of potential overfill. Based on the CAA section 114 request data, we identified 78 storage vessels that would be subject to option 2, of which 14 have fixed roofs (although, in this analysis, seven of these are considered to have been converted to IFR due to option 1, and six of the other seven fixed roof storage vessels route emissions to a process or to a closed vent system and APCD) and the remaining 64 have either an IFR or EFR. In addition, two of the storage vessels with an IFR and one of the storage vessels with an EFR route emissions to a closed vent system and APCD. In order to determine costs for option 2, we added costs for enhanced monitoring requirements to costs determined for option 1.

Under option 3, we considered the impacts of converting storage vessels with EFRs to IFRs through the use of geodesic domes. We assumed for this option that only those storage vessels with EFRs with a capacity greater than or equal to 59 m^3 and that contain liquid with an MTVP of total organic HAP of 0.69 kPa or greater but less than 76.6 kPa would be required to retrofit their storage vessel with a geodesic dome. After reviewing the CAA section 114 request data, we identified 32 storage vessels with EFRs that would be subject to option 3. Therefore, we estimated costs and emissions reductions for 32 EFRs. The costs were added to the costs determined for option 1 to determine the cost of option 3.

Table 5 of this preamble presents the nationwide impacts for the three options considered. See the technical memorandum titled *Clean Air Act Section 112(d)(6) Technology Review for Storage Vessels Located in the Ethylene Production Source Category,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357 for details on the assumptions and methodologies used in this analysis, including the calculations we used to account for additional ethylene production facilities that did not receive a CAA section 114 request, additional facilities that would be subject to the proposed control options and storage vessels from new ethylene production facilities that are either under construction or that started operation in 2017, and major expansions of currently operating facilities. The calculation of the incremental cost effectiveness allows us to assess the impacts of the incremental change between option 1 and the other options.

We determined that option 1 is cost effective and we are proposing to revise the EMACT standards to reflect the more stringent storage vessel capacity and MTVP thresholds of option 1 pursuant to CAA section 112(d)(6). Considering the emissions reductions and high incremental cost effectiveness, we determined that storage vessel options 2 and 3 are not cost effective and are not proposing to revise the EMACT standards to reflect the requirements of these options pursuant to CAA section 112(d)(6).

TABLE 5—NATIONWIDE EMISSIONS REDUCTION AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR STORAGE VESSELS AT ETHYLENE PRODUCTION UNITS

Control option	Total capital investment ($)	Total annualized costs w/o VOC credit ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness w/o credits ($/ton)	Total annualized costs with VOC credit ($/yr)	HAP cost effectiveness with credits ($/ton)	HAP incremental cost effectiveness with credits ($/ton)
1	820,000	152,000	309	34.6	4,400	34,000	1,000	.....
2	1,453,000	373,800	328	40.7	9,190	248,700	6,120	35,400
3	19,909,000	2,723,000	383	58.3	46,700	2,547,000	44,100	107,100

Technology Review for Storage Vessels Located in the Ethylene Production Source Category, which is available in Docket ID No. EPA–HQ–OAR–2017–0357.

2. Ethylene Process Vents

Ethylene production units generate gaseous streams containing HAP. These streams may be routed to other unit operations for additional processing (*e.g.,* a gas stream from a reactor that is routed to a distillation unit for separation), may be sent to one or more recovery devices, a process vent header collection system (*e.g.,* blowdown system) and APCD, and/or may be vented to the atmosphere. Ethylene process vents are gas streams with a flow rate greater than 0.005 standard m^3 per minute containing greater than 20 ppmv HAP that are continuously discharged during operation of an ethylene production unit.

Under Table 7 to 40 CFR 63.1103(e)(3), the owner or operator must reduce organic HAP emissions from ethylene process vents by 98 weight-percent or reduce organic HAP or total organic compounds to a concentration of 20 ppmv, whichever is less stringent, by venting emissions through a closed vent system to any combination of APCDs (*e.g.,* a flare, thermal oxidizer, boiler, process heater, absorber, condenser, or carbon adsorber) that meet applicable requirements of 40 CFR part 63, subpart SS.

In the technology review for process vents, we did not identify any practices, processes, or control technologies beyond those already required by the EMACT standards for process vents. Therefore, we are proposing that it is not necessary to revise EMACT standards for ethylene process vents pursuant to CAA section 112(d)(6). For further details on the assumptions and methodologies used in this analysis, see the technical memorandum titled *Clean Air Act Section 112(d)(6) Technology Review for Ethylene Process Vents Located in the Ethylene Production Source Category,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357.

3. Transfer Racks

Transfer racks at ethylene production units are equipment that are used to transfer materials (primarily liquid products) from the facility into either tank trucks or railcars. Emissions from transfer racks may be released when material loaded into tank trucks or railcars displaces vapors inside these transport vehicles.

The EMACT standards at Table 7 to 40 CFR 63.1103(e)(3) allow multiple options to control emissions from applicable transfer racks. These options include the use of APCDs or collecting emissions for use in the production process, a fuel gas system, or a vapor balance system. To be subject to these requirements, the owner or operator must load materials that have a true vapor pressure of total organic HAP of 3.4 kPa or greater and must load 76 m^3 of HAP-containing material or greater per day (averaged over any consecutive 30-day period).

In our technology review for transfer racks, we identified one emission reduction option which would require changing the transfer rack applicability threshold (for volumetric throughput of liquid loaded) from 76 m^3 per day to 1.8 m^3 per day to reflect the more stringent applicability threshold of other chemical sector standards that regulate emissions from transfer rack operations (*i.e.,* 40 CFR part 63, subparts F and G and 40 CFR part 63, subpart FFFF).

Upon review of the CAA section 114 request data, we identified only one transfer rack that would be subject to this revision. This transfer rack loads red oil material (containing benzene, ethyl benzene, toluene, and xylene) with a true vapor pressure of total organic HAP of 3.4 kPa or greater at a maximum 30-day average throughput of about 48 m^3 per day into tank trucks. We also found that emissions from this transfer rack are routed to a flare, and we, therefore, expect that the owner or operator of this transfer rack is already complying with the requirement to reduce emissions of organic HAP by 98 weight-percent as specified in Table 7 to 40 CFR 63.1103(e)(3). As such, we determined that none of the 21 facilities that responded to the CAA section 114 request would be impacted by changing the transfer rack applicability threshold (for volumetric throughput of liquid loaded) from 76 m^3 per day to 1.8 m^3 per day. We also estimated that there would be no emission reductions associated with this change. While this change would not have direct implementation costs, it would still impose a certain burden on facilities because they would need to read the rule, determine applicability, and meet additional recordkeeping and reporting requirements. Because there are no emissions reductions, and there would be a certain burden to industry, we do not consider this to be a cost-effective option. Therefore, we are proposing that it is not necessary to revise the EMACT standards for transfer racks pursuant to CAA section 112(d)(6). For further details on the assumptions and methodologies used in this analysis, see the technical memorandum titled *Clean Air Act Section 112(d)(6) Technology Review for Transfer Racks Located in the Ethylene Production Source Category,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357.

4. Equipment Leaks

Emissions from equipment leaks occur in the form of gases or liquids that escape to the atmosphere through many types of connection points (*e.g.,* threaded fittings) or through the moving parts of valves, pumps, compressors, PRDs, and certain types of process equipment.

The requirements of 40 CFR part 63, subpart UU (National Emission Standards for Equipment Leaks—Control Level 2 Standards), represent the MACT floor for equipment leaks at both new and existing ethylene production units. 40 CFR part 63, subpart UU, specifies LDAR requirements for applicable equipment. The applicable equipment includes: pumps, compressors, agitators, PRDs, sampling collection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that contain or contact material that is 5 percent by weight or more of organic HAP, operate 300 hr/yr or more, and are not in vacuum service. The LDAR requirements vary by equipment (component) type but include EPA Method 21 monitoring at certain frequencies (*e.g.,* monthly, quarterly, every two quarters, annually) and leak definitions (*e.g.,* 500 ppm, 1,000 ppm, 10,000 ppm) if the component is in either gas and vapor service or in light liquid service. The LDAR requirements for components in heavy liquid service include sensory monitoring, and the use of EPA Method 21 monitoring if a leak is identified.

Our technology review for equipment leaks identified two developments in LDAR practices and processes: (1) Lowering the leak definition for valves in gas and vapor service or in light liquid service from 500 ppm to 100 ppm and (2) lowering the leak definition for pumps in light liquid service from 1,000 ppm to 500 ppm. The leak definition for option 1 was identified in the petroleum refinery sector technology review and, based on a recent air permit application, a new ethylene production facility will comply with this leak definition. The leak definition for option 2 was reported by seven ethylene production facilities in the CAA section 114 responses, and this leak definition is also applicable to certain facilities in Texas. We, therefore, considered both options as developments in technology given that they are either required by other regulatory agencies or are in use by some sources covered by the Ethylene Production source category.

Table 6 of this preamble presents the nationwide impacts for the two options considered. A VOC recovery credit for

product not lost to the atmosphere from equipment leaks was also considered for both options presented.[32] See the technical memorandum titled *Clean Air Act Section 112(d)(6) Technology Review for Equipment Leaks in the Ethylene Production Source Category,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357 for details on the assumptions and methodologies used in this analysis, including the calculations we used to account for additional ethylene production facilities that did not receive a CAA section 114 request, new ethylene production facilities that are either under construction or that started operation in 2017, and major expansions of currently operating facilities.

Based on the costs and emission reductions for each of the options, we consider none of these identified options as cost effective for reducing emissions from equipment leaks at ethylene production units. We are proposing that it is not necessary to revise the EMACT standards for equipment leaks pursuant to CAA section 112(d)(6).

TABLE 6—NATIONWIDE EMISSIONS REDUCTION AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR EQUIPMENT LEAKS AT ETHYLENE PRODUCTION UNITS

Control option	Total capital investment ($)	Total annualized costs w/o credits ($/yr)	Total annualized costs with credits ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	VOC cost effectiveness w/o credits ($/ton)	VOC cost effectiveness with credits ($/ton)	HAP cost effectiveness w/o credits ($/ton)	HAP cost effectiveness with credits ($/ton)
1	1,628,500	713,600	575,500	178	19.6	4,000	3,200	36,500	29,400
2	143,300	67,800	65,000	3.5	0.38	19,500	18,700	177,200	170,200

5. Waste Streams

Examples of waste streams at ethylene production units include process wastewater, product tank drawdown, sludge and slop oil removed from waste management units, and landfill leachate. Owners and operators of waste streams use wastewater collection systems (including drains, manholes, trenches, lift stations, sumps, and/or junction boxes) to combine waste streams prior to treatment. Wastewater treatment systems are divided into three categories: Primary treatment operations, which include oil-water separators and equalization basins; secondary treatment systems, such as biological treatment units or steam strippers; and tertiary treatment systems, which further treat or filter wastewater prior to discharge to a receiving body of water or reuse in a process. Emissions from these systems occur by volatilization of organic compounds at any water/air interface.

The EMACT standards apply to waste streams that contain benzene and continuous butadiene waste streams and are dependent on a facility's total annual benzene (TAB) quantity. For a TAB quantity of 10 megagrams per year (Mg/yr) or greater, owners or operators of all waste streams that have flow rates of at least 0.02 liters per minute (lpm), wastewater quantities of at least 10 Mg/yr, and benzene concentrations of at least 10 parts per million by weight (ppmw), must either manage and treat these waste streams according to any of the options in the Benzene Waste Operations NESHAP (BWON), or transfer the waste off-site. For a TAB quantity of less than 10 Mg/yr, owners or operators of waste streams that contain benzene and are either spent caustic waste streams or dilution steam blowdown waste streams that have flow rates of at least 0.02 lpm and wastewater quantities of at least 10 Mg/yr, must manage and treat the waste streams according to the BWON, but are not allowed to use any of the 1, 2, or 6 Mg/yr compliance options.[33] For any facility TAB quantity, owners and operators of all waste streams that have flow rates of at least 0.02 lpm and 1–3-butadiene concentrations of at least 10 ppmw, must also manage and treat these waste streams according to the BWON (but the treatment and control efficiencies required for benzene in BWON for these waste streams are instead required for 1–3 butadiene, and owners and operators are also not allowed to use any of the 1, 2, or 6 Mg/yr compliance options).

The emission reduction options we identified in the waste stream technology review are: (1) Specific performance parameters for an enhanced biological unit (EBU) beyond those required in the BWON; and (2) treatment of wastewater streams with a VOC content of 750 ppmv or higher by steam stripping prior to any other treatment process for facilities with high organic loading rates (*i.e.,* facilities with total annualized benzene quantity of 10 Mg/yr or more). Option 1 is intended to improve the performance of wastewater treatment systems that use an EBU, and thereby achieve additional emission reductions. The BWON, as it applies to sources covered under EMACT, has limited operational requirements for an EBU. Available data suggest that these systems are generally effective for degrading benzene and other organic HAP; however, without specific performance or operational requirements, the effectiveness of the EBU to reduce emissions can be highly variable. Under option 1, more stringent operating requirements are considered for the EBU at ethylene production units. Option 2 considers segregated treatment of wastewater streams with a volatile organic content of greater than 750 ppmw, or high-strength wastewater streams, directly in a steam stripper (*i.e.,* not allowing these streams to be mixed and treated in the EBU).

Table 7 of this preamble presents the nationwide impacts for the two options considered. See the technical memorandum titled *Clean Air Act Section 112(d)(6) Technology Review for Waste Streams Located in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357 for details on the assumptions and methodologies used in this analysis, including the calculations we used to account for additional ethylene production facilities that did not receive a CAA section 114 request, additional

[32] A VOC recovery credit of $776 per ton was used and is based on a November 2016 market price for ethylene.

[33] The BWON requires removal of benzene from the waste stream to 10 ppmw or by 99 weight-percent. For each closed vent system and APCD used to comply with the BWON, a benzene reduction of 98 weight-percent must be achieved. However, the BWON also includes three compliance options that allow a facility to choose which streams to manage and treat if certain conditions are met: either the TAB quantity for the untreated waste streams cannot exceed 2 Mg/yr, the facility TAB quantity for treated and untreated process wastewater streams is less than 1 Mg/yr, or the facility TAB quantity for all waste streams with at least 10-percent water content is less than 6 Mg/yr. These options are referred to as the 1, 2, and 6 Mg/yr compliance options. The waste or wastewater streams that can be exempted from management and treatment vary with the different compliance options. Details of these compliance options are specified in 40 CFR 61.342(c) through (e) of the BWON.

impacted facilities from new ethylene production facilities under construction or that started operation in 2017, and major expansions of currently operating facilities. The costs and emissions impacts presented in Table 7 of this preamble are not incremental between options, but rather incremental from the baseline of compliance with the BWON.

Based on the costs and emission reductions for each of the options, we consider none of the options identified to be cost effective for reducing emissions from waste streams at ethylene production units. We are proposing that it is not necessary to revise the EMACT standards for waste streams pursuant to CAA section 112(d)(6).

TABLE 7—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR WASTE STREAMS AT ETHYLENE PRODUCTION UNITS

Control option	Total capital investment ($)	Total annualized costs ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	VOC cost effectiveness ($/ton)	HAP cost effectiveness ($/ton)
1	224,050,000	24,727,000	1,986	529	12,450	46,700
2	34,987,000	11,579,000	2,253	600	5,140	19,300

6. Heat Exchange Systems

Heat exchangers are devices or collections of devices used to transfer heat from process fluids to another process fluid (typically water) without intentional direct contact of the process fluid with the cooling fluid (*i.e.,* non-contact heat exchanger). The term ''heat exchange system'' is used in this preamble to refer collectively to water-cooled heat exchangers and the associated cooling water handling system. There are two types of heat exchange systems: Closed-loop recirculation systems and once-through systems. Closed-loop recirculation systems use a cooling tower to cool the heated water leaving the heat exchanger and then return the newly cooled water to the heat exchanger for reuse. Once-through systems typically use river water as the influent cooling fluid to the heat exchangers, and the heated water leaving the heat exchangers is then discharged from the facility. At times, the internal tubing material of a heat exchanger can corrode or crack, allowing some process fluids to mix or become entrained with the cooling water. Pollutants in the process fluids may subsequently be released from the cooling water into the atmosphere when the water is exposed to air (*e.g.,* in a cooling tower for closed-loop systems or trenches/ponds in a once-through system).

The EMACT standards include an LDAR program for owners or operators of certain heat exchange systems. The LDAR program specifies that heat exchange systems be monitored for leaks of process fluids into cooling water and that owners or operators take actions to repair detected leaks within 45 days. Owners or operators may delay the repair of leaks if they meet the applicable criteria in 40 CFR 63.1088. The current EMACT standards for heat exchange systems allow the use of any method listed in 40 CFR part 136 for sampling cooling water for leaks for the HAP listed in Table 1 to 40 CFR part 63, subpart XX. Other representative substances such as total organic carbon or VOC that can indicate the presence of a leak can also be used. According to the EMACT standards, a leak in the heat exchange system is detected if the exit mean concentration of HAP (or other representative substance) in the cooling water is at least 10 percent greater than (using a one-sided statistical procedure at the 0.05 level of significance) the entrance mean concentration of HAP (or other representative substance) in the cooling water, and the leak is at least 3.06 kg/hr. Individual heat exchangers are considered leaking, according to the EMACT standards, if the cooling water in the heat exchanger has an exit mean concentration (of HAP or of another representative substance) that is at least 1 ppmw or 10 percent greater than the entrance mean concentration, whichever is greater. Furthermore, the EMACT standards allow owners or operators to monitor for leaks using a surrogate indicator of leaks (*e.g.,* ion specific electrode monitoring, pH, conductivity), provided that certain criteria in 40 CFR 63.1086(c) are met. The EMACT standards for monitoring heat exchange systems according to 40 CFR 63.1086(a) or for monitoring individual heat exchangers according to 40 CFR 63.1086(b) initially require 6 months of monthly monitoring for heat exchange systems at existing sources. If no leaks are detected, the frequency decreases to quarterly monitoring for heat exchange systems at existing sources, until a leak is detected. Once a leak is detected, the frequency changes to monthly monitoring until the leak is repaired and for the following 6 months, at which point the heat exchange system's monitoring frequency can be reduced back to quarterly. The EMACT standards initially require 6 months of weekly monitoring for heat exchange systems at new sources. If no leaks are detected, the frequency decreases to monthly monitoring for heat exchange systems at new sources, until a leak is detected. Once a leak is detected, the frequency changes to weekly monitoring until the leak is repaired and for the following 6 months, at which point the heat exchange system's monitoring frequency can revert to monthly monitoring. Where surrogate monitoring is used for heat exchange systems according to 40 CFR 63.1086(c), heat exchange systems at existing sources must follow the same monitoring frequency as previously discussed in this section; however, heat exchange systems at new sources must always perform weekly monitoring.

Our technology review identified one development in LDAR practices and processes for heat exchange systems. Specifically, the use of the Modified El Paso Method [34] to monitor for leaks. The Modified El Paso Method, which is included in the Petroleum Refinery Sector MACT rule (*i.e.,* 40 CFR part 63, subpart CC), was identified in our review of the RACT/BACT/LAER clearinghouse database. It is also required by the TCEQ for facilities (including eight ethylene production facilities) complying with their HRVOC rule (*i.e.,* 30 TAC Chapter 115, Subchapter H, Division 3). For heat exchange system LDAR programs, the compliance monitoring option, leak

[34] The Modified El Paso Method uses a dynamic or flow-through system for air stripping a sample of the water and analyzing the resultant off-gases for VOC using a common flame ionization detector (FID) analyzer. The method is described in detail in Appendix P of the TCEQ's Sampling Procedures Manual: *The Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound (VOC) Emissions from Water Sources.* Appendix P is included in Docket ID No. EPA–HQ–OAR–2017–0357.

definition, and frequency of monitoring for leaks are all important considerations for being able to identify when there is a leak and when to take corrective actions to repair the leak. We, therefore, evaluated the Modified El Paso Method for use at ethylene production facilities, including an assessment of appropriate leak definitions and monitoring frequencies.

In order to identify an appropriate Modified El Paso Method leak definition for ethylene production facilities, we identified two rules, TCEQ's HRVOC rule and the Petroleum Refinery Sector MACT rule, that incorporate this monitoring method and have leak definitions corresponding to use of this methodology. We also reviewed data submitted from our CAA section 114 request, where ethylene production facilities performed sampling using the Modified El Paso Method. The Petroleum Refinery MACT rule and TCEQ's HRVOC rule have leak definitions of total strippable hydrocarbon concentration (as methane) in the stripping gas ranging from 3.1 ppmv to 6.2 ppmv. In addition, sources subject to the Petroleum Refinery Sector MACT rule may not delay the repair of leaks for more than 30 days where, during subsequent monitoring, a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv or higher is found. In reviewing the CAA section 114 data, a clear delineation in the hydrocarbon mass emissions data was noticed at 6.1 ppmv of total strippable hydrocarbon (as methane) in the stripping gas. In addition, given that both the leak concentration and water recirculation rate of the heat exchange system are key variables affecting the hydrocarbon mass emissions from heat exchange systems, the overall CAA section 114 data for all heat exchange systems sampled generally showed lower hydrocarbon mass emissions for leaks at or below 6.1 ppmv of total strippable hydrocarbon (as methane) in the stripping gas compared to leaks found above 6.1 ppmv of total strippable hydrocarbon (as methane) in the stripping gas. Taking into account the range of actionable leak definitions in use by other rules that require use of the Modified El Paso Method currently (*i.e.,* 3.1 ppmv–6.2 ppmv of total strippable hydrocarbon (as methane) in the stripping gas), and the magnitude of emissions for leaks of total strippable hydrocarbon (as methane) in the stripping gas above 6.1 ppmv compared to other leaks identified in the CAA section 114 sampling data, we chose to evaluate a leak definition at the upper end of identified actionable leak definitions in our analysis. Thus, the Modified El Paso Method leak definition we evaluated was 6.2 ppmv of total strippable hydrocarbon concentration (as methane) in the stripping gas for both new and existing ethylene heat exchange systems, along with not allowing delay of repair of leaks for more than 30 days where, during subsequent monitoring, a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv or higher is found.

We determined an appropriate leak monitoring frequency by reviewing the current monitoring frequencies that ethylene production facilities are subject to, along with frequencies for the Petroleum Refinery Sector MACT rule and the TCEQ HRVOC rule. As a first step, we reviewed whether it was still reasonable to specify more frequent monitoring for a 6-month period after repair of leaks. Our review of the CAA section 114 data showed that no leaks were identified during the 6-month period for any of the ethylene production facilities that reported heat exchange system compliance data that had leaks. Thus, we find that re-monitoring once after repair of a leak, at the monitoring location where the leak was identified, is sufficient from a continuous compliance perspective to demonstrate a successful repair. The monitoring frequencies currently in 40 CFR part 63, subpart XX, for where no leaks are found were, thus, considered the base frequencies: *i.e.,* quarterly monitoring for existing heat exchange systems and monthly monitoring for new heat exchange systems. Once we determined the base frequencies, we next considered more stringent monitoring frequencies. Both the Petroleum Refinery Sector MACT rule, which includes monthly (or quarterly) monitoring for existing sources, and the TCEQ HRVOC rule, which includes continuous monitoring provisions for existing and new sources, have more stringent monitoring frequencies. However, analysis done for the Petroleum Refinery Sector MACT rule showed that the incremental HAP cost-effectiveness to change from quarterly to monthly monitoring and monthly to continuous monitoring was found to be $40,000/ton and $500,000/ton, respectively. Given that the assumed leak distributions used in the analysis to estimate emissions from heat exchange systems at ethylene production facilities are considerably smaller than those used in the Petroleum Refinery Sector MACT analysis (by over an order of magnitude), higher incremental HAP cost effectiveness are expected for these options at ethylene production facilities compared to petroleum refineries, making them not cost-effective options. Thus, we chose to evaluate quarterly monitoring for heat exchange systems at existing sources and monthly monitoring for heat exchange systems at new sources (*i.e.,* the base monitoring frequency currently in the rule after the initial 6-months of more frequent monitoring is performed).

Based on this technology review, we identified the following control option as a development in practice for heat exchange systems: Quarterly monitoring for heat exchange systems at existing sources (after an initial 6 months of monthly monitoring) and monthly monitoring for heat exchange systems at new sources (after an initial 6 months of weekly monitoring) with the Modified El Paso Method, and using a leak definition of 6.2 ppmv of total strippable hydrocarbon concentration (as methane) in the stripping gas.

We then reviewed the CAA section 114 request data to determine the impacts of this control option. We identified 67 heat exchange systems at 31 ethylene production facilities that would be impacted by requiring the use of the Modified El Paso Method. As part of our analysis, we assumed owners or operators conducting monthly monitoring or quarterly monitoring for three or more of these heat exchange systems would elect to purchase a stripping column and FID analyzer and perform in-house Modified El Paso Method monitoring (because the total annualized costs for in-house Modified El Paso Method monitoring is less than the costs for contracted services for monthly monitoring and because of logistics with facilities having three or more heat exchange systems performing quarterly monitoring). In addition, because owners and operators of 20 of these heat exchange systems (at eight facilities) are required by TCEQ's HRVOC rule to conduct continuous Modified El Paso Method monitoring, we assumed these owners or operators would only incur an annualized repair cost (and no capital costs). Further, we assumed repairs could be performed by plugging a specific heat exchanger tube and, if a heat exchanger that is leaking to the extent that it needs to be replaced, then it is effectively at the end of its useful life. Therefore, we determined that the cost of replacing a heat exchanger is an operational cost that would be incurred by the facility as a result of routine maintenance and equipment replacement and it is not attributable to the control option.

Table 8 of this preamble presents the nationwide impacts for requiring owners or operators to use the Modified El Paso Method and repair leaks of total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv or greater. A VOC recovery credit for product not lost to the atmosphere from leaks in heat exchange systems was also considered for the option presented.[35] See the technical memorandum titled *Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems in the Ethylene Production Source Category,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357 for details on the assumptions and methodologies used in this analysis, including the calculations we used to account for additional ethylene production facilities that did not receive a CAA section 114 request, new ethylene production facilities that are either under construction or that started operation in 2017, and major expansions of currently operating facilities.

Based on the costs and emission reductions for the identified control option, we are proposing to revise the EMACT standards for heat exchange systems pursuant to CAA section 112(d)(6). We are proposing at 40 CFR 63.1086(e)(4) to retain quarterly monitoring for heat exchange systems at existing sources (after an initial 6-months of monthly monitoring) and monthly monitoring for heat exchange systems at new sources (after an initial 6-months of weekly monitoring) using the Modified El Paso Method, and a leak definition of 6.2 ppmv of total strippable hydrocarbon concentration (as methane) in the stripping gas. We are also proposing at 40 CFR 63.1088(d) a delay of repair action level of total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv, that if exceeded during leak monitoring, would require immediate repair (*i.e.,* the leak found cannot be put on delay of repair and would be required to be repaired within 30 days of the monitoring event). This would apply to both monitoring heat exchange systems and individual heat exchangers by replacing the use of any 40 CFR part 136 water sampling method with the Modified El Paso Method and removing the option that allows for use of a surrogate indicator of leaks. We are also proposing re-monitoring at the monitoring location where a leak is identified to ensure that any leaks found are fixed.

TABLE 8—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACT FOR REQUIRING THE MODIFIED EL PASO METHOD FOR HEAT EXCHANGE SYSTEMS AT ETHYLENE PRODUCTION UNITS

Control option	Total capital investment ($)	Total annualized costs w/o VOC credit ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness w/o credits ($/ton)	Total annualized costs with VOC Credit ($/yr)	HAP cost effectiveness with credits ($/ton)
1	136,000	26,400	227	25	1,060	(149,600)	(5,980)

E. What other actions are we proposing?

In addition to the proposed actions described above, we are proposing additional revisions to the NESHAP. We are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), which vacated portions of two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also are proposing revisions to require electronic reporting of performance test results and reports, performance evaluation reports, and NOCS reports, to remove certain exemptions for once-through heat exchange systems, to include overlap provisions for equipment at ethylene production facilities subject to both the EMACT standards and synthetic organic chemicals manufacturing equipment leak standards at 40 CFR part 60, subpart VVa, and to clarify text or correct typographical errors, grammatical errors, and cross-reference errors. Our analyses and proposed changes related to these issues are discussed below.

1. SSM

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

a. Proposed Elimination of the SSM Exemption

We are proposing the elimination of the SSM exemption in this rule which appears at 40 CFR 63.1108(a). Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to 40 CFR part 63, subpart YY as is explained in more detail below. For example, we are proposing to eliminate the requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

We are proposing that startups and shutdowns are normal operation for the Ethylene Production source category. We, therefore, believe that emissions from startup and shutdown activities should be included when determining if all the standards are being attained. As currently proposed in 40 CFR 63.1108(a)(4)(i), compliance with the emission limitations (including operating limits) in this subpart is required ''at all times,'' except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. Based on the information for APCD operation

[35] A VOC recovery credit of $776 per ton was used and is based on a November 2016 market price for ethylene.

received in the CAA section 114 survey issued to the Ethylene Production source category, we conclude that ethylene production facilities will generally be able to comply with the standards during periods of startup and shutdown for the reasons discussed below. Where appropriate, we have also proposed in this preamble alternative standards for certain emission points during periods of SSM to ensure a standard applies ''at all times.'' Emission reductions for process vents and transfer rack operations are typically achieved by routing vapors to an APCD such as a flare, thermal oxidizer, or carbon adsorber. It is common practice in this source category to start an APCD prior to startup of the emissions source it is controlling, so the APCD would be operating before emissions are routed to it. We expect APCDs would be operating during startup and shutdown events in a manner consistent with normal operating periods, and that these APCDs will be operated to maintain and meet the monitoring parameter operating limits set during the performance test. We do not expect startup and shutdown events to affect emissions from storage vessels, equipment leaks, waste sources (*e.g.,* surface impoundments, oil-water separators, organic-water separators), or heat exchange systems. Working and breathing losses from storage vessels are the same regardless of whether the process is operating under normal operating conditions or if it is in a startup or shutdown event. Leak detection programs associated with equipment leaks and heat exchange systems are in place to detect leaks, and, therefore, it is inconsequential whether the process is operating under normal operating conditions or is in startup or shutdown. Waste emissions are also not expected to be significantly affected by startup or shutdown events.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2) (Definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (D.C. Cir. 2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source.

As the Court recognized in *U.S. Sugar Corp,* accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *Id.* at 608 (''the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.'') As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. *See, e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study' ''). See also *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an APCD with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the APCD was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunction that result in releases from PRDs or emergency flaring events because we had information to determine that such work practices reflected the level of control that applies to the best performing sources. 80 FR 75178, 75211–14 (December 1, 2015). The EPA will consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. As discussed in sections IV.A.1 and IV.A.2.a of this preamble, we are proposing work practice standards that will apply to PRD releases and flares, respectively, due to their similarities to PRD releases and flares used in the Petroleum Refinery Sector source category. As also previously explained, many parent companies that own and operate facilities subject to the EMACT standards also own and operate

petroleum refineries that are subject to the Petroleum Refinery Sector Rule.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions.

Finally, in keeping with the elimination of the SSM exemption, we are proposing in the EMACT standards at 40 CFR 63.1103(e)(11) to remove the following SSM exemption provisions from the subparts referenced by the EMACT standards.

- The second sentence of 40 CFR 63.181(d)(5)(i) of subpart H.
- 40 CFR 63.983(a)(5) of subpart SS.
- The phrase ''except during periods of start-up, shutdown and malfunction as specified in the referencing subpart'' in 40 CFR 63.984(a) of subpart SS.
- The phrase ''except during periods of start-up, shutdown and malfunction as specified in the referencing subpart'' in 40 CFR 63.985(a) of subpart SS.
- The phrase ''other than start-ups, shutdowns, or malfunctions'' in 40 CFR 63.994(c)(1)(ii)(D) of subpart SS.
- 40 CFR 63.996(c)(2)(ii) of subpart SS.
- 40 CFR 63.997(e)(1)(i) of subpart SS.
- The term ''breakdowns'' from 40 CFR 63.998(b)(2)(i) of subpart SS.
- 40 CFR 63.998(b)(2)(iii) of subpart SS.
- The phrase ''other than periods of startups, shutdowns, and malfunctions'' from 40 CFR 63.998(b)(5)(i)(A) of subpart SS.
- The phrase ''other than periods of startups, shutdowns, and malfunctions'' from 40 CFR 63.998(b)(5)(i)(C) of subpart SS.
- The phrase ''except as provided in paragraphs (b)(6)(i)(A) and (B) of this section'' from 40 CFR 63.998(b)(6)(i) of subpart SS.
- The second sentence of 40 CFR 63.998(b)(6)(ii) of subpart SS.
- 40 CFR 63.998(c)(1)(ii)(D), (E), (F), and (G) of subpart SS.
- 40 CFR 63.998(d)(1)(ii) of subpart SS.
- 40 CFR 63.998(d)(3)(i) and (ii) of subpart SS.
- The phrase ''(except periods of startup, shutdown, or malfunction)'' from 40 CFR 63.1026(e)(1)(ii)(A) of subpart UU.
- The phrase ''(except periods of startup, shutdown, or malfunction)'' from 40 CFR 63.1028(e)(1)(i)(A) of subpart UU.
- The phrase ''(except periods of startup, shutdown, or malfunction)'' from 40 CFR 63.1031(b)(1) of subpart UU.

b. General Duty

We are proposing to remove the requirements at 40 CFR 63.1108(a)(5) and 40 CFR 63.1111(a)(2) and are proposing instead to add general duty regulatory text at 40 CFR 63.1108(a)(4)(ii) that reflects the general duty to minimize emissions ''at all times,'' while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.1108(a)(5) and 40 CFR 63.1111(a)(2) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.1108(a)(4)(ii) does not include that language from 40 CFR 63.1108(a)(5) and 40 CFR 63.1111(a)(2).

c. SSM Plan

We are proposing to remove certain language at 40 CFR 63.1103(e)(3) and 40 CFR 63.1111(a) requiring owners or operators to develop an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

d. Compliance With Standards

We are proposing to remove the current language of 40 CFR 63.1108(a)(1) and (2) which exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standard apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

e. Performance Testing

We are proposing to add a performance testing requirement at 40 CFR 63.1108(b)(4)(ii)(B) intended to replace the performance testing requirements of 40 CFR 63.997(e)(1) (as referenced in 40 CFR 63.1108(b)(4)(ii)(A)). The proposal does not include the language that precludes startup and shutdown periods from being considered ''representative'' for purposes of performance testing, and instead allows performance testing during periods of startup or shutdown if specified by the Administrator. As in 40 CFR 63.997(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is also proposing to add language at 40 CFR 63.1108(b)(4)(ii)(B) that requires the owner or operator maintain records of process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Finally, the EPA is proposing to add language clarifying that the owner or operator make such records available to the Administrator upon request.

f. Recordkeeping

We are not proposing to change the language at 40 CFR 63.1109(a) requiring owners or operators of each affected source to keep copies of reports. However, we are proposing to completely remove 40 CFR 63.1111(b), which eliminates periodic SSM reports, consequently eliminating the requirement to keep a copy of this report. These requirements are no longer appropriate for startup and shutdown because SSM plans will no longer be required and the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods. See section IV.E.1.a of this preamble for further discussion of this proposed language removal.

Furthermore, in lieu of the requirements applicable to malfunctions in 40 CFR 63.1111(b), we are proposing new recordkeeping requirements at 40 CFR 63.1111(c)(1). The regulatory text we are proposing to add at 40 CFR 63.1111(c)(1)(i) differs from 40 CFR 63.1111(b) in that 40 CFR 63.1111(b) requires the creation and retention of a record for each malfunction during which excess emissions occurred, including total duration of all malfunctions for a reporting period. The EPA is proposing that this requirement

apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the total duration of all malfunctions with which excess emissions occurred. For each failure to meet an applicable standard, the EPA is also proposing to add to 40 CFR 63.1111(c)(1)(ii) a provision that sources keep records that include a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. Furthermore, the EPA is proposing to add 40 CFR 63.1111(c)(1)(iii) requiring sources keep records of any corrective actions taken to return the affected unit to its normal or usual manner of operations, and actions taken to minimize emissions in accordance with the general duty regulatory text at 40 CFR 63.1108(a)(4)(ii). The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

g. Reporting

We are proposing to completely remove 40 CFR 63.1111(b) which describes the reporting requirements for SSM. When applicable, 40 CFR 63.1111(b)(1) requires sources to report actions taken during SSM events to show that actions taken were consistent with their SSM plan. When applicable, 40 CFR 63.1111(b)(2) requires sources to report actions taken during SSM events when actions were inconsistent with their SSM plan. To replace the 40 CFR 63.1111(b) reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.1111(c)(2). The replacement language differs from the 40 CFR 63.1111(b) language in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the periodic report already required under this rule. We are proposing that the report contain the number, date, time, and duration of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Regarding the proposed new requirement, discussed above, to estimate the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions, examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* ethylene production rates and control efficiencies). The EPA is proposing this provision to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate 40 CFR 63.1111(b)(2) that requires reporting of whether the source deviated from its SSM plan, including required actions to communicate with the Administrator, and the cross-reference to 40 CFR 63.1111(b)(1) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to completely remove 40 CFR 63.1111(b)(2) for reasons discussed above and because 40 CFR 63.1111(b)(2) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

h. Waste

The BWON provisions that are applicable to waste generated by sources in the Ethylene Production source category are set forth in 40 CFR part 63, subpart XX, and are cross-referenced in Table 7 to 40 CFR 63.1103(e)(3). With the elimination of the SSM exemption, we are proposing to remove the exemption language at 40 CFR 63.1095(a)(3) and (b)(1) that exempts an owner or operator of continuous butadiene waste streams and waste streams that contain benzene at a facility with a TAB less than 10 Mg/yr from the BWON requirements during periods of SSM. (For more information on how BWON applies to these streams, refer to section IV.D.5 of this preamble.) This exemption does not apply to facilities with a TAB of 10 Mg/yr or greater. An owner or operator of a facility with a TAB less than 10 Mg/yr would be required to comply with BWON at all times, including during periods of SSM for continuous butadiene waste streams and waste streams that contain benzene. As part of these proposed revisions, we are also proposing to remove language from the definitions of ''dilution steam blowdown waste stream'' and ''spent caustic waste stream'' at 40 CFR 63.1082(b) such that the definitions no longer exclude streams generated from sampling, maintenance activities, or shutdown purges.

We estimate that there would be no impact on any facility for making these changes. In reviewing the data submitted to us from the facilities who responded to our CAA section 114 survey, we determined that there was only one facility with a TAB less than 10 Mg/yr; however, this facility recently went through an expansion and we believe their TAB has likely changed to 10 Mg/yr or greater such that they are already complying with the BWON requirements at all times for continuous butadiene waste streams and waste streams that contain benzene. We solicit comment on whether there are any ethylene production facilities that operate with a TAB less than 10 Mg/yr; and if so, how this proposed change would impact them.

2. Electronic Reporting Requirements

Through this proposal, the EPA is proposing that owners and operators of ethylene production facilities submit electronic copies of required performance test results and reports and NOCS reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)*

Rules, available in Docket ID No. EPA–HQ–OAR–2017–0357. The proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [36] at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. The proposed rule requires that NOCS reports be submitted as a PDF upload in CEDRI.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. The situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI which precludes an owner or operator from accessing the system and submitting required reports is addressed in 40 CFR 63.1110(a)(10)(iv). The situation where an extension may be warranted due to a force majeure event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents an owner or operator from complying with the requirement to submit a report electronically as required by this rule is addressed in 40 CFR 63.1110(a)(10)(v). Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [37] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy [38] developed in response to the White House's Digital Government Strategy.[39] For more information on the benefits of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in Docket ID No. EPA–HQ–OAR–2017–0357.

3. Exemptions for Heat Exchange Systems

Heat exchange systems that meet any one of the criteria specified in 40 CFR 63.1084 are exempt from the LDAR requirements in the EMACT standards. We have also reviewed these criteria to see if the exemptions were still reasonable to maintain. In addition, we compared these exemptions to those requirements for heat exchangers that are subject to the Petroleum Refinery Sector Rule given that this MACT standard was more recently promulgated in 2009, relative to the EMACT standard promulgated in 2002.[40] Based upon this review, we are proposing to remove the exemptions at 40 CFR 63.1084(c) and (d) for once-through heat exchange systems and instead, proposing that facilities comply with 40 CFR 63.1085 and 40 CFR 63.1086.

We identified two criteria in 40 CFR 63.1084 that are applicable to once-through heat exchange systems meeting certain National Pollutant Discharge Elimination System (NPDES) permit conditions (*i.e.,* 40 CFR 63.1084(c) and (d)) that warranted further assessment. As discussed in section IV.D.6 of this preamble, once-through heat exchange systems at a petrochemical plant have systems open to the air (*e.g.,* open sewer lines, trenches, and ponds) that are utilized to transport used cooling water to a discharge point (*e.g.,* an outfall) of a facility. This cooling water can also be mixed with other sources of water (*e.g.,* cooling water used in once-through heat exchange systems in non-ethylene source categories, stormwater, treated wastewater, etc.) in sewers, trenches, and ponds prior to discharge from the plant. If this point of discharge from the plant is into a ''water of the United States,'' then the facility is required to have a NPDES permit and to meet certain pollutant discharge limits. In reviewing the requirements of 40 CFR 63.1084(c), we find that there is a disconnect between having a NPDES permit that meets certain allowable discharge limits (*i.e.,* 1 ppmv) or less above influent concentration, or 10 percent or less above influent concentration, whichever is greater) at the discharge point of a facility (*e.g.,* outfall) as compared to being able to adequately identify a leak from a once-through heat exchange system given that these systems are open to the atmosphere prior to this discharge point and, therefore, any volatile HAP leaking from a once-through heat exchange system would likely be emitted to the atmosphere prior to the NPDES outfall. Similarly, while the requirements of 40 CFR 63.1084(d) allow facilities with once-through heat exchange systems that have certain requirements (*i.e.,* the requirements of 40 CFR 63.1084(d)(1) through (4)) incorporated into their NPDES permit not to comply with the EMACT standards for heat exchange systems, we find this exemption to be problematic. Specifically, the NPDES requirements at 40 CFR 63.1084(d) lack the specificity of where a sample must be taken to adequately find and quantify a leak from a once-through heat exchange system. These include, for example, just prior to the outfall from the plant versus from the exit of the once-through heat exchange system prior to being open to atmosphere, what concentration and/or mass emissions rate constitutes a leak that must be fixed, how quickly a leak must be fixed, what pollutants must be adequately accounted for, and what test method(s)/surrogate(s) facilities can use to demonstrate compliance. As such, we

[36] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[37] The EPA's *Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[38] *E-Reporting Policy Statement for EPA Regulations,* September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[39] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

[40] The Refinery MACT standards for heat exchange systems were promulgated on October 28, 2009 (see 74 FR 55685) and further amended on June 30, 2010 (see 75 FR 37731) and June 20, 2013 (see 78 FR 37146).

find 40 CFR 63.1084(d) to be inadequate for purposes of LDAR for leaks that are at least as equivalent to those that would be identified if once-through heat exchange systems were complying with 40 CFR 63.1085 and 40 CFR 63.1086 instead.

Further, in reviewing the data submitted to us from the facilities who responded to our CAA section 114 survey, we determined that there are no facilities with once-through heat exchange systems complying with the NPDES compliance options at 40 CFR 63.1084(c) and (d). Accordingly, we are removing the exemption for once-through exchange systems that are specified in 40 CFR 63.1084(c) and (d) and are proposing that facilities that previously used either of these exemptions comply with 40 CFR 63.1085 and 40 CFR 63.1086. Therefore, we estimate that there would be no cumulative nationwide costs or emission reductions associated with this change. We solicit comment on our proposed decision.

4. Equipment Leak Overlap Provisions With Subpart VVa

When an emission point is subject to multiple regulations, the EMACT standards include overlap provisions at 40 CFR 63.1100(g) that specify which regulations owners or operators must comply with. For equipment leaks, overlap provisions are specified for 40 CFR part 60, subpart VV; 40 CFR part 61, subpart J or subpart V; and 40 CFR part 63, subpart H. However, since the promulgation of the EMACT standards in 2002, equipment leak regulations were finalized at 40 CFR part 60, subpart VVa, in 2007 and did not address overlap with the EMACT standards (or 40 CFR part 63, subpart UU, generally). As such, certain equipment at newly constructed ethylene production facilities must currently comply with both the EMACT standards and subpart VVa. Except for calibration drift assessments required by subpart VVa, we are proposing at 40 CFR 63.1100(g)(4)(iii) that equipment controlled according to the EMACT standards and subpart VVa are required only to comply with the EMACT standards. We believe this compliance option will provide flexibility and reduce the burden on ethylene production facilities. We are proposing that where equipment at ethylene production facilities is subject to both the EMACT standards and subpart VVa, an owner or operator that chooses to comply with the EMACT standards only (instead of complying with both standards), must also still comply with the calibration drift assessment provisions at 40 CFR 60.485a(b)(2). The calibration drift assessment helps ensure that the EPA Method 21 monitoring results are accurate when demonstrating compliance.

5. Other Corrections

There are several additional revisions that we are proposing to 40 CFR part 63, subpart YY to clarify text or correct typographical errors, grammatical errors, and cross-reference errors. These proposed editorial corrections and clarifications are summarized in Table 9 of this preamble.

TABLE 9—SUMMARY OF PROPOSED EDITORIAL AND MINOR CORRECTIONS TO 40 CFR PART 63, SUBPART YY

Provision	Proposed revision
Table 1 to 40 CFR 63.1100(a)	Format footnote "a"; remove unnecessary periods; and correct reference to definition of heat exchange systems in footnote "c."
40 CFR 63.1100(b)	Clarify applicability of General Provisions for ethylene production affected sources.
40 CFR 63.1100(g)(5)	Correct spelling of the word "collocated."
40 CFR 63.1100(g)(7)	Add paragraph to clarify flares that are subject to the provisions of 40 CFR 60.18 or 40 CFR 63.11 and used as a control device for an emission point subject to the requirements in Table 7 to 40 CFR 63.1103(e) are only required to comply with the provisions specified in 40 CFR 63.1103(e)(4).
40 CFR 63.1101	Clarify that the definition of "pressure relief device or valve" does not apply to ethylene production affected sources (see section IV.A.2.a of this preamble for further details). Change "ethylene production unit furnaces" to "ethylene cracking furnaces" in the definition of "shutdown" for consistency.
40 CFR 63.1103(b)(2)	Change the word "contracts" to "contacts" in definition of "in organic hazardous air pollutant or in organic HAP service."
40 CFR 63.1103(e)(1)(F) and Table 7 at 40 CFR 63.1103(e)(3)(h).	Correct the reference to the definition of "heat exchange systems."
Table 7 at 40 CFR 63.1103(e)(3)(a)(1).	Correct typo by changing "≤" to "<".
Table 7 at 40 CFR 63.1103(e)(3)(d)(1).	Clarify concentration applicability for ethylene process vents is on a dry basis based on original MACT floor determination.
Table 7 at 40 CFR 63.1103(e)(3)(d)(1)(i) and (ii), and (e)(1)(i) and (ii).	Clarify concentration emission limitation for ethylene process vents and transfer racks is on a dry basis corrected to 3.0-percent oxygen based on original MACT floor determination.
40 CFR 63.1107(a)	Clarify how EPA Method 18 can be used when determining the percent organic HAP content of the process fluid that is contained in or contacts equipment for the ethylene production affected sources.
40 CFR 63.1108(a)(4)(ii)	Change "which" to "that" and clarify inspection of the "affected" source when determining whether a source is operating in compliance with operation and maintenance requirements.
40 CFR 63.1108(b)(4)(i)	Correct reference to paragraphs (b)(4)(i)(A) through (D).

F. What compliance dates are we proposing?

Amendments to the EMACT standards proposed in this rulemaking for adoption under CAA section 112(d)(2) and (3) and CAA section 112(d)(6) are subject to the compliance deadlines outlined in the CAA under CAA section 112(i). For all of the requirements we are proposing under CAA sections 112(d)(2) and (3), and CAA section 112 (d)(6), we are proposing that all existing affected sources, and all new affected source that commence construction or reconstruction after December 6, 2000 and on or before October 9, 2019, must comply with all of the amendments no later than 3 years after the effective date of the final rule, or upon startup, whichever is later. For existing sources, CAA section 112(i) provides that the compliance date shall provide for compliance as expeditiously as practicable, but no later than 3 years after the effective date of the standard. ("Section 112(i)(3)'s three-year maximum compliance period applies generally to any emission standard . . .

promulgated under [section 112].'' *Association of Battery Recyclers* v. *EPA,* 716 F.3d 667, 672 (D.C. Cir. 2013).) In determining what compliance period is as expeditious as practicable, we consider the amount of time needed to plan and construct projects and change operating procedures by affected sources. As provided in CAA section 112(i), all ethylene production new affected sources that commenced construction or reconstruction after October 9, 2019 would be required to comply with these requirements by the effective date of the final amendments to the EMACT standards or startup, whichever is later.

We are proposing new operating and monitoring requirements for flares under CAA section 112(d)(2) and (3). We anticipate that these requirements would require the installation of new flare monitoring equipment and we project that most ethylene production units would install new control systems to monitor and adjust assist gas (air or steam) addition rates. Similar to the addition of new control equipment, these new monitoring requirements for flares would require engineering evaluations, solicitation and review of vendor quotes, contracting and installation of the equipment, and operator training. Installation of new monitoring and control equipment on flares will require the flare to be taken out of service. Depending on the configuration of the flares and flare header system, taking the flare out of service may also require a significant portion of the ethylene production unit to be shutdown. Therefore, for all existing affected sources, and all new affected source that commence construction or reconstruction after December 6, 2000 and on or before October 9, 2019, we are proposing that it is necessary to provide 3 years after the effective date of the final rule (or upon startup, whichever is later) for owners or operators to comply with the new operating and monitoring requirements for flares. For all ethylene production new affected sources that commenced construction or reconstruction after October 9, 2019, we are proposing owners or operators comply with the new operating and monitoring requirements for flares by the effective date of the final rule (or upon startup, whichever is later).

Under CAA section 112(d)(2) and (3), we are proposing new vent control requirements for bypasses. These requirements would typically require the addition of piping and potentially new control requirements. As these vent controls would most likely be routed to the flare, we are proposing to provide 3 years after the effective date of the final rule for owners or operators to install additional piping, monitoring, and/or controls to correct any vent control bypasses. For atmospheric PRDs in organic HAP service, we are establishing a work practice standard that requires a process hazard analysis and implementation of a minimum of three redundant measures to prevent atmospheric releases. Alternately, owners or operators may elect to install closed vent systems to route these PRDs to a flare, drain (for liquid thermal relief valves) or other control system. We anticipate that sources will need to identify the most appropriate preventive measures or control approach; design, install, and test the system; install necessary process instrumentation and safety systems; and may need to time installations with equipment shutdown or maintenance outages. Therefore, all existing affected sources, and all new affected source that commence construction or reconstruction after December 6, 2000 and on or before October 9, 2019, we are proposing a compliance date of 3 years from the effective date of the final rule (or upon startup, whichever is later) for owners or operators to comply with the work practice standards for atmospheric PRD releases. For all ethylene production new affected sources that commenced construction or reconstruction after October 9, 2019, we are proposing owners or operators comply with the work practice standards for atmospheric PRD releases by the effective date of the final rule (or upon startup, whichever is later).

Under CAA section 112(d)(2) and (3), we are also proposing work practice standards for decoking operations that would require owners and operators to institute procedures to reduce coke formation and coke combustion emissions, and prevent non-coke combustion HAP emissions from escaping to the atmosphere due to leaks in the transfer line and decoking valves. We anticipate that most, if not all owners and operators already have procedures in place that meet the proposed criteria; however, the EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. Also, facilities will still need some time to read and understand the amended rule requirements, update standard operating procedures, and install monitoring equipment; therefore, we are proposing that all existing affected sources, and all new affected source that commence construction or reconstruction after December 6, 2000 and on or before October 9, 2019 must comply with the decoking work practice standards no later than 3 years after the effective date of the final rule, or upon startup, whichever is later. For all ethylene production new affected sources that commenced construction or reconstruction after October 9, 2019, we are proposing owners or operators comply with the decoking work practice standards by the effective date of the final rule (or upon startup, whichever is later).

Under our technology review for storage vessels under CAA section 112(d)(6), we are revising the EMACT standards to reflect more stringent storage vessel capacity and MTVP thresholds. We project that some owners and operators will need to install new control equipment on certain storage vessels because of the proposed applicability revisions. The addition of new control equipment would require engineering design, solicitation, and review of vendor quotes, and contracting and installation of the equipment, which would need to be timed with process unit outage and operator training. Therefore, we are proposing a compliance date of 3 years after the effective date of the final rule, or upon startup, whichever is later for all existing affected sources, and all new affected source that commence construction or reconstruction after December 6, 2000 and on or before October 9, 2019 to comply with the proposed storage vessel requirements. For all ethylene production new affected sources that commenced construction or reconstruction after October 9, 2019, we are proposing owners or operators comply with the proposed storage vessel requirements by the effective date of the final rule (or upon startup, whichever is later).

As a result of our technology review for heat exchange systems, we are proposing to replace the existing leak definition and monitoring method with a new leak definition and monitoring method. We project some owners and operators would require engineering evaluations, solicitation, and review of vendor quotes, contracting and installation of monitoring equipment, and operator training. In addition, facilities will need time to read and understand the amended rule requirements and update standard operating procedures. Therefore, we are proposing that all existing affected sources, and all new affected source that commence construction or reconstruction after December 6, 2000 and on or before October 9, 2019 must

comply with the new monitoring requirements for heat exchange systems no later than 3 years after the effective date of the final rule, or upon startup, whichever is later. For all ethylene production new affected sources that commenced construction or reconstruction after October 9, 2019, we are proposing owners or operators comply with the new monitoring requirements for heat exchange systems by the effective date of the final rule (or upon startup, whichever is later).

Finally, we are proposing to change the requirements for SSM by removing both the exemption from the requirements to meet the standard during SSM periods and the requirement to develop and implement an SSM plan. We are also proposing electronic reporting requirements. We are positing that facilities would need some time to successfully accomplish these revisions, including time to read and understand the amended rule requirements, to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown, as defined in the rule, and make any necessary adjustments, including making adjustments to standard operating procedures, and to convert reporting mechanisms to install necessary hardware and software. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 3 years after the effective date of the final rule to be the most expeditious compliance period practicable and, thus, is proposing at 40 CFR 63.1102(c) and 40 CFR 63.1081 that all affected sources should be in compliance with all of this regulation's revised requirements upon initial startup or within 3 years of the effective date of the final rule, whichever is later.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

As of January 1, 2017, there were 26 ethylene production facilities currently operating that are major sources of HAP, and the EPA is aware of five ethylene production facilities under construction. As such, 31 ethylene production facilities will be subject to the proposed amendments. A complete list of facilities that are currently subject, or will be subject, to the EMACT standards is available in Appendix A of the memorandum titled *Review of the RACT/BACT/LAER Clearinghouse Database for the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357.

B. What are the air quality impacts?

At the current level of control, estimated HAP emissions were approximately 4,040 tpy. We estimated HAP emissions reductions of 62 tpy and VOC emissions reductions of 540 tpy as a result of the proposed amendments for storage vessels, heat exchange systems, and decoking operations for ethylene cracking furnaces. We note that these emissions reductions do not consider the potential excess emissions reductions from flares that could result from the proposed monitoring requirements; we estimated flare excess emissions reductions of 1,430 tpy HAP and 13,020 tpy VOC. When considering the flare excess emissions, the total emissions reductions as a result of the proposed amendments were estimated at 1,492 tpy HAP and 13,560 tpy VOC. These emissions reductions are documented in the following memoranda, which are available in Docket ID No. EPA–HQ–OAR–2017–0357: *Assessment of Work Practice Standards for Ethylene Cracking Furnace Decoking Operations Located in the Ethylene Production Source Category, Clean Air Act Section 112(d)(6) Technology Review for Storage Vessels Located in the Ethylene Production Source Category, Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems in the Ethylene Production Source Category,* and *Control Option Impacts for Flares Located in the Ethylene Production Source Category.*

C. What are the cost impacts?

We estimated the total capital costs of the proposed amendments to be $48.0 million and the total annualized costs to be about $10.3 million in 2016 dollars (annualized costs include annual recovery credits of $290,000). The present value in 2016 of the costs is $87.2 million at a discount rate of 3 percent and $ 71.8 million at 7 percent. Calculated as an equivalent annualized value, which is consistent with the present value of costs in 2016, the costs are $12.0 million at a discount rate of 7 percent and $12.4 million at a discount rate of 3 percent. The costs are associated with the proposed amendments for flares, pressure relief devices, maintenance (equipment openings), storage vessels, heat exchange systems, and decoking operations for ethylene cracking furnaces. Costs for flares include purchasing analyzers, monitors, natural gas and steam, developing a flare management plan, and performing root cause analysis and corrective action (details are available in section IV.A.1.h of this preamble and the memorandum titled *Control Option Impacts for Flares Located in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). Costs for pressure relief devices were developed based on compliance with the proposed work practice standard and include implementation of three prevention measures, performing root cause analysis and corrective action, and purchasing pressure relief device monitors (details are available in section IV.A.2.a of this preamble and the memorandum titled *Review of Regulatory Alternatives for Certain Vent Streams in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). Maintenance costs were estimated to document equipment opening procedures and to document circumstances under which the alternative maintenance vent limit is used (details are available in section IV.A.2.d of this preamble and the memorandum titled *Review of Regulatory Alternatives for Certain Vent Streams in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). Costs for storage vessels include installing IFRs and upgrading deck fittings (details are available in section IV.D.1 of this preamble and the memorandum titled *Clean Air Act Section 112(d)(6) Technology Review for Storage Vessels Located in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). Heat exchange systems costs include the use of the Modified El Paso Method to monitor for leaks (details are available in section IV.D.6 of this preamble and the memorandum titled *Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). The costs associated with decoking operations for ethylene cracking furnaces include conducting isolation valve inspections and conducting flame impingement firebox inspections (details are available in section IV.A.3 of this preamble and the memorandum titled *Assessment of Work Practice Standards for Ethylene Cracking Furnace Decoking Operations Located in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357).

D. What are the economic impacts?

The EPA conducted economic impact analyses for this proposal, as detailed in

the memorandum titled *Economic Impact Analysis for the Proposed Ethylene Production Risk and Technology Review (RTR) NESHAP,* which is available in the docket for this action. The economic impacts of the proposal are calculated as the percentage of total annualized costs incurred by affected parent owners to their annual revenues. This ratio of total annualized costs to annual revenues provides a measure of the direct economic impact to parent owners of ethylene production facilities while presuming no passthrough of costs to ethylene consumers. We estimate that none of the 16 parent owners affected by this proposal will incur total annualized costs of 0.02 percent or greater of their revenues. Product recovery, which is estimated as an impact of the proposed rule, is included in the estimate of total annualized costs that is an input to the economic impact analysis. Thus, these economic impacts are quite low for affected companies and the ethylene production industry, and consumers of ethylene should experience minimal price changes.

VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.* The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.

2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).

3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2017–0357 (through the method described in the **ADDRESSES** section of this preamble).

5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR website at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

VIII. Statutory and Executive Order Reviews

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

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

This action is a significant regulatory action that was submitted to OMB for review because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, *Economic Impact Analysis for the Proposed Ethylene Production Risk and Technology Review (RTR) NESHAP,* is available in the docket for this rule.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in section V of this preamble.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1983.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

We are proposing amendments that change the reporting and recordkeeping requirements for several emission sources at ethylene production facilities (*e.g.,* flares, decoking operations for ethylene cracking furnaces, heat exchangers, PRDs, storage vessels). The proposed amendments also require electronic reporting, remove the malfunction exemption, and impose other revisions that affect reporting and recordkeeping. This information would be collected to assure compliance with 40 CFR part 63, subparts XX and YY.

Respondents/affected entities: Owners or operators of ethylene production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts XX and YY).

Estimated number of respondents: 31 facilities.

Frequency of response: Semiannual or annual. Responses include performance evaluation notifications and reports, NOCS, and semiannual compliance reports.

Total estimated burden: 8,500 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,410,000 (per year), which includes $3,660,000 annualized capital and operation and maintenance costs for the responding facilities.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than November 8, 2019. The EPA

will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). This action will not impose any requirements on small entities. This action is projected to affect 31 facilities, and none of these facilities is owned by a small entity. Details of the associated analysis are presented in the memorandum, *Economic Impact Analysis for the Proposed Ethylene Production Risk and Technology Review (RTR) NESHAP,* which is available in the docket for this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. None of the ethylene production facilities that have been identified as being affected by this action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and C and sections IV.B and C of this preamble.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The overall economic impact of this proposed rule should be minimal for ethylene production facilities and their parent companies (which are engaged in the energy sector).

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. Therefore, the EPA conducted searches for the Ethylene Production NESHAP through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3B, 4, 5, 18, 21, 22, 25, 25A, 27, and 29 of 40 CFR part 60, appendix A, 301, 316, and 320 of 40 CFR part 63, appendix A, and 602 and 624 of 40 CFR part 136, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 21, 22, 27, 316, 602, and 624. The following VCS were identified as acceptable alternatives to the EPA test methods for the purpose of this rule.

The EPA proposes to use the VCS ANSI/ASME PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses'' as an acceptable alternative to EPA Methods 3A and 3B for the manual procedures only and not the instrumental procedures. The ANSI/ASME PTC 19–10–1981—Part 10 method incorporates both manual and instrumental methodologies for the determination of oxygen content. The manual method segment of the oxygen determination is performed through the absorption of oxygen. This method is available at the American National Standards Institute (ANSI), 1899 L Street NW, 11th Floor, Washington, DC 20036 and the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990. See *https://wwww.ansi.org* and *https://www.asme.org.*

Also, the EPA proposes to use the VCS ASTM D6420–18, ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry'' as an acceptable alternative to EPA Method 18 with the following caveats. This ASTM procedure has been approved by the EPA as an alternative to EPA Method 18 only when the target compounds are all known and the target compounds are all listed in ASTM D6420 as measurable. We are proposing that ASTM D6420–18 should not be used for methane and ethane because the atomic mass is less than 35; and ASTM D6420 should never be specified as a total VOC method. The ASTM D6420–18 test method employs a direct interface gas chromatograph/mass spectrometer to measure 36 VOC. The test method provides on-site analysis of extracted, unconditioned, and unsaturated (at the instrument) gas samples from stationary sources.

In addition, the EPA proposes to use the VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy'' as an acceptable alternative to EPA Method 320 with caveats requiring inclusion of selected annexes to the standard as mandatory. The ASTM D6348–12e1 method is an extractive FTIR Spectroscopy-based field test method and is used to quantify gas phase concentrations of multiple target compounds in emission streams from stationary sources. We are proposing the test plan preparation and implementation in the Annexes to ASTM D 6348–03, Sections Al through A8 are mandatory; and in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5). We are proposing that in order for the test data to be acceptable for a compound, %R must be $70\% \geq R \leq 130\%$. If the %R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated

for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). We are proposing that the %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

Reported Results = (Measured Concentration in the Stack × 100)/% R.

The two ASTM methods (ASTM D6420–18 and ASTM D6348–12e1) are available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See *https://www.astm.org/.*

The search identified 17 other VCS that were potentially applicable for this rule in lieu of the EPA reference methods. After reviewing the available standards, the EPA determined that 17 candidate VCS identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Additional information for the VCS search and determinations can be found in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants for Ethylene Production RTR,* which is available in the docket for this action.

Finally, we are proposing at 40 CFR 63.1107(a) to incorporate by reference SW–846–8260B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 2, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition; and SW–846–8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition. Method SW–846–8260B is used to determine VOC in a variety of solid waste matrices with gas chromatography/mass spectrometry. Method SW–846–8260 can be used to quantitate most VOC that have boiling points below 200 degrees Celsius, including low molecular weight halogenated hydrocarbons, aromatics, ketones, nitriles, acetates, acrylates, ethers, and sulfides. Method SW–846–8270D is used to determine the concentration of semivolatile organic compounds in a variety of solid waste matrices with gas chromatography/mass spectrometry. Method SW–846–8270D can be used to quantitate semivolatile compounds such as polyaromatic hydrocarbons, chlorinated hydrocarbons, pesticides, phthalate esters, organophosphate esters, nitrosamines, haloethers, aldehydes, ethers, ketones, anilines, pyridines, quinolines, aromatic nitro compounds, and phenols, including nitrophenols. The two SW–846 methods (Method SW–846–8260B and Method SW–846–8270D) are available in the docket for this rulemaking and on EPA's website. See *https://www.epa.gov/hw-sw846.*

The EPA welcomes comments on this aspect of the proposed rulemaking given that these proposed changes are being made in 40 CFR part 63, subpart SS, and, specifically, invites the public to identify potentially applicable VCS, and to explain why the EPA should use such standards in this regulation.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (58 FR 7629, February 16, 1994). Our analysis of the demographics of the population with estimated risks greater than 1-in-1 million indicates potential disparities in risks between demographic groups, including the African American, Hispanic or Latino, Over 25 Without a High School Diploma, and Below the Poverty Level groups. In addition, the population living within 50 km of the ethylene production facilities has a higher percentage of minority, lower income, and lower education people when compared to the nationwide percentages of those groups. However, acknowledging these potential disparities, the risks for the source category were determined to be acceptable, and emissions reductions from the proposed revisions will benefit these groups the most.

The documentation for this decision is contained in section IV.B and C of this preamble, and the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Ethylene Production Source Category Operations,* which is available in the docket for this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: September 5, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by:

■ a. Revising paragraphs (e)(1) and (h)(18) and (85);

■ b. Redesignating paragraphs (h)(92) through (111) as paragraphs (h)(93) through (112);

■ c. Adding new paragraph (h)(92);

■ d. Revising paragraphs (n)(12) and (13); and

■ e. Revising paragraph (t)(1).

The revisions and addition read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(e) * * *

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for §§ 63.309(k), 63.457(k), 63.772(e) and (h), 63.865(b), 63.997(e), 63.1282(d) and (g), 63.1625(b), 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), 63.5160(d), table 4 to subpart UUUU, 63.9307(c), 63.9323(a), 63.11148(e), 63.11155(e), 63.11162(f), 63.11163(g), 63.11410(j), 63.11551(a), 63.11646(a), and 63.11945, table 5 to subpart DDDDD, table 4 to subpart JJJJJ, table 4 to subpart KKKKK, tables 4 and 5 of subpart UUUUU, table 1 to subpart ZZZZZ, and table 4 to subpart JJJJJJ.

* * * * *

(h) * * *

(18) ASTM D1946–90 (Reapproved 1994), Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 63.11(b), 63.987(b), and 63.1412.

* * * * *

(85) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved

February 1, 2012, IBR approved for §§ 63.997(e) and 63.1571(a).

* * * * *

(92) ASTM D6420–18, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, IBR approved for § 63.987(b) and § 63.997(e).

* * * * *

(n) * * *

(12) SW–846–8260B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 2, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.1107(a), 63.11960, 63.11980, and table 10 to subpart HHHHHHH.

(13) SW–846–8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.1107(a), 63.11960, 63.11980, and table 10 to subpart HHHHHHH.

* * * * *

(t) * * *

(1) ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, January 31, 2003, IBR approved for §§ 63.654(c) and (g), 63.655(i), 63.1086(e), 63.1089(d), and 63.11920.

* * * * *

Subpart SS—[Amended]

■ 3. Section 63.987 is amended by revising parameter ''Dj'' of Equation 1 in paragraph (b)(3)(ii) to read as follows:

§ 63.987 Flare requirements.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

* * * * *

Dj = Concentration of sample component j, in parts per million by volume on a wet basis, as measured for organics by Method 18 of 40 CFR part 60, appendix A, or by American Society for Testing and Materials (ASTM) D6420–18 (Incorporated by reference in § 63.14)) under the conditions specified in § 63.997(e)(2)(iii)(D)(1) through (3). Hydrogen and carbon monoxide are measured by ASTM D1946–90 (Incorporated by reference, see § 63.14); and

* * * * *

■ 4. Section 63.997 is amended by revising paragraphs (e)(2)(iii) introductory text, (e)(2)(iii)(C)(*1*), (e)(2)(iii)(D), (e)(2)(iv) introductory text, (e)(2)(iv)(F) and (I) to read as follows:

§ 63.997 Performance test and compliance assessment requirements for control devices.

* * * * *

(e) * * *

(2) * * *

(iii) To determine compliance with a parts per million by volume total organic regulated material or TOC limit, the owner or operator shall use Method 18 or 25A of 40 CFR part 60, appendix A, as applicable. The ASTM D6420–18 (Incorporated by reference, see § 63.14) may be used in lieu of Method 18 of 40 CFR part 60, appendix A, under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. The procedures specified in paragraphs (e)(2)(iii)(A), (B), (D), and (E) of this section shall be used to calculate parts per million by volume concentration. The calculated concentration shall be corrected to 3 percent oxygen using the procedures specified in paragraph (e)(2)(iii)(C) of this section if a combustion device is the control device and supplemental combustion air is used to combust the emissions.

* * * * *

(C) * * *

(*1*) The emission rate correction factor (or excess air), integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, or the manual method in ANSI/ASME PTC 19–10–1981—Part 10 (Incorporated by reference, see § 63.14)), shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the organic regulated material or organic compound samples, and the samples shall be taken during the same time that the organic regulated material or organic compound samples are taken.

* * * * *

(D) To measure the total organic regulated material concentration at the outlet of a control device, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–18. If you have a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream using process knowledge or the screening procedure described in Method 18. In conducting the performance test, analyze samples collected at the outlet of the combustion control device as specified in Method 18 or ASTM D6420–18 for the regulated material compounds present at the inlet of the control device. The method ASTM D6420–18 may be used only under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section.

(*1*) If the target compounds are all known and are all listed in Section 1.1 of ASTM D6420–18 as measurable.

(*2*) ASTM D6420–18 may not be used for methane and ethane.

(*3*) ASTM D6420–18 may not be used as a total VOC method.

* * * * *

(iv) *Percent reduction calculation.* To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18, 25, or 25A of 40 CFR part 60, appendix A, as applicable. The method ASTM D6420–18 may be used in lieu of Method 18 of 40 CFR part 60, appendix A, under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. The procedures specified in paragraphs (e)(2)(iv)(A) through (I) of this section shall be used to calculate percent reduction efficiency.

* * * * *

(F) To measure inlet and outlet concentrations of total organic regulated material, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–18, under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section. In conducting the performance test, collect and analyze samples as specified in Method 18 or ASTM D6420–18. You must collect samples simultaneously at the inlet and outlet of the control device. If the performance test is for a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream (*i.e.,* uncontrolled emissions) using process knowledge or the screening procedure described in Method 18. Quantify the emissions for the regulated material compounds present in the inlet gas stream for both the inlet and outlet gas streams for the combustion device.

* * * * *

(I) If the uncontrolled or inlet gas stream to the control device contains formaldehyde, you must conduct emissions testing according to

paragraphs (e)(2)(iv)(I)(*1*) through (*3*) of this section.

(*1*) Except as specified in paragraph (e)(2)(iv)(I)(*3*) of this section, if you elect to comply with a percent reduction requirement and formaldehyde is the principal regulated material compound (*i.e.,* greater than 50 percent of the regulated material compounds in the stream by volume), you must use Method 316 or 320 of 40 CFR part 63, appendix A, to measure formaldehyde at the inlet and outlet of the control device. Use the percent reduction in formaldehyde as a surrogate for the percent reduction in total regulated material emissions.

(*2*) Except as specified in paragraph (e)(2)(iv)(I)(*3*) of this section, if you elect to comply with an outlet total organic regulated material concentration or TOC concentration limit, and the uncontrolled or inlet gas stream to the control device contains greater than 10 percent (by volume) formaldehyde, you must use Method 316 or 320 of 40 CFR part 63, appendix A, to separately determine the formaldehyde concentration. Calculate the total organic regulated material concentration or TOC concentration by totaling the formaldehyde emissions measured using Method 316 or 320 and the other regulated material compound emissions measured using Method 18 or 25/25A.

(*3*) You may elect to use ASTM D6348–12e1 (Incorporated by reference, § 63.14) in lieu of Method 316 or 320 of 40 CFR part 63, appendix A as specified in paragraph (e)(2)(iv)(I)(*1*) or (*2*) of this section. To comply with this paragraph, the test plan preparation and implementation in the Annexes to ASTM D 6348–03 (Incorporated by reference, see § 63.14) Sections A1 through A8 are mandatory; the percent (%) R must be determined for each target analyte using Equation A5.5 of ASTM D6348–03 Annex A5 (Analyte Spiking Technique); and in order for the test data to be acceptable for a compound, the %R must be $70\% \geq R \leq 130\%$. If the %R value does not meet this criterion for a target compound, then the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

Reported Results = (Measured Concentration in the Stack × 100)/%R.

Subpart XX—[Amended]

■ 5. Section 63.1081 is revised to read as follows:

§ 63.1081 When must I comply with the requirements of this subpart?

Except as specified in paragraphs (a) and (b) of this section, you must comply with the requirements of this subpart according to the schedule specified in § 63.1102(a).

(a) Each heat exchange system at an ethylene production affected source that commenced construction or reconstruction on or before October 9, 2019, must be in compliance with the heat exchange system requirements specified in § 63.1084(f), § 63.1085(e) and (f), § 63.1086(e), § 63.1087(c) and (d), § 63.1088(d), and § 63.1089(d) and (e) upon initial startup or [date 3 years after date of publication of final rule in the **Federal Register**], whichever is later. Each heat exchange system at an ethylene production affected source that commences construction or reconstruction after October 9, 2019, must be in compliance with the heat exchange system requirements specified in §§ 63.1084(f), 63.1085(e) and (f), 63.1086(e), 63.1087(c) and (d), 63.1088(d), and 63.1089(d) and (e) upon initial startup, or [date of publication of final rule in the **Federal Register**], whichever is later.

(b) Each waste stream at an ethylene production affected source that commenced construction or reconstruction on or before October 9, 2019, must be in compliance with the flare requirements specified in § 63.1095(a)(1)(vi) and (b)(3) upon initial startup or [date 3 years after date of publication of final rule in the **Federal Register**], whichever is later. Each waste stream at an ethylene production affected source that commences construction or reconstruction after October 9, 2019, must be in compliance with the flare requirements specified in § 63.1095(a)(1)(vi) and (b)(3) upon initial startup, or [date of publication of final rule in the **Federal Register**], whichever is later.

■ 6. Section 63.1082 is amended by revising definitions for ''Dilution steam blowdown waste stream,'' and ''Spent caustic waste stream'' to read as follows:

§ 63.1082 What definitions do I need to know?

* * * * *

Dilution steam blowdown waste stream means any continuously flowing process wastewater stream resulting from the quench and compression of cracked gas (the cracking furnace effluent) at an ethylene production unit and is discharged from the unit. This stream typically includes the aqueous or oily-water stream that results from condensation of dilution steam (in the cracking furnace quench system), blowdown from dilution steam generation systems, and aqueous streams separated from the process between the cracking furnace and the cracked gas dehydrators. Before [date 3 years after date of publication of final rule in the **Federal Register**], the dilution steam blowdown waste stream does not include dilution steam blowdown streams generated from sampling, maintenance activities, or shutdown purges. Beginning on [date 3 years after date of publication of final rule in the **Federal Register**], the dilution steam blowdown streams generated from sampling, maintenance activities, or shutdown purges are included in the definition of dilution steam blowdown waste stream. The dilution steam blowdown waste stream also does not include blowdown that has not contacted HAP-containing process materials.

* * * * *

Spent caustic waste stream means the continuously flowing process wastewater stream that results from the use of a caustic wash system in an ethylene production unit. A caustic wash system is commonly used at ethylene production units to remove acid gases and sulfur compounds from process streams, typically cracked gas. Before [date 3 years after date of publication of final rule in the **Federal Register**], the spent caustic waste stream does not include spent caustic streams generated from sampling, maintenance activities, or shutdown purges. Beginning on [date 3 years after date of publication of final rule in the **Federal Register**], the spent caustic streams generated from sampling, maintenance activities, or shutdown purges are included in the definition of spent caustic waste stream.

* * * * *

■ 7. Section 63.1084 is amended by revising the introductory text and adding paragraph (f) to read as follows:

§ 63.1084 What heat exchange systems are exempt from the requirements of this subpart?

Except as specified in paragraph (f) of this section, your heat exchange system is exempt from the requirements in §§ 63.1085 and 63.1086 if it meets any one of the criteria in paragraphs (a) through (e) of this section.

* * * * *

(f) Beginning no later than the compliance dates specified in

§ 63.1081(a), your heat exchange system is no longer exempt from the requirements in §§ 63.1085 and 63.1086 if it meets the criteria in paragraphs (c) or (d) of this section; instead, your heat exchange system is exempt from the requirements in §§ 63.1085 and 63.1086 if it meets any one of the criteria in paragraphs (a), (b), or (e) of this section.

■ 8. Section 63.1085 is amended by revising the introductory text and paragraphs (a) and (b), and by adding paragraphs (e) and (f) to read as follows:

§ 63.1085 What are the general requirements for heat exchange systems?

Unless you meet one of the requirements for exemptions in § 63.1084, you must meet the requirements in paragraphs (a) through (f) of this section.

(a) Except as specified in paragraph (e) of this section, you must monitor the cooling water for the presence of substances that indicate a leak according to § 63.1086(a) through (d).

(b) Except as specified in paragraph (f) of this section, if you detect a leak, then you must repair it according to § 63.1087(a) and (b) unless repair is delayed according to § 63.1088(a) through (c).

* * * * *

(e) Beginning no later than the compliance dates specified in § 63.1081(a), the requirements specified in § 63.1086(a) through (d) no longer apply; instead, you must monitor the cooling water for the presence of total strippable hydrocarbon concentration (as methane) that indicate a leak according to § 63.1086(e). At any time before the compliance dates specified in § 63.1081(a), you may choose to comply with the requirements in this paragraph in lieu of the requirements in paragraph (a) of this section.

(f) Beginning no later than the compliance dates specified in § 63.1081(a), the requirements specified in § 63.1087(a) and (b), and § 63.1088(a) through (c), no longer apply; instead, if you detect a leak, then you must repair it according to § 63.1087(c) and (d), unless repair is delayed according to § 63.1088(d). At any time before the compliance dates specified in § 63.1081(a), you may choose to comply with the requirements in this paragraph in lieu of the requirements in paragraph (b) of this section.

■ 9. Section 63.1086 is amended by revising the introductory text and by adding paragraph (e) to read as follows:

§ 63.1086 How must I monitor for leaks to cooling water?

Except as specified in § 63.1085(e) and paragraph (e) of this section, you must monitor for leaks to cooling water by monitoring each heat exchange system according to the requirements of paragraph (a) of this section, monitoring each heat exchanger according to the requirements of paragraph (b) of this section, or monitoring a surrogate parameter according to the requirements of paragraph (c) of this section. Except as specified in § 63.1085(e) and paragraph (e) of this section, if you elect to comply with the requirements of paragraph (a) or (b) of this section, you may use alternatives in paragraph (d)(1) or (2) of this section for determining the mean entrance concentration.

* * * * *

(e) Beginning no later than the compliance dates specified in § 63.1081(a), you must perform monitoring to identify leaks of total strippable hydrocarbon concentration (as methane) from each heat exchange system subject to the requirements of this subpart according to the procedures in paragraphs (e)(1) through (5) of this section.

(1) *Monitoring locations for closed-loop recirculation heat exchange systems.* For each closed loop recirculating heat exchange system, you must collect and analyze a sample from the location(s) described in either paragraph (e)(1)(i) or (ii) of this section.

(i) Each cooling tower return line or any representative riser within the cooling tower prior to exposure to air for each heat exchange system.

(ii) Selected heat exchanger exit line(s), so that each heat exchanger or group of heat exchangers within a heat exchange system is covered by the selected monitoring location(s).

(2) *Monitoring locations for once-through heat exchange systems.* For each once-through heat exchange system, you must collect and analyze a sample from the location(s) described in paragraph (e)(2)(i) of this section. You may also elect to collect and analyze an additional sample from the location(s) described in paragraph (e)(2)(ii) of this section.

(i) Selected heat exchanger exit line(s), so that each heat exchanger or group of heat exchangers within a heat exchange system is covered by the selected monitoring location(s). The selected monitoring location may be at a point where discharges from multiple heat exchange systems are combined provided that the combined cooling water flow rate at the monitoring location does not exceed 40,000 gallons per minute.

(ii) The inlet water feed line for a once-through heat exchange system prior to any heat exchanger. If multiple heat exchange systems use the same water feed (*i.e.,* inlet water from the same primary water source), you may monitor at one representative location and use the monitoring results for that sampling location for all heat exchange systems that use that same water feed.

(3) *Monitoring method.* You must determine the total strippable hydrocarbon concentration (in parts per million by volume (ppmv) as methane) at each monitoring location using the ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' (incorporated by reference, see § 63.14) using a flame ionization detector (FID) analyzer for on-site determination as described in Section 6.1 of the Modified El Paso Method.

(4) *Monitoring frequency and leak action level.* For each heat exchange system, you must comply with the applicable monitoring frequency and leak action level, as defined in paragraphs (e)(4)(i) through (iii) of this section. The monitoring frequencies specified in paragraphs (e)(4)(i) through (iii) of this section also apply to the inlet water feed line for a once-through heat exchange system, if you elect to monitor the inlet water feed as provided in paragraph (e)(2)(ii) of this section.

(i) For each heat exchange system at an ethylene production affected source that commenced construction or reconstruction on or before December 6, 2000, you must monitor quarterly using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv. If a leak is detected as specified in paragraph (e)(5) of this section, then you must monitor monthly until the leak has been repaired according to the requirements in § 63.1087(c) or (d). Once the leak has been repaired according to the requirements in § 63.1087(c) or (d), quarterly monitoring for the heat exchange system may resume.

(ii) For each heat exchange system at an ethylene production affected source that commences construction or reconstruction after December 6, 2000 and on or before October 9, 2019, you must monitor at the applicable frequency specified in paragraph (e)(4)(ii)(A) or (B) of this section using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv.

(A) If you have completed the initial weekly monitoring for 6-months of the heat exchange system as specified in § 63.1086(a)(2)(ii) or (b)(1)(ii) then you must monitor monthly. If a leak is

detected as specified in paragraph (e)(5) of this section, then you must monitor weekly until the leak has been repaired according to the requirements in § 63.1087(c) or (d). Once the leak has been repaired according to the requirements in § 63.1087(c) or (d), monthly monitoring for the heat exchange system may resume.

(B) If you have not completed the initial weekly monitoring for 6-months of the heat exchange system as specified in § 63.1086(a)(2)(ii) or (b)(1)(ii), or if you elect to comply with paragraph (e) of this section rather than paragraphs (a) through (d) of this section upon startup, then you must initially monitor weekly for 6-months beginning upon startup and monitor monthly thereafter. If a leak is detected as specified in paragraph (e)(5) of this section, then you must monitor weekly until the leak has been repaired according to the requirements in § 63.1087(c) or (d). Once the leak has been repaired according to the requirements in § 63.1087(c) or (d), monthly monitoring for the heat exchange system may resume.

(iii) For each heat exchange system at an ethylene production affected source that commences construction or reconstruction after October 9, 2019, you must initially monitor weekly for 6-months beginning upon startup and monitor monthly thereafter using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv. If a leak is detected as specified in paragraph (e)(5) of this section, then you must monitor weekly until the leak has been repaired according to the requirements in § 63.1087(c) or (d). Once the leak has been repaired according to the requirements in § 63.1087(c) or (d), monthly monitoring for the heat exchange system may resume.

(5) *Leak definition.* A leak is defined as described in paragraph (e)(5)(i) or (ii) of this section, as applicable.

(i) For once-through heat exchange systems for which the inlet water feed is monitored as described in paragraph (e)(2)(ii) of this section, a leak is detected if the difference in the measurement value of the sample taken from a location specified in paragraph (e)(2)(i) of this section and the measurement value of the corresponding sample taken from the location specified in paragraph (e)(2)(ii) of this section equals or exceeds the leak action level.

(ii) For all other heat exchange systems, a leak is detected if a measurement value of the sample taken from a location specified in paragraph (e)(1)(i), (ii), or (e)(2)(i) of this section equals or exceeds the leak action level.

■ 10. Section 63.1087 is amended by revising the introductory text and by adding paragraphs (c) and (d) to read as follows:

§ 63.1087 What actions must I take if a leak is detected?

Except as specified in § 63.1085(f) and paragraphs (c) and (d) of this section, if a leak is detected, you must comply with the requirements in paragraphs (a) and (b) of this section unless repair is delayed according to § 63.1088.

* * * * *

(c) Beginning no later than the compliance dates specified in § 63.1081(a), if a leak is detected using the methods described in § 63.1086(e), you must repair the leak to reduce the measured concentration to below the applicable leak action level as soon as practicable, but no later than 45 days after identifying the leak, except as specified in § 63.1088(d). Repair must include re-monitoring at the monitoring location where the leak was identified according to the method specified in § 63.1086(e)(3) to verify that the measured total strippable hydrocarbon concentration is below the applicable leak action level. Repair may also include performing the additional monitoring in paragraph (d) of this section to verify that the total strippable hydrocarbon concentration is below the applicable leak action level. Actions that can be taken to achieve repair include but are not limited to:

(1) Physical modifications to the leaking heat exchanger, such as welding the leak or replacing a tube;

(2) Blocking the leaking tube within the heat exchanger;

(3) Changing the pressure so that water flows into the process fluid;

(4) Replacing the heat exchanger or heat exchanger bundle; or

(5) Isolating, bypassing, or otherwise removing the leaking heat exchanger from service until it is otherwise repaired.

(d) Beginning no later than the compliance dates specified in § 63.1081(a), if you detect a leak when monitoring a cooling tower return line according to § 63.1086(e)(1)(i), you may conduct additional monitoring of each heat exchanger or group of heat exchangers associated with the heat exchange system for which the leak was detected, as provided in § 63.1086(e)(1)(ii). If no leaks are detected when monitoring according to the requirements of § 63.1086(e)(1)(ii), the heat exchange system is considered to have met the repair requirements through re-monitoring of the heat exchange system, as provided in paragraph (c) of this section.

■ 11. Section 63.1088 is amended by revising the introductory text and by adding paragraph (d) to read as follows:

§ 63.1088 In what situations may I delay leak repair, and what actions must I take for delay of repair?

You may delay the repair of heat exchange systems if the leaking equipment is isolated from the process. At any time before the compliance dates specified in § 63.1081(a), you may also delay repair if repair is technically infeasible without a shutdown, and you meet one of the conditions in paragraphs (a) through (c) of this section. Beginning no later than the compliance dates specified in § 63.1081(a), paragraphs (a) through (c) of this section no longer apply; instead, you may delay repair if the conditions in paragraph (d) of this section are met.

* * * * *

(d) Beginning no later than the compliance dates specified in § 63.1081(a), you may delay repair when one of the conditions in paragraph (d)(1) or (2) of this section is met and the leak is less than the delay of repair action level specified in paragraph (d)(3) of this section. You must determine if a delay of repair is necessary as soon as practicable, but no later than 45 days after first identifying the leak.

(1) If the repair is technically infeasible without a shutdown and the total strippable hydrocarbon concentration is initially and remains less than the delay of repair action level for all monitoring periods during the delay of repair, then you may delay repair until the next scheduled shutdown of the heat exchange system. If, during subsequent monitoring, the delay of repair action level is exceeded, then you must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded the delay of repair action level.

(2) If the necessary equipment, parts, or personnel are not available and the total strippable hydrocarbon concentration is initially and remains less than the delay of repair action level for all monitoring periods during the delay of repair, then you may delay the repair for a maximum of 120 calendar days. You must demonstrate that the necessary equipment, parts, or personnel were not available. If, during subsequent monitoring, the delay of repair action level is exceeded, then you must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded the delay of repair action level.

(3) The delay of repair action level is a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv. The delay of repair action level is assessed as described in paragraph (d)(3)(i) or (ii) of this section, as applicable.

(i) For once-through heat exchange systems for which the inlet water feed is monitored as described in § 63.1086(e)(2)(ii), the delay of repair action level is exceeded if the difference in the measurement value of the sample taken from a location specified in § 63.1086(e)(2)(i) and the measurement value of the corresponding sample taken from the location specified in § 63.1086(e)(2)(ii) equals or exceeds the delay of repair action level.

(ii) For all other heat exchange systems, the delay of repair action level is exceeded if a measurement value of the sample taken from a location specified in § 63.1086(e)(1)(i) and (ii) or § 63.1086(e)(2)(i) equals or exceeds the delay of repair action level.

■ 12. Section 63.1089 is amended by revising paragraphs (d) and (e) to read as follows:

§ 63.1089 What records must I keep?

* * * * *

(d) At any time before the compliance dates specified in § 63.1081(a), you must keep documentation of delay of repair as specified in § 63.1088(a) through (c). Beginning no later than the compliance dates specified in § 63.1081(a), the requirement to keep documentation of delay of repair as specified in § 63.1088(a) through (c) no longer applies; instead, you must keep documentation of delay of repair as specified in paragraphs (d)(1) through (4) of this section.

(1) The reason(s) for delaying repair.

(2) A schedule for completing the repair as soon as practical.

(3) The date and concentration of the leak as first identified and the results of all subsequent monitoring events during the delay of repair.

(4) An estimate of the potential strippable hydrocarbon emissions from the leaking heat exchange system or heat exchanger for each required delay of repair monitoring interval following the procedures in paragraphs (d)(4)(i) through (iv) of this section.

(i) Determine the leak concentration as specified in § 63.1086(e) and convert the stripping gas leak concentration (in ppmv as methane) to an equivalent liquid concentration, in parts per million by weight (ppmw), using equation 7–1 from ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' (incorporated by reference—see § 63.14) and the molecular weight of 16 grams per mole (g/mol) for methane.

(ii) Determine the mass flow rate of the cooling water at the monitoring location where the leak was detected. If the monitoring location is an individual cooling tower riser, determine the total cooling water mass flow rate to the cooling tower. Cooling water mass flow rates may be determined using direct measurement, pump curves, heat balance calculations, or other engineering methods. Volumetric flow measurements may be used and converted to mass flow rates using the density of water at the specific monitoring location temperature or using the default density of water at 25 degrees Celsius, which is 997 kilograms per cubic meter or 8.32 pounds per gallon.

(iii) For delay of repair monitoring intervals prior to repair of the leak, calculate the potential strippable hydrocarbon emissions for the leaking heat exchange system or heat exchanger for the monitoring interval by multiplying the leak concentration in the cooling water, ppmw, determined in (d)(4)(i) of this section, by the mass flow rate of the cooling water determined in (d)(4)(ii) of this section and by the duration of the delay of repair monitoring interval. The duration of the delay of repair monitoring interval is the time period starting at midnight on the day of the previous monitoring event or at midnight on the day the repair would have been completed if the repair had not been delayed, whichever is later, and ending at midnight of the day the of the current monitoring event.

(iv) For delay of repair monitoring intervals ending with a repaired leak, calculate the potential strippable hydrocarbon emissions for the leaking heat exchange system or heat exchanger for the final delay of repair monitoring interval by multiplying the duration of the final delay of repair monitoring interval by the leak concentration and cooling water flow rates determined for the last monitoring event prior to the re-monitoring event used to verify the leak was repaired. The duration of the final delay of repair monitoring interval is the time period starting at midnight of the day of the last monitoring event prior to re-monitoring to verify the leak was repaired and ending at the time of the re-monitoring event that verified that the leak was repaired.

(e) At any time before the compliance dates specified in § 63.1081(a), if you validate a 40 CFR part 136 method for the HAP listed in Table 1 to this subpart according to the procedures in appendix D to this part, then you must keep a record of the test data and calculations used in the validation. On the compliance dates specified in § 63.1081(a), this requirement no longer applies.

■ 13. Section 63.1090 is amended by revising the introductory text and by adding paragraph (f) to read as follows:

§ 63.1090 What reports must I submit?

If you delay repair for your heat exchange system, you must report the delay of repair in the semiannual report required by § 63.1110(e). If the leak remains unrepaired, you must continue to report the delay of repair in semiannual reports until you repair the leak. Except as provided in paragraph (f) of this section, you must include the information in paragraphs (a) through (e) of this section in the semiannual report.

* * * * *

(f) For heat exchange systems subject to § 63.1085(e) and (f), Periodic Reports must include the information specified in paragraphs (f)(1) through (5) of this section, in lieu of the information specified in paragraphs (a) through (e) of this section.

(1) The number of heat exchange systems at the plant site subject to the monitoring requirements in § 63.1085(e) and (f).

(2) The number of heat exchange systems at the plant site found to be leaking.

(3) For each monitoring location where the total strippable hydrocarbon concentration was determined to be equal to or greater than the applicable leak definitions specified in § 63.1086(e)(5), identification of the monitoring location (*e.g.,* unique monitoring location or heat exchange system ID number), the measured total strippable hydrocarbon concentration, the date the leak was first identified, and, if applicable, the date the source of the leak was identified;

(4) For leaks that were repaired during the reporting period (including delayed repairs), identification of the monitoring location associated with the repaired leak, the total strippable hydrocarbon concentration measured during re-monitoring to verify repair, and the re-monitoring date (*i.e.,* the effective date of repair); and

(5) For each delayed repair, identification of the monitoring location associated with the leak for which repair is delayed, the date when the delay of repair began, the date the repair is expected to be completed (if the leak is not repaired during the reporting period), the total strippable hydrocarbon concentration and date of each monitoring event conducted on the

delayed repair during the reporting period, and an estimate of the potential strippable hydrocarbon emissions over the reporting period associated with the delayed repair.

■ 14. Section 63.1095 is amended by:

■ a. Revising paragraphs (a)(1) introductory text;

■ b. Adding paragraph (a)(1)(vi);

■ c. Revising paragraphs (a)(3), (b) introductory text, and (b)(1); and

■ d. Adding paragraph (b)(3).

The revisions and additions read as follows:

§ 63.1095 What specific requirements must I comply with?

* * * * *

(a) * * *

(1) Route the continuous butadiene stream to a treatment process or wastewater treatment system used to treat benzene waste streams that complies with the standards specified in 40 CFR 61.348. Comply with the requirements of 40 CFR part 61, subpart FF; with the changes in Table 2 to this subpart, and as specified in paragraphs (a)(1)(i) through (vi) of this section.

* * * * *

(vi) Beginning no later than the compliance dates specified in § 63.1081(b), if you use a steam-assisted, air-assisted, non-assisted, or pressure-assisted multi-point flare to comply with 40 CFR part 61, subpart FF, then you must comply with the requirements of 40 CFR 63.1103(e)(4) in lieu of 40 CFR 61.349(a)(2)(iii) and (d), 40 CFR 61.354(c)(3), 40 CFR 61.356(f)(2)(i)(D) and (j)(7), and 40 CFR 61.357(d)(7)(iv)(F).

* * * * *

(3) Before [date 3 years after date of publication of final rule in the **Federal Register**], if the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), comply with the requirements of this section at all times except during periods of startup, shutdown, and malfunction, if the startup, shutdown, or malfunction precludes the ability of the affected source to comply with the requirements of this section and the owner or operator follows the provisions for periods of startup, shutdown, and malfunction, as specified in § 63.1111. Beginning on [date 3 years after date of publication of final rule in the **Federal Register**], if the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), you must comply with the requirements of this section at all times.

(b) *Waste streams that contain benzene.* For waste streams that contain benzene, you must comply with the requirements of 40 CFR part 61, subpart FF, except as specified in Table 2 to this subpart and paragraph (b)(3) of this section. You must manage and treat waste streams that contain benzene as specified in either paragraph (b)(1) or (2) of this section.

(1) If the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), manage and treat spent caustic waste streams and dilution steam blowdown waste streams according to 40 CFR 61.342(c)(1) through (c)(3)(i). Before [date 3 years after date of publication of final rule in the **Federal Register**], the requirements of this paragraph (b)(1) shall apply at all times except during periods of startup, shutdown, and malfunction, if the startup, shutdown, or malfunction precludes the ability of the affected source to comply with the requirements of this section and the owner or operator follows the provisions for periods of startup, shutdown, and malfunction, as specified in § 63.1111. Beginning on [date 3 years after date of publication of final rule in the **Federal Register**], the requirements of this paragraph (b)(1) shall apply at all times.

* * * * *

(3) Beginning no later than the compliance dates specified in § 63.1081(b), if you use a steam-assisted, air-assisted, non-assisted, or pressure-assisted multi-point flare to comply with 40 CFR part 61, subpart FF, then you must comply with the requirements of 40 CFR 63.1103(e)(4) in lieu of 40 CFR 61.349(a)(2)(iii) and (d), 40 CFR 61.354(c)(3), 40 CFR 61.356(f)(2)(i)(D) and (j)(7), and 40 CFR 61.357(d)(7)(iv)(F).

■ 15. Table 2 to subpart XX of part 63 is amended by revising the first column heading, third entry to row 1, and the first two entries to row 2 to read as follows:

TABLE 2 TO SUBPART XX OF PART 63—REQUIREMENTS OF 40 CFR PART 61, SUBPART FF, NOT INCLUDED IN THE REQUIREMENTS FOR THIS SUBPART AND ALTERNATE REQUIREMENTS

If the total annual benzene quantity for waste from your facility is * * *	Do not comply with:	Instead, comply with:
1. Less than 10 Mg/yr	40 CFR 61.340	§ 63.1093.
	40 CFR 61.342(c)(3)(ii), (d), and (e)	There is no equivalent requirement.
	40 CFR 61.342(f)	§ 63.1096.
* *	* * *	* *
2. Greater than or equal to 10 Mg/yr	40 CFR 61.340	§ 63.1093.
	40 CFR 61.342(f)	§ 63.1096.
* *	* * *	* *

■ 16. Section 63.1100 is amended by:

■ a. Revising the heading to Table 1 to § 63.1100(a);

■ b. Revising the rows ''Carbon Black Production,'' ''Cyanide Chemicals Manufacturing,'' ''Ethylene Production,'' and ''Spandex Production''; and revising footnote c to Table 1 to § 63.1100(a);

■ c. Revising paragraphs (b), (g) introductory text, and (g)(4)(ii);

■ d. Adding paragraph (g)(4)(iii);

■ e. Revising paragraph (g)(5); and

■ f. Adding paragraph (g)(7).

The revisions and additions read as follows:

§ 63.1100 Applicability.

(a) * * *

TABLE 1 TO § 63.1100(a)—SOURCE CATEGORY MACT[a] APPLICABILITY

Source category	Storage vessels	Process vents	Transfer racks	Equipment leaks	Wastewater streams	Other	Source category MACT requirements
* *		*	*		*	*	*
Carbon Black Production	No	Yes	No	No	No	No	§ 63.1103(f).
Cyanide Chemicals Manufacturing.	Yes	Yes	Yes	Yes	Yes	No	§ 63.1103(g).
Ethylene Production	Yes	Yes	Yes	Yes	Yes	Yes[c]	§ 63.1103(e).
* *		*	*		*	*	*
Spandex Production	Yes	Yes	No	No	No	Yes[d]	§ 63.1103(h).

[a] Maximum achievable control technology.
[b] Fiber spinning lines using spinning solution or suspension containing acrylonitrile.
[c] Heat exchange systems as defined in § 63.1082(b).
[d] Fiber spinning lines.

(b) *Subpart A requirements.* The following provisions of subpart A of this part (General Provisions), §§ 63.1 through 63.5, and §§ 63.12 through 63.15, apply to owners or operators of affected sources subject to this subpart. Beginning no later than the compliance dates specified in § 63.1102(c), for ethylene production affected sources, §§ 63.7, 63.8, 63.10(c), and 63.10(e) also apply, except for § 63.8(c)(1)(iii).

* * * * *

(g) *Overlap with other regulations.* Paragraphs (g)(1) through (7) of this section specify the applicability of this subpart YY emission point requirements when other rules may apply. Where subpart YY of this part allows an owner or operator an option to comply with one or another regulation to comply with subpart YY of this part, an owner or operator must report which regulation they choose to comply with in the Notification of Compliance Status report required by § 63.1110(a)(4).

(4) * * *

(ii) After the compliance dates specified in § 63.1102, equipment that must be controlled according to this subpart and subpart H of this part is in compliance with the equipment leak requirements of this subpart if it complies with either set of requirements. For ethylene production affected sources, the requirement in § 63.1103(e)(9)(i) also applies. The owner or operator must specify the rule with which they will comply in the Notification of Compliance Status report required by § 63.1110(a)(4).

(iii) Beginning no later than the compliance dates specified in § 63.1102(c), for ethylene production affected sources, equipment that must be controlled according to this subpart and subpart VVa of 40 CFR part 60 is required only to comply with the equipment leak requirements of this subpart, except the owner or operator must also comply with the calibration drift assessment requirements specified at § 60.485a(b)(2). When complying with the calibration drift assessment requirements at § 60.485a(b)(2), the requirement at § 60.486a(e)(8)(v) to record the instrument reading for each scale used applies.

(5) *Overlap of subpart YY with other regulations for wastewater for source categories other than ethylene production.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a wastewater stream that is subject to the wastewater requirements of this subpart and the wastewater requirements of subparts F, G, and H of this part (collectively known as the ''HON'') shall be deemed to be in compliance with the requirements of this subpart if it complies with either set of requirements. In any instance where a source subject to this subpart is collocated with a Synthetic Organic Chemical Manufacturing Industry (SOCMI) source, and a single wastewater treatment facility treats both Group 1 wastewaters and wastewater residuals from the source subject to this subpart and wastewaters from the SOCMI source, a certification by the treatment facility that they will manage and treat the waste in conformity with the specific control requirements set forth in 40 CFR 63.133 through 63.147 will also be deemed sufficient to satisfy the certification requirements for wastewater treatment under this subpart.

* * * * *

(7) *Overlap of subpart YY with other regulations for flares for the ethylene production source category.* (i) Beginning no later than the compliance dates specified in § 63.1102(c), flares that are subject to the provisions of 40 CFR 60.18 or 63.11 and used as a control device for an emission point subject to the requirements in Table 7 to § 63.1103(e) are required to comply only with the provisions specified in § 63.1103(e)(4). At any time before the compliance dates specified in § 63.1102(c), flares that are subject to the provisions of 40 CFR 60.18 or 63.11 and elect to comply with the requirements in § 63.1103(e)(4) are required to comply only with the provisions specified in this subpart.

■ 17. Section 63.1101 is amended by revising the definitions of ''Pressure relief device or value'' and ''Shutdown'' to read as follows:

§ 63.1101 Definitions.

* * * * *

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices. This definition does not apply to ethylene production affected sources.

* * * * *

Shutdown means the cessation of operation of an affected source or equipment that is used to comply with this subpart, or the emptying and degassing of a storage vessel. For the purposes of this subpart, shutdown includes, but is not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. Shutdown includes the decoking of ethylene cracking furnaces.

* * * * *

■ 18. Section 63.1102 is amended by revising paragraph (a) introductory text and adding paragraph (c) to read as follows:

§ 63.1102 Compliance schedule.

(a) *General requirements.* Affected sources, as defined in § 63.1103(a)(1)(i) for acetyl resins production, § 63.1103(b)(1)(i) for acrylic and modacrylic fiber production, § 63.1103(c)(1)(i) for hydrogen fluoride production, § 63.1103(d)(1)(i) for polycarbonate production, § 63.1103(e)(1)(i) for ethylene production, § 63.1103(f)(1)(i) for carbon black production, § 63.1103(g)(1)(i) for cyanide chemicals manufacturing, or § 63.1103(h)(1)(i) for spandex production shall comply with the appropriate provisions of this subpart and the subparts referenced by this subpart according to the schedule in paragraphs (a)(1) or (2) of this section, as appropriate, except as provided in paragraphs (b) and (c) of this section. Proposal and effective dates are specified in Table 1 to this section.

* * * * *

(c) All ethylene production affected sources that commenced construction or reconstruction on or before October 9, 2019, must be in compliance with the requirements listed in paragraphs (c)(1) through (13) of this section upon initial startup or [date 3 years after date of publication of final rule in the **Federal Register**], whichever is later. All ethylene production affected sources that commenced construction or reconstruction after October 9, 2019, must be in compliance with the requirements listed in paragraphs (c)(1) through (13) of this section upon initial startup, or [date of publication of final rule in the **Federal Register**], whichever is later.

(1) Overlap requirements specified in § 63.1100(g)(4)(iii) and (7), if applicable.

(2) The storage vessel requirements specified in paragraphs (a)(2), (b)(2), and (c)(1)(ii) of Table 7 to § 63.1103(e).

(3) The ethylene process vent requirements specified in paragraph (d)(1)(ii) of Table 7 to § 63.1103(e).

(4) The transfer rack requirements specified in § 63.1105(a)(5).

(5) The equipment requirements specified in paragraph (f)(1)(ii) of Table 7 to § 63.1103(e), and § 63.1107(h).

(6) The bypass line requirements specified in paragraph (i) of Table 7 to § 63.1103(e), and § 63.1103(e)(6).

(7) The decoking requirements for ethylene cracking furnaces specified in paragraph (j) of Table 7 to § 63.1103(e), and § 63.1103(e)(7) and (8).

(8) The flare requirements specified in § 63.1103(e)(4).

(9) The maintenance vent requirements specified in § 63.1103(e)(5).

(10) The requirements specified in § 63.1103(e)(9).

(11) The requirements in § 63.1108(a)(4)(i), (b)(1)(ii), (b)(2), and (b)(4)(ii)(B).

(12) The recordkeeping requirements specified in § 63.1109(e) through (i).

(13) The reporting requirements specified in § 63.1110(a)(10), (d)(1)(iv) and (v), and (e)(4) through (8).

* * * * *

■ 19. Section 63.1103 is amended:

■ a. By revising the definition of ''In organic hazardous air pollutant or in organic HAP service'' in paragraph (b)(2);

■ b. By revising paragraphs (e)(1)(i) introductory text, (e)(1)(i)(F), and (e)(1)(ii)(J);

■ c. In paragraph (e)(2) by;

■ i. Adding in alphabetical order a definition for ''Decoking operation'';

■ ii. Revising the definition of ''Ethylene process vent'';

■ iii. Adding in alphabetical order a definition for ''Force majeure event'';

■ iv. Removing the definition of ''Heat exchange system'';

■ v. Adding in alphabetical order, a definition for ''Periodically discharged,'' ''Pressure-assisted multi-point flare,'' ''Pressure relief device,'' ''Radiant tube(s),'' and ''Relief valve'';

■ d. By revising paragraph (e)(3);

■ e. By revising Table 7 to § 63.1103(e); and

■ f. By adding paragraphs (e)(4) through (9).

The revisions and additions read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

(b) * * *

(2) * * *

* * * * *

In organic hazardous air pollutant or in organic HAP service means, for acrylic and modacrylic fiber production affected sources, that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 10 percent by weight of total organic HAP as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.

* * * * *

(e) *Ethylene production applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the ethylene production (as defined in paragraph (e)(2) of this section) source category, the affected source comprises all emission points listed in paragraphs (e)(1)(i)(A) through (G) of this section that are associated with an ethylene production unit that is located at a major source, as defined in section 112(a) of the Act.

* * * * *

(F) All heat exchange systems (as defined in § 63.1082(b)) associated with an ethylene production unit.

* * * * *

(ii) * * *

(J) Air emissions from all ethylene cracking furnaces.

* * * * *

(2) *Definitions.*

Decoking operation means the coke combustion activity that occurs inside the radiant tube(s) in the ethylene cracking furnace firebox.

Ethylene process vent means a gas stream with a flow rate greater than 0.005 standard cubic meters per minute containing greater than 20 parts per million by volume HAP that is continuously discharged, or periodically discharged on and after [date 3 years after date of publication of final rule in the **Federal Register**], during operation of an ethylene production unit. Ethylene process vents are gas streams that are discharged to the atmosphere (or the point of entry into a control device, if any) either directly or after passing through one or more recovery devices. Ethylene process vents do not include:

(A) Pressure relief device discharges;

(B) Gaseous streams routed to a fuel gas system, including any flares using fuel gas, of which less than 50 percent of the fuel gas is derived from an ethylene production unit;

(C) Gaseous streams routed to a fuel gas system whereby any flares using fuel gas, of which 50 percent or more of the fuel gas is derived from an ethylene production unit, comply with § 63.1103(e)(4) beginning no later than the compliance dates specified in § 63.1102(c);

(D) Leaks from equipment regulated under this subpart;

(E) Episodic or nonroutine releases such as those associated with startup, shutdown, and malfunction until [date 3 years after date of publication of final rule in the **Federal Register**]; and

(F) In situ sampling systems (online analyzers) until [date 3 years after date of publication of final rule in the **Federal Register**].

* * * * *

Force majeure event means a release of HAP, either directly to the atmosphere from a pressure relief device or discharged via a flare, that is demonstrated to the satisfaction of the Administrator to result from an event beyond the owner or operator's control, such as natural disasters; acts of war or terrorism; loss of a utility external to the

ethylene production unit (*e.g.,* external power curtailment), excluding power curtailment due to an interruptible service agreement; and fire or explosion originating at a near or adjoining facility outside of the ethylene production unit that impacts the ethylene production unit's ability to operate.

* * * * *

Periodically discharged means gas stream discharges that are intermittent for which the total organic HAP concentration is greater than 20 parts per million by volume and total volatile organic compound emissions are 50 pounds per day or more. These intermittent discharges are associated with routine operations, maintenance activities, startups, shutdowns, malfunctions, or process upsets and do not include pressure relief device discharges or discharges classified as maintenance vents.

Pressure-assisted multi-point flare means a flare system consisting of multiple flare burners in staged arrays whereby the vent stream pressure is used to promote mixing and smokeless operation at the flare burner tips. Pressure-assisted multi-point flares are designed for smokeless operation at velocities up to Mach = 1 conditions (*i.e.,* sonic conditions), can be elevated or at ground level, and typically use cross-lighting for flame propagation to combust any flare vent gases sent to a particular stage of flare burners.

Pressure relief device means a valve, rupture disk, or similar device used only to release an unplanned, nonroutine discharge of gas from process equipment in order to avoid safety hazards or equipment damage. A pressure relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause. Such devices include conventional, spring-actuated relief valves, balanced bellows relief valves, pilot-operated relief valves, rupture disks, and breaking, buckling, or shearing pin devices.

Radiant tube(s) means any portion of the tube coil assembly located within the ethylene cracking furnace firebox whereby a thermal cracking reaction of hydrocarbons (in the presence of steam) occurs. Hydrocarbons and steam pass through the radiant tube(s) of the ethylene cracking furnace during normal operation and coke is removed from the inside of the radiant tube(s) during decoking operation.

Relief valve means a type of pressure relief device that is designed to re-close after the pressure relief.

* * * * *

(3) *Requirements.* The owner or operator must control organic HAP emissions from each affected source emission point by meeting the applicable requirements specified in Table 7 to this section. An owner or operator must perform the applicability assessment procedures and methods for process vents specified in § 63.1104, except for paragraphs (d), (g), (h) through (j), (l)(1), and (n). An owner or operator must perform the applicability assessment procedures and methods for equipment leaks specified in § 63.1107. General compliance, recordkeeping, and reporting requirements are specified in § § 63.1108 through 63.1112. Before [date 3 years after date of publication of final rule in the **Federal Register**], minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting and recordkeeping of such events. A startup, shutdown, and malfunction plan is not required on and after [date 3 years after date of publication of final rule in the **Federal Register**] and the requirements specified in § 63.1111 no longer apply; however, for historical compliance purposes, a copy of the plan must be retained and available on-site for five years after [date 3 years after date of publication of final rule in the **Federal Register**]. Except as specified in paragraph (e)(4)(i) of this section, procedures for approval of alternate means of emission limitations are specified in § 63.1113.

TABLE 7 TO § 63.1103(e)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
(a) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) Except as specified in paragraph (a)(2) of this table, the maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥4 cubic meters but <95 cubic meters.	(i) Fill the vessel through a submerged pipe; or (ii) Comply with the requirements in paragraph (b)(1)(i) or (ii) of this table.
	(2) Beginning no later than the compliance dates specified in § 63.1102(c), the maximum true vapor pressure of total organic HAP is ≥0.69 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥4 cubic meters but <59 cubic meters.	(i) Fill the vessel through a submerged pipe; or (ii) Comply with the requirements in paragraph (b)(2)(i) or (ii) of this table.
(b) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) Except as specified in paragraph (b)(2) of this table, the maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥95 cubic meters.	(i) Comply with the requirements of subpart WW of this part; or (ii) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices and meet the requirements of § 63.982(a)(1).

TABLE 7 TO § 63.1103(e)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
	(2) Beginning no later than the compliance dates specified in § 63.1102(c), the maximum true vapor pressure of total organic HAP is ≥0.69 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥59 cubic meters.	(i) Comply with the requirements of subpart WW of this part; [a] or (ii) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to a flare and meet the requirements of § 63.983 and paragraphs (e)(4) and (9) of this section; or (iii) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of non-flare control devices and meet the requirements specified in § 63.982(c)(1) and (e)(9) of this section; or (iv) Reduce emissions of total organic HAP by 98 weight-percent by routing emissions to a fuel gas system [b] or process and meet the requirements specified in § 63.982(d) and (e)(9) of this section.
(c) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) The maximum true vapor pressure of total organic HAP is ≥76.6 kilopascals.	(i) Except as specified in paragraph (c)(1)(ii) of this table, reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices and meet the requirements of § 63.982(a)(1). (ii) Beginning no later than the compliance dates specified in § 63.1102(c), comply with paragraph (c)(1)(ii)(A), (B), or (C) of this section. (A) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to a flare and meet the requirements of § 63.983 and paragraphs (e)(4) and (9) of this section; or (B) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of non-flare control devices and meet the requirements specified in § 63.982(c)(1) and (e)(9) of this section; or (C) Reduce emissions of total organic HAP by 98 weight-percent by routing emissions to a fuel gas system [b] or process and meet the requirements specified in § 63.982(d) and (e)(9) of this section.
(d) An ethylene process vent (as defined in paragraph (e)(2) of this section).	(1) The process vent is at an existing source and the vent stream has a flow rate ≥0.011 scmm and a total organic HAP concentration ≥50 parts per million by volume on a dry basis; or the process vent is at a new source and the vent stream has a flow rate ≥0.008 scmm and a total organic HAP concentration ≥30 parts per million by volume on a dry basis.	(i) Except as specified in paragraph (d)(1)(ii) of this table, reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume on a dry basis corrected to 3% oxygen; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices and meet the requirements specified in § 63.982(b) and (c)(2). (ii) Beginning no later than the compliance dates specified in § 63.1102(c), comply with the maintenance vent requirements specified in paragraph (e)(5) of this section and either paragraph (d)(1)(ii)(A) or (B) of this table. (A) Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume on a dry basis corrected to 3% oxygen; whichever is less stringent, by venting emissions through a closed vent system to a flare and meet the requirements of § 63.983 and paragraphs (e)(4) and (9) of this section; or (B) Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume on a dry basis corrected to 3% oxygen; whichever is less stringent, by venting emissions through a closed vent system to any combination of non-flare control devices and meet the requirements specified in § 63.982(c)(2) and (e)(9) of this section.

TABLE 7 TO § 63.1103(e)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
(e) A transfer rack (as defined in paragraph (e)(2) of this section).	(1) Materials loaded have a true vapor pressure of total organic HAP ≥3.4 kilopascals and ≥76 cubic meters per day (averaged over any consecutive 30-day period) of HAP-containing material is loaded.	(i) Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume on a dry basis corrected to 3% oxygen; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices as specified in § 63.1105 and meet the requirements specified in paragraph (e)(9) of this section.; or (ii) Install process piping designed to collect the HAP-containing vapors displaced from tank trucks or railcars during loading and to route it to a process, a fuel gas system, or a vapor balance system, as specified in § 63.1105 and meet the requirements specified in paragraph (e)(9) of this section.[b]
(f) Equipment (as defined in § 63.1101) that contains or contacts organic HAP.	(1) The equipment contains or contacts ≥5 weight-percent organic HAP; and the equipment is not in vacuum service.	(i) Except as specified in paragraph (f)(1)(ii) of this table, comply with the requirements of subpart UU of this part. (ii) Beginning no later than the compliance dates specified in § 63.1102(c), comply with the requirements of paragraph (e)(9) of this section and subpart UU of this part, except instead of complying with the pressure relief device requirements of § 63.1030 of subpart UU, meet the requirements of § 63.1107(h), and in lieu of the flare requirement of § 63.1034(b)(2)(iii), comply with the requirements specified in paragraph (e)(4) of this section.[b]
(g) Processes that generate waste (as defined in paragraph (e)(2) of this section.	(1) The waste stream contains any of the following HAP: Benzene, cumene, ethyl benzene, hexane, naphthalene, styrene, toluene, o-xylene, m-xylene, p-xylene, or 1,3-butadiene.	(i) Comply with the waste requirements of subpart XX of this part. For ethylene production unit waste stream requirements, terms have the meanings specified in subpart XX.
(h) A heat exchange system (as defined in § 63.1082(b)).	.....	Comply with the heat exchange system requirements of subpart XX of this part.
(i) A closed vent system that contains one or more bypass lines.	(1) The bypass line could divert a vent stream directly to the atmosphere or to a control device not meeting the requirements in this table.	(i) Beginning no later than the compliance dates specified in § 63.1102(c), comply with the requirements specified in paragraphs (e)(6) and (9) of this section.
(j) A decoking operation associated with an ethylene cracking furnace.	.....	Beginning no later than the compliance dates specified in § 63.1102(c), comply with the requirements specified in paragraphs (e)(7) and (8) of this section.

[a] For owners or operators that choose to comply with the requirements of subpart WW of this part for storage vessels with a capacity ≥59 cubic meters, the timing for installation of the required controls is specified within subpart WW of this part. All references to "promulgation of the referencing subpart" and "the promulgation date of the referencing subpart" in subpart WW of this part means [date of publication of final rule in the **Federal Register**].

[b] Beginning no later than the compliance dates specified in § 63.1102(c), any flare using fuel gas from a fuel gas system, of which 50 percent or more of the fuel gas is derived from an ethylene production unit, must be in compliance with paragraph (e)(4) of this section.

(4) *Flares.* Beginning no later than the compliance dates specified in § 63.1102(c), if a steam-assisted, air-assisted, non-assisted, or pressure-assisted multi-point flare is used as a control device for an emission point subject to the requirements in Table 7 to this section, then the owner or operator must meet the applicable requirements for flares as specified in §§ 63.670 and 63.671 of subpart CC, including the provisions in Tables 12 and 13 to subpart CC of this part, except as specified in paragraphs (e)(4)(i) through (xi) of this section. This requirement also applies to any flare using fuel gas from a fuel gas system, of which 50 percent or more of the fuel gas is derived from an ethylene production unit, being used to control an emission point subject to the requirements in Table 7 of this section. For purposes of compliance with this paragraph, the following terms are defined in § 63.641 of subpart CC: Assist air, assist steam, center steam, combustion zone, combustion zone gas, flare, flare purge gas, flare supplemental gas, flare sweep gas, flare vent gas, lower steam, net heating value, perimeter assist air, pilot gas, premix assist air, total steam, and upper steam.

(i) The owner or operator may elect to comply with the alternative means of emissions limitation requirements specified in of § 63.670(r) of subpart CC in lieu of the requirements in § 63.670(d) through (f) of subpart CC, as applicable. However, instead of complying with § 63.670(r)(3) of subpart CC, the owner or operator must submit the alternative means of emissions limitation request following the requirements in § 63.1113.

(ii) Instead of complying with § 63.670(o)(2)(i) of subpart CC, the owner or operator must develop and implement the flare management plan no later than the compliance dates specified in § 63.1102(c).

(iii) Instead of complying with § 63.670(o)(2)(iii) of subpart CC, if required to develop a flare management plan and submit it to the Administrator, then the owner or operator must also submit all versions of the plan in portable document format (PDF) to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). If you claim some of the information in your flare management plan is confidential business information (CBI), submit a version with the CBI omitted via CEDRI. A complete plan, including information claimed to be CBI and clearly marked as CBI, must be mailed to the following address: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143–01), Attention: Ethylene Production Sector Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711.

(iv) Substitute ''ethylene production unit'' for each occurrence of ''petroleum refinery.''

(v) Each occurrence of ''refinery'' does not apply.

(vi) If a pressure-assisted multi-point flare is used as a control device for an emission point subject to the requirements in Table 7 to this section, then the following conditions apply:

(A) The owner or operator is not required to comply with the flare tip velocity requirements in § 63.670(d) and (k) of subpart CC;

(B) The owner or operator must substitute ''800'' for each occurrence of ''270'' in § 63.670(e) of subpart CC;

(C) The owner or operator must determine the 15-minute block average NHVvg using only the direct calculation method specified in § 63.670(l)(5)(ii) of subpart CC;

(D) Instead of complying with § 63.670(b) and (g) of subpart CC, if a pressure-assisted multi-point flare uses cross-lighting on a stage of burners rather than having an individual pilot flame on each burner, the owner or operator must operate each stage of the pressure-assisted multi-point flare with a flame present at all times when regulated material is routed to that stage of burners. Each stage of burners that cross-lights in the pressure-assisted multi-point flare must have at least two pilots with a continuously lit pilot flame capable of igniting all regulated material that is routed to that stage of burners. Each 15-minute block during which there is at least one minute where no pilot flame is present on a stage of burners when regulated material is routed to the flare is a deviation of the standard. Deviations in different 15-minute blocks from the same event are considered separate deviations. The pilot flame(s) on each stage of burners that use cross-lighting must be continuously monitored by a thermocouple or any other equivalent device used to detect the presence of a flame;

(E) The owner or operator of a pressure-assisted multi-point flare must ensure that if a stage of burners on the flare uses cross-lighting, that the distance between any two burners in series on that stage is no more than 6 feet; and

(F) The owner or operator of a pressure-assisted multi-point flare must install and operate pressure monitor(s) on the main flare header, as well as a valve position indicator monitoring system for each staging valve to ensure that the flare operates within the proper range of conditions as specified by the manufacturer. The pressure monitor must meet the requirements in Table 13 of subpart CC of this part.

(vii) If an owner or operator chooses to determine compositional analysis for net heating value with a continuous process mass spectrometer, the owner or operator must comply with the requirements specified in paragraphs (e)(4)(vii)(A) through (G) of this section.

(A) The owner or operator must meet the requirements in § 63.671(e)(2). The owner or operator may augment the minimum list of calibration gas components found in § 63.671(e)(2) with compounds found during a pre-survey or known to be in the gas through process knowledge.

(B) Calibration gas cylinders must be certified to an accuracy of 2 percent and traceable to National Institute of Standards and Technology (NIST) standards.

(C) For unknown gas components that have similar analytical mass fragments to calibration compounds, the owner or operator may report the unknowns as an increase in the overlapped calibration gas compound. For unknown compounds that produce mass fragments that do not overlap calibration compounds, the owner or operator may use the response factor for the nearest molecular weight hydrocarbon in the calibration mix to quantify the unknown component's NHV_{vg}.

(D) The owner or operator may use the response factor for n-pentane to quantify any unknown components detected with a higher molecular weight than n-pentane.

(E) The owner or operator must perform an initial calibration to identify mass fragment overlap and response factors for the target compounds.

(F) The owner or operator must meet applicable requirements in Performance Specification 9 of 40 CFR part 60, appendix B, for continuous monitoring system acceptance including, but not limited to, performing an initial multi-point calibration check at three concentrations following the procedure in Section 10.1 and performing the periodic calibration requirements listed for gas chromatographs in Table 13 of 40 CFR part 63, subpart CC, for the process mass spectrometer. The owner or operator may use the alternative sampling line temperature allowed under Net Heating Value by Gas Chromatograph in Table 13 of 40 CFR part 63, subpart CC.

(G) The average instrument calibration error (CE) for each calibration compound at any calibration concentration must not differ by more than 10 percent from the certified cylinder gas value. The CE for each component in the calibration blend must be calculated using the following equation:

$$CE = \frac{C_m - C_a}{C_a} x\ 100$$

Where:

C_m = Average instrument response (ppm)
C_a = Certified cylinder gas value (ppm)

(viii) An owner or operator using a gas chromatograph or mass spectrometer for compositional analysis for net heating value may choose to use the CE of $NHV_{measured}$ versus the cylinder tag value NHV as the measure of agreement for daily calibration and quarterly audits in lieu of determining the compound-specific CE. The CE for NHV at any calibration level must not differ by more than 10 percent from the certified cylinder gas value. The CE for must be calculated using the following equation:

$$CE = \frac{NHV_{measured} - NHV_a}{NHV_a} x\ 100$$

Where:

$NHV_{measured}$ = Average instrument response (Btu/scf)

NHV_a = Certified cylinder gas value (Btu/scf)

(ix) Instead of complying with § 63.670(p) of subpart CC, the owner or operator must keep the flare monitoring records specified in § 63.1109(e).

(x) Instead of complying with § 63.670(q) of subpart CC, the owner or operator must comply with the reporting requirements specified in § 63.1110(d) and (e)(4).

(xi) When determining compliance with the flare tip velocity and combustion zone operating limits specified in § 63.670(d) and (e), the initial 15-minute block period starts with the 15-minute block that includes a full 15 minutes of the flaring event.

(5) *Maintenance vents.* Beginning no later than the compliance dates specified in § 63.1102(c), an owner or operator may designate a process vent as a maintenance vent if the vent is only used as a result of startup, shutdown, maintenance, or inspection of equipment where equipment is emptied, depressurized, degassed, or placed into service. The owner or operator must comply with the applicable requirements in paragraphs (e)(5)(i) through (iii) of this section for each maintenance vent, unless an extension is requested in accordance with the provisions in § 63.6(i) of subpart A.

(i) Prior to venting to the atmosphere, remove process liquids from the equipment as much as practical and depressurize the equipment to either: A flare meeting the requirements specified in paragraph (e)(4) of this section, or a non-flare control device meeting the requirements specified in § 63.982(c)(2) of subpart SS, until one of the following conditions, as applicable, is met.

(A) The vapor in the equipment served by the maintenance vent has a lower explosive limit (LEL) of less than 10 percent.

(B) If there is no ability to measure the LEL of the vapor in the equipment based on the design of the equipment, the pressure in the equipment served by the maintenance vent is reduced to 5 pounds per square inch gauge (psig) or less. Upon opening the maintenance vent, active purging of the equipment cannot be used until the LEL of the vapors in the maintenance vent (or inside the equipment if the maintenance is a hatch or similar type of opening) is less than 10 percent.

(C) The equipment served by the maintenance vent contains less than 50 pounds of total volatile organic compounds (VOC).

(D) If, after applying best practices to isolate and purge equipment served by a maintenance vent, none of the applicable criterion in paragraphs (e)(5)(i)(A) through (C) of this section can be met prior to installing or removing a blind flange or similar equipment blind, then the pressure in the equipment served by the maintenance vent must be reduced to 2 psig or less before installing or removing the equipment blind. During installation or removal of the equipment blind, active purging of the equipment may be used provided the equipment pressure at the location where purge gas is introduced remains at 2 psig or less.

(ii) Except for maintenance vents complying with the alternative in paragraph (e)(5)(i)(C) of this section, the owner or operator must determine the LEL or, if applicable, equipment pressure using process instrumentation or portable measurement devices and follow procedures for calibration and maintenance according to manufacturer's specifications.

(iii) For maintenance vents complying with the alternative in paragraph (e)(5)(i)(C) of this section, the owner or operator must determine mass of VOC in the equipment served by the maintenance vent based on the equipment size and contents after considering any contents drained or purged from the equipment. Equipment size may be determined from equipment design specifications. Equipment contents may be determined using process knowledge.

(6) *Bypass lines.* Beginning on the compliance dates specified in § 63.1102(c), the use of a bypass line at any time on a closed vent system to divert a vent stream to the atmosphere or to a control device not meeting the requirements specified in Table 7 of this subpart is an emissions standards violation. Equipment such as low leg drains and equipment subject to the requirements specified in paragraph (f) of Table 7 to § 63.1103(e) are not subject to this paragraph (e)(6). Open-ended valves or lines that use a cap, blind flange, plug, or second valve and follow the requirements specified in § 60.482–6(a)(2), (b), and (c) are also not subject to this paragraph (e)(6). If the owner or operator is subject to the bypass monitoring requirements of § 63.983(a)(3) of subpart SS, then the owner or operator must continue to comply with the requirements in § 63.983(a)(3) of subpart SS and the recordkeeping and reporting requirements in §§ 63.998(d)(1)(ii) and 63.999(c)(2) of subpart SS, in addition to paragraph (e)(9) of this section, the recordkeeping requirements specified in § 63.1109(g), and the reporting requirements specified in § 63.1110(e)(6).

(7) *Decoking operation standards for ethylene cracking furnaces.* Beginning no later than the compliance dates specified in § 63.1102(c), the owner or operator must comply with paragraph (e)(7)(i) of this section and also use at least two of the control measures specified in paragraphs (e)(7)(ii) through (v) of this section to minimize coke combustion emissions from the decoking of the radiant tube(s) in each ethylene cracking furnace.

(i) During normal operations, conduct daily inspections of the firebox burners and repair all burners that are impinging on the radiant tube(s) as soon as practical, but not later than 1 calendar day after the flame impingement is found. An inspection may include, but is not limited to: Visual inspection of the radiant tube(s) for localized bright spots (this may be confirmed with a temperature gun), use of luminescent powders injected into the burner to illuminate the flame pattern, or identifying continued localized coke build-up that causes short runtimes between decoking cycles. A repair may include, but is not limited to: Taking the burner out of service, replacing the burner, adjusting the alignment of the burner, adjusting burner configuration, making burner air corrections, repairing a malfunction of the fuel liquid removal equipment, or adding insulation around the radiant tube(s).

(ii) During decoking operations, continuously monitor (or use a gas detection tube every hour to monitor) the CO_2 concentration at the radiant tube(s) outlet for indication that the coke combustion in the ethylene cracking furnace radiant tube(s) is complete. The owner or operator must immediately initiate procedures to stop the decoking cycle once the CO_2 concentration at the radiant tube(s) outlet consistently reaches a level that indicates combustion of coke inside the radiant tube(s) is slowing or stopping.

(iii) During decoking operations, continuously monitor the temperature at the radiant tube(s) outlet to ensure the coke combustion occurring inside the radiant tube(s) is not so aggressive (*i.e.,* too hot) that it damages either the radiant tube(s) or ethylene cracking furnace isolation valve(s). The owner or operator must immediately initiate procedures to reduce the temperature at the radiant tube(s) outlet once the temperature reaches a level that indicates combustion of coke inside the radiant tube(s) is too aggressive.

(iv) After decoking, but before returning the ethylene cracking furnace back to normal operations, purge the

radiant tube(s) with steam and verify that all air is removed.

(v) After decoking, but before returning the ethylene cracking furnace back to normal operations, apply a coating material to the interior of the radiant tube(s) to protect against coke formation inside the radiant tube during normal operation.

(8) *Ethylene cracking furnace isolation valve inspections.* Beginning no later than the compliance dates specified in § 63.1102(c), the owner or operator must conduct ethylene cracking furnace isolation valve inspections as specified in paragraphs (e)(8)(i) and (ii) of this section.

(i) Prior to decoking operation, inspect the applicable ethylene cracking furnace isolation valve(s) to confirm that the radiant tube(s) being decoked is completely isolated from the ethylene production process so that no emissions generated from decoking operations are sent to the ethylene production process. If poor isolation is identified, then the owner or operator must rectify the isolation issue prior to continuing decoking operations to prevent leaks into the ethylene production process.

(ii) Prior to returning the ethylene cracking furnace to normal operations after a decoking operation, inspect the applicable ethylene cracking furnace isolation valve(s) to confirm that the radiant tube(s) that was decoked is completely isolated from the decoking pot or furnace firebox such that no emissions are sent from the radiant tube(s) to the decoking pot or furnace firebox once the ethylene cracking furnace returns to normal operation. If poor isolation is identified, then the owner or operator must rectify the isolation issue prior to continuing normal operations to prevent product from escaping to the atmosphere through the decoking pot or furnace firebox.

(9) *Startup, shutdown, and malfunction referenced provisions.* Beginning no later than the compliance dates specified in § 63.1102(c), the referenced provisions specified in paragraphs (e)(9)(i) through (xv) of this section do not apply when demonstrating compliance with paragraph (e)(3) of this section.

(i) The second sentence of § 63.181(d)(5)(i) of subpart H.

(ii) Section 63.983(a)(5) of subpart SS.

(iii) The phrase ''except during periods of start-up, shutdown and malfunction as specified in the referencing subpart'' in § 63.984(a) of subpart SS.

(iv) The phrase ''except during periods of start-up, shutdown and malfunction as specified in the referencing subpart'' in § 63.985(a) of subpart SS.

(v) The phrase ''other than start-ups, shutdowns, or malfunctions'' in § 63.994(c)(1)(ii)(D) of subpart SS.

(vi) Section 63.996(c)(2)(ii) of subpart SS.

(vii) Section 63.997(e)(1)(i) of subpart SS.

(viii) The term ''breakdowns'' from § 63.998(b)(2)(i) of subpart SS.

(ix) Section 63.998(b)(2)(iii) of subpart SS.

(x) The phrase ''other than periods of startups, shutdowns, and malfunctions'' from § 63.998(b)(5)(i)(A) of subpart SS.

(xi) The phrase ''other than periods of startups, shutdowns, and malfunctions'' from § 63.998(b)(5)(i)(C) of subpart SS.

(xii) The phrase ''except as provided in paragraphs (b)(6)(i)(A) and (B) of this section'' from § 63.998(b)(6)(i) of subpart SS.

(xiii) The second sentence of § 63.998(b)(6)(ii) of subpart SS.

(xiv) Section 63.998(c)(1)(ii)(D) through (G) of subpart SS.

(xv) Section 63.998(d)(1)(ii) of subpart SS.

(xvi) Section 63.998(d)(3)(i) and (ii) of subpart SS.

(xvii) The phrase ''(except periods of startup, shutdown, or malfunction)'' from § 63.1026(e)(1)(ii)(A) of subpart UU.

(xviii) The phrase ''(except periods of startup, shutdown, or malfunction)'' from § 63.1028(e)(1)(i)(A) of subpart UU.

(xix) The phrase ''(except periods of startup, shutdown, or malfunction)'' from § 63.1031(b)(1) of subpart UU.

* * * * *

■ 20. Section 63.1104 is amended by revising paragraph (c) to read as follows:

§ 63.1104 Process vents from continuous unit operations: Applicability assessment procedures and methods.

* * * * *

(c) *Applicability assessment requirement.* The TOC or organic HAP concentrations, process vent volumetric flow rates, process vent heating values, process vent TOC or organic HAP emission rates, halogenated process vent determinations, process vent TRE index values, and engineering assessments for process vent control applicability assessment requirements are to be determined during maximum representative operating conditions for the process, except as provided in paragraph (d) of this section, or unless the Administrator specifies or approves alternate operating conditions. For acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and ethylene production affected sources, operations during periods of malfunction shall not constitute representative conditions for the purpose of an applicability test. For all other affected sources, operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of an applicability test.

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■ 21. Section 63.1105 is amended by revising paragraph (a) introductory text and adding paragraph (a)(5).

§ 63.1105 Transfer racks.

(a) *Design requirements.* Except as specified in paragraph (a)(5) of this section, the owner or operator shall equip each transfer rack with one of the control options listed in paragraphs (a)(1) through (5) of this section.

* * * * *

(5) Beginning no later than the compliance dates specified in § 63.1102(c), if emissions are vented through a closed vent system to a flare at an ethylene production affected source, then the owner or operator must comply with the requirements specified in § 63.1103(e)(4) instead of the requirements in § 63.987 and the provisions regarding flare compliance assessments at § 63.997(a) through (c).

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■ 22. Section 63.1107 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 63.1107 Equipment leaks.

(a) Each piece of equipment within a process unit that can reasonably be expected to contain equipment in organic HAP service is presumed to be in organic HAP service unless an owner or operator demonstrates that the piece of equipment is not in organic HAP service. For a piece of equipment to be considered not in organic HAP service, it must be determined that the percent organic HAP content can be reasonably expected not to exceed the percent by weight control applicability criteria specified in § 63.1103 for an affected source on an annual average basis. For purposes of determining the percent organic HAP content of the process fluid that is contained in or contacts equipment, Method 18 of 40 CFR part 60, appendix A shall be used. For purposes of determining the percent organic HAP content of the process fluid that is contained in or contacts equipment for the ethylene production affected sources, the following methods shall be used for equipment: For equipment in gas and vapor service, as that term is defined in Subpart UU of this part, shall use Method 18 of 40 CFR

part 60, appendix A; for equipment in liquid service, as that term is defined in Subpart UU of this part, shall use a combination of Method 18 of 40 CFR part 60, appendix A, SW–846–8260B (incorporated by reference, see § 63.14); and SW–846–8270D (incorporated by reference, see § 63.14), as appropriate.

* * * * *

(h) *Ethylene production pressure release requirements.* Beginning no later than the compliance dates specified in § 63.1102(c), except as specified in paragraph (h)(4) of this section, owners or operators of ethylene production affected sources must comply with the requirements specified in paragraphs (h)(1) and (2) of this section for pressure relief devices, such as relief valves or rupture disks, in organic HAP gas or vapor service instead of the pressure relief device requirements of § 63.1030 of subpart UU or § 63.165 of subpart H. Beginning no later than the compliance dates specified in § 63.1102(c), except as specified in paragraphs (h)(4) and (5) of this section, the owner or operator must also comply with the requirements specified in paragraphs (h)(3), and (6) through (8) of this section for all pressure relief devices.

(1) *Operating requirements.* Except during a pressure release, operate each pressure relief device in organic HAP gas or vapor service with an instrument reading of less than 500 ppm above background as measured by the method in § 63.1023(b) of subpart UU or § 63.180(b) and (c) of subpart H.

(2) *Pressure release requirements.* For pressure relief devices in organic HAP gas or vapor service, the owner or operator must comply with the applicable requirements in paragraphs (h)(2)(i) through (iii) of this section following a pressure release.

(i) If the pressure relief device does not consist of or include a rupture disk, conduct instrument monitoring, as specified in § 63.1023(b) of subpart UU or § 63.180(b) and (c) of subpart H, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(ii) If the pressure relief device includes a rupture disk, either comply with the requirements in paragraph (h)(2)(i) of this section (and do not replace the rupture disk) or install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator must conduct instrument monitoring, as specified in § 63.1023(b) of subpart UU or § 63.180(b) and (c) of subpart H, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(iii) If the pressure relief device consists only of a rupture disk, install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator must not initiate startup of the equipment served by the rupture disk until the rupture disc is replaced. The owner or operator must conduct instrument monitoring, as specified in § 63.1023(b) of subpart UU or § 63.180(b) and (c) of subpart H, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(3) *Pressure release management.* Except as specified in paragraphs (h)(4) and (5) of this section, the owner or operator must comply with the requirements specified in paragraphs (h)(3)(i) through (v) of this section for all pressure relief devices in organic HAP service.

(i) The owner or operator must equip each affected pressure relief device with a device(s) or use a monitoring system that is capable of:

(A) Identifying the pressure release;

(B) Recording the time and duration of each pressure release; and

(C) Notifying operators immediately that a pressure release is occurring. The device or monitoring system must be either specific to the pressure relief device itself or must be associated with the process system or piping, sufficient to indicate a pressure release to the atmosphere. Examples of these types of devices and systems include, but are not limited to, a rupture disk indicator, magnetic sensor, motion detector on the pressure relief valve stem, flow monitor, or pressure monitor.

(ii) The owner or operator must apply at least three redundant prevention measures to each affected pressure relief device and document these measures. Examples of prevention measures include:

(A) Flow, temperature, liquid level and pressure indicators with deadman switches, monitors, or automatic actuators. Independent, non-duplicative systems within this category count as separate redundant prevention measures.

(B) Documented routine inspection and maintenance programs and/or operator training (maintenance programs and operator training may count as only one redundant prevention measure).

(C) Inherently safer designs or safety instrumentation systems.

(D) Deluge systems.

(E) Staged relief system where the initial pressure relief device (with lower set release pressure) discharges to a flare or other closed vent system and control device.

(iii) If any affected pressure relief device releases to atmosphere as a result of a pressure release event, the owner or operator must perform root cause analysis and corrective action analysis according to the requirement in paragraph (h)(6) of this section and implement corrective actions according to the requirements in paragraph (h)(7) of this section. The owner or operator must also calculate the quantity of organic HAP released during each pressure release event and report this quantity as required in § 63.1110(e)(8)(iii). Calculations may be based on data from the pressure relief device monitoring alone or in combination with process parameter monitoring data and process knowledge.

(iv) The owner or operator must determine the total number of release events that occurred during the calendar year for each affected pressure relief device separately. The owner or operator must also determine the total number of release events for each pressure relief device for which the root cause analysis concluded that the root cause was a force majeure event, as defined in § 63.1103(e)(2).

(v) Except for pressure relief devices described in paragraphs (h)(4) and (5) of this section, the following release events from an affected pressure relief device are a violation of the pressure release management work practice standards.

(A) Any release event for which the root cause of the event was determined to be operator error or poor maintenance.

(B) A second release event not including force majeure events from a single pressure relief device in a 3-calendar year period for the same root cause for the same equipment.

(C) A third release event not including force majeure events from a single pressure relief device in a 3-calendar year period for any reason.

(4) *Pressure relief devices routed to a control device, process, fuel gas system, or drain system.* (i) If all releases and potential leaks from a pressure relief device are routed through a closed vent system to a control device, back into the

process, a fuel gas system, or drain system, then the owner or operator is not required to comply with paragraph (h)(1), (2), or (3) of this section.

(ii) Before the compliance dates specified in § 63.1102(c), both the closed vent system and control device (if applicable) referenced in paragraph (h)(4)(i) of this section must meet the applicable requirements specified in § 63.982(b) and (c)(2). Beginning no later than the compliance dates specified in § 63.1102(c), both the closed vent system and control device (if applicable) referenced in paragraph (h)(4)(i) of this section must meet the applicable requirements specified in § 63.982(c)(2), § 63.983, and § 63.1103(e)(4).

(iii) The drain system (if applicable) referenced in paragraph (h)(4)(i) of this section must meet the applicable requirements specified in § 61.346.

(5) *Pressure relief devices exempted from pressure release management requirements.* The following types of pressure relief devices are not subject to the pressure release management requirements in paragraph (h)(3) of this section.

(i) Pressure relief devices in heavy liquid service, as defined in § 63.1020 of subpart UU.

(ii) Thermal expansion relief valves.

(iii) Pressure relief devices designed with a set relief pressure of less than 2.5 psig.

(iv) Pilot-operated pressure relief devices where the primary release valve is routed through a closed vent system to a control device or back into the process, a fuel gas system, or drain system.

(v) Balanced bellows pressure relief devices where the primary release valve is routed through a closed vent system to a control device or back into the process, a fuel gas system, or drain system.

(6) *Root cause analysis and corrective action analysis.* A root cause analysis and corrective action analysis must be completed as soon as possible, but no later than 45 days after a release event. Special circumstances affecting the number of root cause analyses and/or corrective action analyses are provided in paragraphs (h)(6)(i) through (iv) of this section.

(i) You may conduct a single root cause analysis and corrective action analysis for a single emergency event that causes two or more pressure relief devices that are installed on the same equipment to release.

(ii) You may conduct a single root cause analysis and corrective action analysis for a single emergency event that causes two or more pressure relief devices to release, regardless of the equipment served, if the root cause is reasonably expected to be a force majeure event, as defined in § 63.1103(e)(2).

(iii) Except as provided in paragraphs (h)(6)(i) and (ii) of this section, if more than one pressure relief device has a release during the same time period, an initial root cause analysis must be conducted separately for each pressure relief device that had a release. If the initial root cause analysis indicates that the release events have the same root cause(s), the initial separate root cause analyses may be recorded as a single root cause analysis and a single corrective action analysis may be conducted.

(7) *Corrective action implementation.* Each owner or operator required to conduct a root cause analysis and corrective action analysis as specified in paragraphs (h)(3)(iii) and (6) of this section, must implement the corrective action(s) identified in the corrective action analysis in accordance with the applicable requirements in paragraphs (h)(7)(i) through (iii) of this section.

(i) All corrective action(s) must be implemented within 45 days of the event for which the root cause and corrective action analyses were required or as soon thereafter as practicable. If an owner or operator concludes that no corrective action should be implemented, the owner or operator must record and explain the basis for that conclusion no later than 45 days following the event.

(ii) For corrective actions that cannot be fully implemented within 45 days following the event for which the root cause and corrective action analyses were required, the owner or operator must develop an implementation schedule to complete the corrective action(s) as soon as practicable.

(iii) No later than 45 days following the event for which a root cause and corrective action analyses were required, the owner or operator must record the corrective action(s) completed to date, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(8) *Flowing pilot-operated pressure relief devices.* For ethylene production affected sources that commenced construction or reconstruction on or before October 9, 2019, owners or operators are prohibited from installing a flowing pilot-operated pressure relief device or replacing any pressure relief device with a flowing pilot-operated pressure relief device after [date 3 years after date of publication of final rule in the **Federal Register**]. For ethylene production affected sources that commenced construction or reconstruction after October 9, 2019, owners or operators are prohibited from installing and operating flowing pilot-operated pressure relief devices. For purpose of compliance with this paragraph, a flowing pilot-operated pressure relief device means the type of pilot-operated pressure relief device where the pilot discharge vent continuously releases emissions to the atmosphere when the pressure relief device is actuated.

■ 23. Section 63.1108 is amended by revising paragraphs (a) introductory text, (a)(4)(i) and (ii), (b)(1)(ii), (b)(2) introductory text, (b)(3), (b)(4)(i) introductory text, and (b)(4)(ii)(B) to read as follows:

§ 63.1108 Compliance with standards and operation and maintenance requirements.

(a) *Requirements.* The requirements of paragraphs (a)(1), (2), and (5) of this section apply to all affected sources except acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources. The requirements of paragraph (a)(4) of this section apply only to acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources. The requirements of paragraphs (a)(3), (6), and (7) of this section apply to all affected sources.

* * * * *

(4) * * *

(i) For acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources, the emission limitations and established parameter ranges of this part shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. Equipment leak requirements shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which the equipment leak requirements apply.

(ii) *General duty.* At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control

equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

* * * * *

(b) * * *

(1) * * *

(ii) Excused excursions are not allowed for acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources. For all other affected sources, including ethylene production affected sources prior to the compliance dates specified in § 63.1102(c), an excused excursion, as described in § 63.998(b)(6)(ii), is not a violation.

(2) *Parameter monitoring: Excursions.* An excursion is not a violation in cases where continuous monitoring is required and the excursion does not count toward the number of excused excursions (as described in § 63.998(b)(6)(ii)), if the conditions of paragraphs (b)(2)(i) or (ii) of this section are met, except that the conditions of paragraph (b)(2)(i) of this section do not apply for acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources. Nothing in this paragraph shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart or a subpart referenced by this subpart.

* * * * *

(3) *Operation and maintenance procedures.* Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator. This information may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan under § 63.1111, if applicable), review of operation and maintenance records, and inspection of the affected source, and alternatives approved as specified in § 63.1113.

(4) * * *

(i) *Applicability assessments.* Unless otherwise specified in a relevant test method required to assess control applicability, each test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in this subpart. The arithmetic mean of the results of the three runs shall apply when assessing applicability. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run if it meets the criteria specified in paragraphs (b)(4)(i)(A) through (D) of this section.

* * * * *

(ii) * * *

(B) For acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources, performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 23. Section 63.1109 is amended by adding paragraphs (e) through (i) to read as follows:

§ 63.1109 Recordkeeping requirements.

* * * * *

(e) *Ethylene production flare records.* For each flare subject to the requirements in § 63.1103(e)(4), owners or operators must keep records specified in paragraphs (e)(1) through (15) of this section in lieu of the information required in § 63.998(a)(1) of subpart SS.

(1) Retain records of the output of the monitoring device used to detect the presence of a pilot flame as required in § 63.670(b) of subpart CC and § 63.1103(e)(4)(vi)(D) for a minimum of 2 years. Retain records of each 15-minute block during which there was at least one minute that no pilot flame is present when regulated material is routed to a flare for a minimum of 5 years. For each pressure-assisted multi-point flare that uses cross-lighting, retain records of each 15-minute block during which there was at least one minute that no pilot flame is present on each stage when regulated material is routed to a flare for a minimum of 5 years.

(2) Retain records of daily visible emissions observations or video surveillance images required in § 63.670(h) of subpart CC as specified in paragraphs (e)(2)(i) through (iv), as applicable, for a minimum of 3 years.

(i) To determine when visible emissions observations are required, the record must identify all periods when regulated material is vented to the flare.

(ii) If visible emissions observations are performed using Method 22 at 40 CFR part 60, appendix A–7, then the record must identify whether the visible emissions observation was performed, the results of each observation, total duration of observed visible emissions, and whether it was a 5-minute or 2-hour observation. Record the date and start time of each visible emissions observation.

(iii) If a video surveillance camera is used, then the record must include all video surveillance images recorded, with time and date stamps.

(iv) For each 2-hour period for which visible emissions are observed for more than 5 minutes in 2 consecutive hours, then the record must include the date and start and end time of the 2-hour period and an estimate of the cumulative number of minutes in the 2-hour period for which emissions were visible.

(3) The 15-minute block average cumulative flows for flare vent gas and, if applicable, total steam, perimeter assist air, and premix assist air specified to be monitored under § 63.670(i) of subpart CC, along with the date and time interval for the 15-minute block. If multiple monitoring locations are used to determine cumulative vent gas flow, total steam, perimeter assist air, and premix assist air, then retain records of the 15-minute block average flows for each monitoring location for a minimum of 2 years, and retain records of the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years. If pressure and temperature monitoring is used, then retain records of the 15-minute

block average temperature, pressure, and molecular weight of the flare vent gas or assist gas stream for each measurement location used to determine the 15-minute block average cumulative flows for a minimum of 2 years, and retain records of the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years.

(4) The flare vent gas compositions specified to be monitored under § 63.670(j) of subpart CC. Retain records of individual component concentrations from each compositional analysis for a minimum of 2 years. If an NHVvg analyzer is used, retain records of the 15-minute block average values for a minimum of 5 years.

(5) Each 15-minute block average operating parameter calculated following the methods specified in § 63.670(k) through (n) of subpart CC, as applicable.

(6) All periods during which operating values are outside of the applicable operating limits specified in § 63.670(d) through (f) of subpart CC and § 63.1103(e)(4)(vi) when regulated material is being routed to the flare.

(7) All periods during which the owner or operator does not perform flare monitoring according to the procedures in § 63.670(g) through (j) of subpart CC.

(8) For pressure-assisted multi-point flares, if a stage of burners on the flare uses cross-lighting, then a record of any changes made to the distance between burners.

(9) For pressure-assisted multi-point flares, all periods when the pressure monitor(s) on the main flare header show burners are operating outside the range of the manufacturer's specifications. Indicate the date and time for each period, the pressure measurement, the stage(s) and number of burners affected, and the range of manufacturer's specifications.

(10) For pressure-assisted multi-point flares, all periods when the staging valve position indicator monitoring system indicates a stage of the pressure-assisted multi-point flare should not be in operation and when a stage of the pressure-assisted multi-point flare should be in operation and is not. Indicate the date and time for each period, whether the stage was supposed to be open, but was closed or vice versa, and the stage(s) and number of burners affected.

(11) Records of periods when there is flow of vent gas to the flare, but when there is no flow of regulated material to the flare, including the start and stop time and dates of periods of no regulated material flow.

(12) Records when the flow of vent gas exceeds the smokeless capacity of the flare, including start and stop time and dates of the flaring event.

(13) Records of the root cause analysis and corrective action analysis conducted as required in § 63.670(o)(3) of subpart CC, including an identification of the affected flare, the date and duration of the event, a statement noting whether the event resulted from the same root cause(s) identified in a previous analysis and either a description of the recommended corrective action(s) or an explanation of why corrective action is not necessary under § 63.670(o)(5)(i) of subpart CC.

(14) For any corrective action analysis for which implementation of corrective actions are required in § 63.670(o)(5) of subpart CC, a description of the corrective action(s) completed within the first 45 days following the discharge and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(15) Records described in § 63.10(b)(2)(vi) and (xi).

(f) *Ethylene production maintenance vent records.* For each maintenance vent opening subject to the requirements in § 63.1103(e)(5), the owner or operator must keep the applicable records specified in (f)(1) through (5) of this section.

(1) The owner or operator must maintain standard site procedures used to deinventory equipment for safety purposes (*e.g.,* hot work or vessel entry procedures) to document the procedures used to meet the requirements in § 63.1103(e)(5). The current copy of the procedures must be retained and available on-site at all times. Previous versions of the standard site procedures, as applicable, must be retained for five years.

(2) If complying with the requirements of § 63.1103(e)(5)(i)(A) and the lower explosive limit at the time of the vessel opening exceeds 10 percent, records that identify the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, and the lower explosive limit at the time of the vessel opening.

(3) If complying with the requirements of § 63.1103(e)(5)(i)(B) and either the vessel pressure at the time of the vessel opening exceeds 5 psig or the lower explosive limit at the time of the active purging was initiated exceeds 10 percent, records that identify the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, the pressure of the vessel or equipment at the time of discharge to the atmosphere and, if applicable, the lower explosive limit of the vapors in the equipment when active purging was initiated.

(4) If complying with the requirements of § 63.1103(e)(5)(i)(C), records used to estimate the total quantity of VOC in the equipment and the type and size limits of equipment that contain less than 50 pounds of VOC at the time of maintenance vent opening. For each maintenance vent opening for which the deinventory procedures specified in paragraph (f)(1) of this section are not followed or for which the equipment opened exceeds the type and size limits established in the records specified in this paragraph, records that identify the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, and records used to estimate the total quantity of VOC in the equipment at the time the maintenance vent was opened to the atmosphere.

(5) If complying with the requirements of § 63.1103(e)(5)(i)(D), identification of the maintenance vent, the process units or equipment associated with the maintenance vent, records documenting actions taken to comply with other applicable alternatives and why utilization of this alternative was required, the date of maintenance vent opening, the equipment pressure and lower explosive limit of the vapors in the equipment at the time of discharge, an indication of whether active purging was performed and the pressure of the equipment during the installation or removal of the blind if active purging was used, the duration the maintenance vent was open during the blind installation or removal process, and records used to estimate the total quantity of VOC in the equipment at the time the maintenance vent was opened to the atmosphere for each applicable maintenance vent opening.

(g) *Ethylene production bypass line records.* For each flow event from a bypass line subject to the requirements in § 63.1103(e)(6), the owner or operator must maintain records sufficient to determine whether or not the detected flow included flow requiring control. For each flow event from a bypass line requiring control that is released either directly to the atmosphere or to a control device not meeting the requirements specified in Table 7 to § 63.1103(e), the owner or operator must include an estimate of the volume of gas, the concentration of organic HAP in the gas and the resulting emissions of organic HAP that bypassed the control

device using process knowledge and engineering estimates.

(h) *Decoking operation of ethylene cracking furnace records.* For each decoking operation of an ethylene cracking furnace subject to the standards in § 63.1103(e)(7) and (8), the owner or operator must keep the records specified in paragraphs (h)(1) through (6) of this section.

(1) Records that document the day and time each inspection specified in § 63.1103(e)(7)(i) took place, the results of each inspection, and any repairs made to correct the flame impingement.

(2) If the owner or operator chooses to monitor the CO_2 concentration during decoking as specified in § 63.1103(e)(7)(ii), then for each decoking cycle, records must be kept for all measured CO2 concentration values and the target used to indicate combustion is complete.

(3) If the owner or operator chooses to monitor the temperature at the radiant tube(s) outlet during decoking as specified in § 63.1103(e)(7)(iii), then for each decoking cycle, records must be kept for all measured temperature values and the target used to indicate a reduction in temperature of the inside of the radiant tube(s) is necessary.

(4) If the owner or operator chooses to purge the radiant tube(s) with steam after decoking, but before returning the ethylene cracking furnace back to normal operation as specified in § 63.1103(e)(7)(iv), then records must be kept that document the verification that all air is removed after each decoking cycle.

(5) If the owner or operator chooses to apply a coating material to the interior of the radiant tube after decoking, but before returning the ethylene cracking furnace back to normal operation as specified in § 63.1103(e)(7)(v), then records must be kept that document when the coating was applied.

(6) For each decoking operation of an ethylene cracking furnace subject to the requirements in § 63.1103(e)(8), the owner or operator must keep records that document the day and time each inspection took place, the results of each inspection, and any repairs made to correct any isolation issues that were identified.

(i) *Ethylene production pressure relief devices records.* For each pressure relief device subject to the pressure release management work practice standards in § 63.1107(h)(3), the owner or operator must keep the records specified in paragraphs (i)(1) through (3) of this section.

(1) Records of the prevention measures implemented as required in § 63.1107(h)(3)(ii).

(2) Records of the number of releases during each calendar year and the number of those releases for which the root cause was determined to be a force majeure event. Keep these records for the current calendar year and the past five calendar years.

(3) For each release to the atmosphere, the owner or operator must keep the records specified in paragraphs (i)(3)(i) through (iv) of this section.

(i) The start and end time and date of each pressure release to the atmosphere.

(ii) Records of any data, assumptions, and calculations used to estimate of the mass quantity of each organic HAP released during the event.

(iii) Records of the root cause analysis and corrective action analysis conducted as required in § 63.1107(h)(3)(iii), including an identification of the affected pressure relief device, a statement noting whether the event resulted from the same root cause(s) identified in a previous analysis and either a description of the recommended corrective action(s) or an explanation of why corrective action is not necessary under § 63.1107(h)(7)(i).

(iv) For any corrective action analysis for which implementation of corrective actions are required in § 63.1107(h)(7), a description of the corrective action(s) completed within the first 45 days following the discharge and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

■ 24. Section 63.1110 is amended by:
■ a. Revising paragraphs (a) introductory text and (a)(7) and (9);
■ b. Adding paragraph (a)(10);
■ c. Revising paragraphs (d)(1) introductory text and (d)(1)(i);
■ d. Adding paragraphs (d)(1)(iv) and (v);
■ e. Revising paragraph (e)(1);
■ f. Adding paragraphs (e)(4) through (8); and
■ g. Revising paragraphs (g)(1) and (2).

The revisions and additions read as follows:

§ 63.1110 Reporting requirements.

(a) *Required reports.* Each owner or operator of an affected source subject to this subpart shall submit the reports listed in paragraphs (a)(1) through (8) of this section, as applicable. Each owner or operator of an acrylic and modacrylic fiber production affected source or polycarbonate production affected source subject to this subpart shall also submit the reports listed in paragraph (a)(9) of this section in addition to the reports listed in paragraphs (a)(1) through (8) of this section, as applicable. Beginning no later than the compliance dates specified in § 63.1102(c), each owner or operator of an ethylene production affected source subject to this subpart shall also submit the reports listed in paragraph (a)(10) of this section in addition to the reports listed in paragraphs (a)(1) through (8) of this section, as applicable.

* * * * *

(7) Startup, Shutdown, and Malfunction Reports described in § 63.1111 (except for acrylic and modacrylic fiber production affected sources, ethylene production affected sources, and polycarbonate production affected sources).

* * * * *

(9) Within 60 days after the date of completing each performance test (as defined in § 63.2), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by this subpart according to the methods specified in paragraph (a)(9)(i) or (ii) of this section.

* * * * *

(10) (i) Beginning no later than the compliance dates specified in § 63.1102(c), within 60 days after the date of completing each performance test required by this subpart, the owner or operator must submit the results of the performance test following the procedures specified in paragraphs (a)(10)(i)(A) through (C) of this section.

(A) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(B) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(C) *CBI.* If you claim some of the information submitted under paragraph (a)(10)(i)(A) or (B) of this section is CBI,

then the owner or operator must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via EPA's CDX as described in paragraphs (a)(10)(i)(A) and (B) of this section.

(ii) Beginning no later than the compliance dates specified in § 63.1102(c), the owner or operator must submit all subsequent Notification of Compliance Status reports required under paragraph (a)(4) of this section to the EPA via CEDRI, which can be accessed through EPA's CDX (*https://cdx.epa.gov/*). If you claim some of the information required to be submitted via CEDRI is CBI, then submit a complete report, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143–01), Attention: Ethylene Production Sector Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(iii) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, the owner or operator must meet the requirements outlined in paragraphs (a)(10)(iii)(A) through (G) of this section.

(A) The owner or operator must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(B) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(C) The outage may be planned or unplanned.

(D) The owner or operator must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(E) The owner or operator must provide to the Administrator a written description identifying:

(*1*) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(*2*) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(*3*) Measures taken or to be taken to minimize the delay in reporting; and

(*4*) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(F) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(G) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(iv) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, the owner or operator must meet the requirements outlined in paragraphs (a)(10)(iv)(A) through (E) of this section.

(A) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this paragraph, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(B) The owner or operator must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(C) The owner or operator must provide to the Administrator:

(*1*) A written description of the force majeure event;

(*2*) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(*3*) Measures taken or to be taken to minimize the delay in reporting; and

(*4*) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(D) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(E) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

* * * * *

(d) *Notification of Compliance Status*—(1) *Contents.* The owner or operator shall submit a Notification of Compliance Status for each affected source subject to this subpart containing the information specified in paragraphs (d)(1)(i) and (ii) of this section. For pressure relief devices subject to the requirements of § 63.1107(e)(3), the owner or operator of an acrylic and modacrylic fiber production affected source or polycarbonate production affected source shall also submit the information listed in paragraph (d)(1)(iii) of this section in a supplement to the Notification of Compliance Status within 150 days after the first applicable compliance date for pressure relief device monitoring. For flares subject to the requirements of § 63.1103(e)(4), the owner or operator of an ethylene production affected source shall also submit the information listed in paragraph (d)(1)(iv) of this section in a supplement to the Notification of Compliance Status within 150 days after the first applicable compliance date for flare monitoring. For pressure relief devices subject to the pressure release management work practice standards in § 63.1107(h)(3), the owner or operator of an ethylene production affected source shall also submit the information listed in paragraph (d)(1)(v) of this section in a supplement to the Notification of Compliance Status within 150 days after the first applicable compliance date for pressure relief device monitoring.

(i) Except as specified in paragraphs (d)(1)(iv) and (v) of this section, the Notification of Compliance Status shall include the information specified in this subpart and the subparts referenced by this subpart. Alternatively, this

information can be submitted as part of a title V permit application or amendment.

* * * * *

(iv) For each flare subject to the requirements in § 63.1103(e)(4), in lieu of the information required in § 63.987(b) of subpart SS, the Notification of Compliance Status shall include flare design (*e.g.,* steam-assisted, air-assisted, non-assisted, or pressure-assisted multi-point); all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the initial visible emissions demonstration required by § 63.670(h) of subpart CC, as applicable; and all periods during the compliance determination when the pilot flame is absent.

(v) For pressure relief devices subject to the requirements § 63.1107(h), the Notification of Compliance Status shall include the information specified in paragraphs (d)(1)(v)(A) and (B) of this section.

(A) A description of the monitoring system to be implemented, including the relief devices and process parameters to be monitored, and a description of the alarms or other methods by which operators will be notified of a pressure release.

(B) A description of the prevention measures to be implemented for each affected pressure relief device.

* * * * *

(e) * * *

(1) *Contents.* Except as specified in paragraphs (e)(4) through (8) of this section, Periodic Reports shall include all information specified in this subpart and subparts referenced by this subpart.

* * * * *

(4) *Ethylene production flare reports.* For each flare subject to the requirements in § 63.1103(e)(4), the Periodic Report shall include the items specified in paragraphs (e)(4)(i) through (vi) of this section in lieu of the information required in § 63.999(c)(3) of subpart SS.

(i) Records as specified in § 63.1109(e)(2) for each 15-minute block during which there was at least one minute when regulated material is routed to a flare and no pilot flame is present. Include the start and stop time and date of each 15-minute block.

(ii) Visible emission records as specified in § 63.1109(e)(3)(iv) for each period of 2 consecutive hours during which visible emissions exceeded a total of 5 minutes.

(iii) The periods specified in § 63.1109(e)(7). Indicate the date and start time for the period, and the net heating value operating parameter(s) determined following the methods in § 63.670(k) through (n) of subpart CC as applicable.

(iv) For flaring events meeting the criteria in § 63.670(o)(3) of subpart CC:

(A) The start and stop time and date of the flaring event.

(B) The length of time that emissions were visible from the flare during the event.

(C) For steam-assisted, air-assisted, and non-assisted flares, the periods of time that the flare tip velocity exceeds the maximum flare tip velocity determined using the methods in § 63.670(d)(2) of subpart CC and the maximum 15-minute block average flare tip velocity recorded during the event.

(D) Results of the root cause and corrective actions analysis completed during the reporting period, including the corrective actions implemented during the reporting period and, if applicable, the implementation schedule for planned corrective actions to be implemented subsequent to the reporting period.

(v) For pressure-assisted multi-point flares, the periods of time when the pressure monitor(s) on the main flare header show the burners operating outside the range of the manufacturer's specifications.

(vi) For pressure-assisted multi-point flares, the periods of time when the staging valve position indicator monitoring system indicates a stage should not be in operation and is or when a stage should be in operation and is not.

(5) *Ethylene production maintenance vent reports.* For maintenance vents subject to the requirements § 63.1103(e)(5), Periodic Reports must include the information specified in paragraphs (e)(5)(i) through (iv) of this section for any release exceeding the applicable limits in § 63.1103(e)(5)(i). For the purposes of this reporting requirement, owners or operators complying with § 63.1103(e)(5)(i)(D) must report each venting event conducted under those provisions and include an explanation for each event as to why utilization of this alternative was required.

(i) Identification of the maintenance vent and the equipment served by the maintenance vent.

(ii) The date and time the maintenance vent was opened to the atmosphere.

(iii) The lower explosive limit, vessel pressure, or mass of VOC in the equipment, as applicable, at the start of atmospheric venting. If the 5 psig vessel pressure option in § 63.1103(e)(5)(i)(B) was used and active purging was initiated while the lower explosive limit was 10 percent or greater, also include the lower explosive limit of the vapors at the time active purging was initiated.

(iv) An estimate of the mass of organic HAP released during the entire atmospheric venting event.

(6) *Bypass line reports.* For bypass lines subject to the requirements in § 63.1103(e)(6), Periodic Reports must include the date, time, duration, estimate of the volume of gas, the concentration of organic HAP in the gas and the resulting mass emissions of organic HAP that bypass a control device. For periods when the flow indicator is not operating, report the date, time, and duration.

(7) *Decoking operation reports.* For decoking operations of an ethylene cracking furnace subject to the requirements in § 63.1103(e)(7) and (8), Periodic Reports must include the information specified in paragraphs (e)(7)(i) and (ii) of this section.

(i) For each control measure selected to minimize coke combustion emissions as specified in § 63.1103(e)(7)(ii) through (v), report instances where the control measures were not followed.

(ii) Report instances where an isolation valve inspection was not conducted according to the procedures specified in § 63.1103(e)(8).

(8) *Ethylene production pressure relief devices reports.* For pressure relief devices subject to the requirements § 63.1107(h), Periodic Reports must include the information specified in paragraphs (e)(8)(i) through (iii) of this section.

(i) For pressure relief devices in organic HAP gas or vapor service, pursuant to § 63.1107(h)(1), report any instrument reading of 500 ppm or greater.

(ii) For pressure relief devices in organic HAP gas or vapor service subject to § 63.1107(h)(2), report confirmation that any monitoring required to be done during the reporting period to show compliance was conducted.

(iii) For pressure relief devices in organic HAP service subject to § 63.1107(h)(3), report each pressure release to the atmosphere, including duration of the pressure release and estimate of the mass quantity of each organic HAP released; the results of any root cause analysis and corrective action analysis completed during the reporting period, including the corrective actions implemented during the reporting period; and, if applicable, the implementation schedule for planned corrective actions to be implemented subsequent to the reporting period.

* * * * *

(g) *Report and notification submission*—(1) *Submission to the Environmental Protection Agency.* All reports and notifications required under this subpart shall be sent to the appropriate EPA Regional Office and to the delegated State authority, except that request for permission to use an alternative means of emission limitation as provided for in § 63.1113 shall be submitted to the Director of the EPA Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–10, Research Triangle Park, North Carolina, 27711. The EPA Regional Office may waive the requirement to submit a copy of any reports or notifications at its discretion, except that electronic reporting to CEDRI cannot be waived, and as such, compliance with the provisions of this paragraph does not relieve owners or operators of affected facilities of the requirement to submit electronic reports required in this subpart to the EPA.

(2) *Submission of copies.* If any State requires a notice that contains all the information required in a report or notification listed in this subpart, an owner or operator may send the appropriate EPA Regional Office a copy of the report or notification sent to the State to satisfy the requirements of this subpart for that report or notification, except that performance test reports and performance evaluation reports required under paragraph (a)(10) of this section must be submitted to CEDRI in the format specified in that paragraph.

* * * * *

■ 25. Section 63.1111 is amended by revising paragraphs (a) introductory text, (b) introductory text, and (c) introductory text to read as follows:

§ 63.1111 Startup, shutdown, and malfunction.

(a) *Startup, shutdown, and malfunction plan.* Before [date 3 years after date of publication of final rule in the **Federal Register**], the requirements of this paragraph (a) apply to all affected sources except for acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources. On and after [date 3 years after date of publication of final rule in the **Federal Register**], the requirements of this paragraph (a) apply to all affected sources except for acrylic and modacrylic fiber production affected sources, ethylene production affected sources, and polycarbonate production affected sources.

* * * * *

(b) *Startup, shutdown, and malfunction reporting requirements.* Before [date 3 years after date of publication of final rule in the **Federal Register**], the requirements of this paragraph (b) apply to all affected sources except for acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources. On and after [date 3 years after date of publication of final rule in the **Federal Register**], the requirements of this paragraph (b) apply to all affected sources except for acrylic and modacrylic fiber production affected sources, ethylene production affected sources, and polycarbonate production affected sources.

* * * * *

(c) *Malfunction recordkeeping and reporting.* Before [date 3 years after date of publication of final rule in the **Federal Register**], the requirements of this paragraph (c) apply only to acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources. On and after [date 3 years after date of publication of final rule in the **Federal Register**], the requirements of this paragraph (c) apply only to acrylic and modacrylic fiber production affected sources, ethylene production affected sources, and polycarbonate production affected sources.

* * * * *

■ 26. Section 63.1112 is amended by revising paragraph (d)(2) to read as follows:

§ 63.1112 Extension of compliance, and performance test, monitoring, recordkeeping and reporting waivers and alternatives.

* * * * *

(d) * * *

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request. Electronic reporting to the EPA cannot be waived, and as such, compliance with the provisions of this paragraph does not relieve owners or operators of affected facilities of the requirement to submit electronic reports required in this subpart to the EPA.

* * * * *

■ 27. Section 63.1113 is amended by revising paragraph (a)(2) to read as follows:

§ 63.1113 Procedures for approval of alternative means of emission limitation.

(a) * * *

(2) Any such notice shall be published only after public notice and an opportunity for public comment.

* * * * *

■ 28. Section 63.1114 is amended by revising paragraph (b) introductory text and adding paragraph (b)(6) to read as follows:

§ 63.1114 Implementation and enforcement.

* * * * *

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (6) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

* * * * *

(6) Approval of an alternative to any electronic reporting to EPA required by this subpart.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224, and 226

Endangered and Threatened Wildlife and Plants: Proposed Rule To Designate Critical Habitat for the Central America, Mexico, and Western North Pacific Distinct Population Segments of Humpback Whales; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224, and 226

[Docket No. 190925–0039]

RIN 0648–BI06

Endangered and Threatened Wildlife and Plants: Proposed Rule To Designate Critical Habitat for the Central America, Mexico, and Western North Pacific Distinct Population Segments of Humpback Whales

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, the NMFS, propose to designate critical habitat for the endangered Western North Pacific distinct population segment (DPS), the endangered Central America DPS, and the threatened Mexico DPS of humpback whales (*Megaptera novaeangliae*) pursuant to section 4 of the Endangered Species Act (ESA). Areas proposed as critical habitat include specific marine areas located off the coasts of California, Oregon, Washington, and Alaska. Based on consideration of national security and economic impacts, we also propose to exclude multiple areas from the designation for each DPS. We are soliciting comments on all aspects of the proposed critical habitat designations and will consider information received prior to making final designations.

DATES: Comments must be received by December 9, 2019. Requests for public hearings must be made in writing by November 25, 2019.

ADDRESSES: You may submit data, information, or comments on this document, identified by NOAA–NMFS–2019–0066, and on the supplemental documents by either of the following methods:

Electronic Submission: Submit all electronic comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0066,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway (SSMC3), Silver Spring, MD 20910, Attn: Humpback Whale Critical Habitat Proposed Rule.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might 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. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Documents supporting this proposed rule, which include a Draft Biological Report (NMFS 2019a), a Draft Economic Analysis (IEc 2019a), and a Draft Section 4(b)(2) Report (NMFS 2019b), are available on the Federal e-Rulemaking Portal *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0066.*

FOR FURTHER INFORMATION CONTACT: Lisa Manning, NMFS, Office of Protected Resources 301–427–8466.

SUPPLEMENTARY INFORMATION: Section 3(5)(A) of the ESA defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. (16 U.S.C. 1532(5)(A)). Conservation is defined in section 3(3) of the ESA as the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary (16 U.S.C. 1532(3)). Section 3(5)(C) of the ESA provides that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat for threatened and endangered species 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. This section also grants the Secretary of Commerce (Secretary) discretion to exclude any area from critical habitat if he determines the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. However, the Secretary may not exclude areas if such exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)).

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is additional to the section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to jeopardize the continued existence of ESA-listed species. Specifying the geographic location of critical habitat also facilitates implementation of section 7(a)(1) of the ESA by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the ESA. *See* 16 U.S.C. 1536(a)(1). Critical habitat requirements do not apply to citizens engaged in actions on private land that do not involve a Federal agency.

This proposed rule summarizes relevant information regarding the biology and habitat use of humpback whales, the methods used to develop the three proposed critical habitat designations, and the proposed critical habitats for the Central America (CAM), Mexico (MX), and Western North Pacific (WNP) DPSs of humpback whales. The following supporting documents provide more detailed discussions of information and analyses that contributed to the conclusions presented in this proposed rule: Draft Biological Report (NMFS 2019a), Draft Economic Impact Analysis (IEc 2019a), and Draft Section 4(b)(2) Report (NMFS 2019b). These supporting documents are referenced throughout this proposed rule.

As detailed in the sections that follow, the specific occupied areas proposed for designation as critical habitat for the WNP DPS of humpback whales contain approximately 78,690 square nautical miles (nmi^2) of marine habitat within the North Pacific Ocean, including areas within the Bering Sea and the Gulf of Alaska. Specific occupied areas proposed for designation as critical habitat for the CAM DPS of humpback whales contain approximately 48,459 nmi^2 of marine habitat within the North Pacific Ocean, specifically within the portions of the

California Current Ecosystem off the coasts of Washington, Oregon, and California. Specific occupied areas proposed for designation as critical habitat for the MX DPS of humpback whales contain approximately 175,812 nmi² of marine habitat within the North Pacific Ocean, specifically within portions of Bristol Bay, the Bering Sea, the Gulf of Alaska, and California Current Ecosystem.

Based on consideration of economic impacts under section 4(b)(2) of the ESA, we propose to exclude approximately 44,119 nmi² of marine habitat from the designation for the WNP DPS, approximately 12,966 nmi² of marine habitat from the designation for the CAM DPS, and approximately 30,527 nmi² of marine habitat from the designation for the MX DPS. Based on consideration of national security impacts under section 4(b)(2) of the ESA, we also propose to exclude approximately 48 nmi² of marine habitat from the critical habitat designation for the MX DPS in Southeast Alaska; and we propose to exclude about 1,522 nmi² of marine habitat off the coast of Washington from the designations for the CAM and MX DPSs.

Background

On September 8, 2016, we published a final rule that revised the listing of humpback whales under the ESA by removing the original, taxonomic-level species listing, and in its place listing four DPSs as endangered and one DPS as threatened (81 FR 62260). We also determined that nine additional DPSs did not warrant listing. Prior to this revision, the humpback whale had been listed as an endangered species in 1970 under the precursor to the ESA (the Endangered Species Conservation Act of 1969), and then transferred to the list of endangered species under the ESA. Although the ESA was later amended to require the designation of critical habitat for listed species, when humpback whales were originally listed, there was no statutory requirement to designate critical habitat for this species. Section 4(a)(3)(A) of the ESA now requires that, to the maximum extent prudent and determinable, critical habitat be designated at the time of listing (16 U.S.C. 1533(a)(3)(A)). Pursuant to implementing regulations at 50 CFR 424.12(g), critical habitat cannot be designated within foreign countries or in areas outside the jurisdiction of the United States. Thus, the listing of DPSs of humpback whales under the ESA in 2016 triggered the requirement to designate critical habitat, to the maximum extent prudent and determinable, for those DPSs occurring in areas under U.S. jurisdiction—specifically, the CAM, MX, and WNP DPSs.

In the proposed rule to revise the humpback whale listing, we solicited information that could inform a critical habitat designation (80 FR 22304; April 21, 2015), but we did not receive relevant data or information regarding habitats or habitat features in areas within U.S. jurisdiction. In the final rule to list five DPSs of humpback whales, we concluded that critical habitat was not yet determinable, which had the effect of extending by one year the statutory deadline for designating critical habitat (16 U.S.C. 1533(b)(6)(C)(ii)).

On March 15, 2018, the Center for Biological Diversity, Turtle Island Restoration Network, and the Wishtoyo Foundation filed a complaint seeking court-ordered deadlines for the issuance of proposed and final rules to designate critical habitat for the CAM, MX, and WNP DPSs of humpback whales. *See Center For Biological Diversity et al.* v. *National Marine Fisheries Service, et al.,* No. 3:18–cv–01628–EDL (N.D. Cal.). The parties entered into a settlement agreement with the approval and oversight of the court, and subsequently amended the dates specified in the original order. The amended settlement agreement stipulates that NMFS must submit a proposed determination concerning the designation of critical habitat for these three DPSs to the **Federal Register** by September 26, 2019, and (to the extent a proposed rule has been published) a final rule by September 28, 2020.

In 2018, a critical habitat review team (CHRT) was convened to assess and evaluate information in support of a critical habitat designation for the CAM, MX, and WNP DPSs of humpback whales, which occur within portions of U.S. waters in the North Pacific Ocean. The CHRT consisted of eight biologists from NMFS and two from the National Ocean Service (NOS), all of whom have expertise and experience in humpback whale research or management, experience in developing critical habitat designations, and/or expertise in geographic information systems (GIS, *i.e.,* mapping). To determine potential critical habitat areas for the DPSs, the CHRT reviewed available data on humpback whales, including the global assessment of humpback whales and the status review that were completed in support of the ESA listings (Fleming and Jackson 2011, Bettridge *et al.* 2015), the proposed and final listing rules for humpback whales (80 FR 22304, April 21, 2015; 81 FR 62260, September 8, 2016), recent biological surveys and reports, and peer-reviewed literature. The CHRT also convened a workshop on May 22–23, 2018, at the NMFS Alaska Fisheries Science Center (AFSC) in Seattle, Washington, that brought together the CHRT members as well as 11 additional researchers from either the AFSC or other parts of NMFS. Several other individuals from external organizations (specifically, the Cascadia Research Collective (CRC), Moss Landing Marine Laboratories, National Park Service, and Oregon State University) participated during portions of the workshop either in person or by video conference to present and discuss their relevant research. Data considered, analyses conducted, and conclusions reached by the CHRT are discussed in detail in the Draft Biological Report (NMFS 2019a). Information from that report is summarized in the sections that follow.

Species Description and Status of the DPSs

Humpback whales (*Megaptera novaeangliae* (Borowski 1781) are large, baleen whales (family Balaenopteridae) that are found in all oceans across the globe. They range in color from black to gray with varying amounts of white on their bellies, flukes, and fins. Some patterns of color variation may occur among whales found in different geographic regions, but variations also occur among individual whales. Distinctive natural markings on the underside of the fluke along with other identifying features such as scars have been used to identify individual whales for decades by cetologists around the world. Also among their distinctive traits are their long flippers, which are knobbed on the leading edge, and both flippers and fluke are scalloped on the trailing edge.

Humpback whales can weigh over 40 tons (Ohsumi 1966) and are, on average, 13–15 meters in length at maturity (Chittleborough 1965, Mikhalev 1997). Females are longer than males by about 1 to 1.5 meters (Chittleborough 1965). The oldest known humpback whale was estimated to be about 95 years old (Chittleborough 1965, Gabriele *et al.* 2010). Average generation time has been estimated to be 21.5 years (Taylor *et al.* 2007), and adult survival rate is estimated to be between 0.87–1.00, depending on location and year (Barlow and Clapham 1997, Chaloupka *et al.* 1999, Mizroch *et al.* 2004).

Humpback whales breed and calve in tropical/subtropical waters in the winter months, typically during January–May in the Northern hemisphere. Calving intervals are between 1 to 5 years but

are more commonly between 2 to 3 years (Wiley and Clapham 1993, Steiger and Calambokidis 2000). Annual calving can occur but is rare (Straley 1989). After an 11–12 month gestation period, calves are born in the low latitude breeding grounds (Matthews 1937). Lactation occurs for close to 11 months, with calves beginning to wean at around 6 months (in June or July in the Northern Hemisphere) and reaching full independence after about a year (Chittleborough 1958, 1965; Clapham and Mayo 1990).

Males produce long, complex songs during the breeding season (Payne and Mcvay 1971), possibly to communicate their location and readiness to mate or to establish social order among males, or both (Tyack 1981, Darling and Bérubé 2001). Singing is typically heard on the breeding grounds but has also been detected during migration (Norris *et al.* 1999, Noad and Cato 2007) and on feeding grounds as well (Mattila *et al.* 1987, McSweeney *et al.* 1989, Clark and Clapham 2004, Stimpert *et al.* 2012, Magnúsdóttir *et al.* 2014). While on breeding grounds, humpback whales rarely feed (Baraff *et al.* 1991).

Around springtime, the whales typically migrate to temperate, higher latitude regions to feed and build up fat and energy reserves for the return migration, lactation, and breeding. Humpback whales feed on mainly euphausiids (krill) and small pelagic fishes (Nemoto 1957, 1959; Klumov 1963; Rice 1963; Krieger and Wing 1984; Baker 1985; Kieckhefer 1992; Clapham *et al.* 1997).

Humpback whales were commercially hunted for centuries throughout their range until the 1950s/60s. Reported catches from the 20th century suggest that humpback whales were distributed extensively throughout the North Pacific (Ivashchenko *et al.* 2015). Non-subsistence whaling was first prohibited by the International Whaling Commission (IWC) in 1955 in the North Atlantic and then in the North Pacific and Southern Hemisphere in 1965 after a final commercial whaling season (NMFS 1991). The total catch of humpback whales exploited in the North Pacific in the 20th century is estimated to be just over 29,000 whales (Ivashchenko *et al.* 2017). By the time modern commercial whaling was officially ended (though not completely ceased), the total abundance of humpback whales in the North Pacific may have been as few as roughly 1,000 whales (Rice 1978). Since the moratorium on commercial whaling, populations have been steadily increasing but some have not yet returned to historical abundance levels (Zerbini *et al.* 2006, Ford *et al.* 2009, Bettridge *et al.* 2015). Despite the official end of commercial whaling, some countries continue to engage in whaling practices.

The CAM DPS is listed as endangered and has been most recently estimated to include 783 whales (CV = 0.170, Wade 2017). Entanglement in fishing gear and vessel collisions, in particular, were identified as the most significant threats to this DPS in the 2016 final listing rule (81 FR 62260, September 8, 2016). Within U.S. waters, whales of this DPS are observed off the coasts of Washington, Oregon, and California.

The MX DPS is listed as threatened and has been most recently estimated to have an abundance of 2,806 whales (CV = 0.055, Wade 2017). Entanglement in fishing gear, especially off the coasts of Washington, Oregon, and California, was identified as the primary threat to this DPS. Entanglement has been documented primarily in pot and trap gear but also in gillnets (Carretta *et al.* 2018). Other threats include ship strikes and persistent organic pollutants, although, at the time of listing, these threats were not considered to be significantly impacting the survival of this DPS (Fleming and Jackson 2011, Bettridge *et al.* 2015). More recently, Rockwood *et al.* (2017) estimated that the mortality due to ship strikes (22 per year) is greater than the estimated fishery bycatch and is equal to the potential biological removal (PBR) level for the California/Oregon/Washington stock of humpback whales (Carretta *et al.* 2018). (Humpback whales are separately identified and managed as ''stocks'' under the Marine Mammal Protection Act (MMPA, 16 U.S.C. 1361 *et seq.*), a management unit that is not necessarily coextensive with a corresponding DPS under the ESA. PBR is defined under the MMPA as the maximum number of animals (not including natural mortalities) that may be removed from the stock while allowing that stock to reach or maintain its optimum sustainable population.) Whales within the MX DPS have a broad distribution within U.S. waters and occur along the coasts of Washington, Oregon, California, and Alaska.

The WNP DPS is listed as endangered and has an estimated abundance of 1,066 whales (CV = 0.079, Wade 2017). There is a high degree of uncertainty regarding the threats to this DPS; however, entanglement in fishing gear likely represents a serious threat (Brownell *et al.* 2000, Baker *et al.* 2006). Other likely threats to this DPS include offshore energy development activities, vessel collisions, pollution, and food competition (with fisheries, Bettridge *et al.* 2015). Humpback whale meat has been identified in Korean markets, and it is possible that whaling could be posing a threat to this DPS (Brownell *et al.* 2000, Baker *et al.* 2006). Within U.S. waters, whales from this DPS have been observed in waters off Alaska, primarily the eastern Aleutian Islands.

All three of these listed DPSs overlap spatially to varying degrees with the Hawaii DPS of humpback whales, which was found to not warrant listing under the ESA in 2016 (81 FR 62260, September 8, 2016). The Hawaii DPS whales breed in waters around the Hawaiian Islands and have been observed on most of the known feeding grounds within the North Pacific (Bettridge *et al.,* 2015). This population has an estimated abundance of about 11,571 whales (Wade 2017). While these whales are no longer protected under the ESA (and critical habitat is not being designated for them), they continue to be managed under the MMPA.

Distribution and Habitat Use

Humpback whales have strong fidelity to particular breeding regions, a general pattern that contributed to how the various DPSs were delineated and listed under the ESA (Bettridge *et al.* 2015). In particular, the MX DPS includes whales that breed in the area of mainland Mexico and the Revillagigedo Islands (Bettridge *et al.* 2015, 50 CFR 223.102). Whales from the CAM DPS breed off the coasts of Costa Rica, Panama, Guatemala, El Salvador, Honduras, and Nicaragua (Bettridge *et al.* 2015, 50 CFR 224.101). Humpback whales from the WNP DPS breed in waters around southern Japan (*e.g.,* Okinawa), off the Philippines in the Kuroshio Current, and in additional breeding grounds in the Western North Pacific that were ''unknown'' at the time of listing (Bettridge *et al.* 2015, 50 CFR 224.101). As discussed in more detail later (see ''Geographical Area Occupied by the Species''), because none of the confirmed breeding areas for these DPSs are within waters under U.S. jurisdiction, we cannot propose to designate them as critical habitat.

Humpback whale breeding areas are characterized by warm, shallow waters (Clapham and Mead 1999, Ersts and Rosenbaum 2003, Rasmussen *et al.* 2007), and the whales are often found in association with islands, banks, or offshore reefs (Dawbin 1966, Whitehead and Moore 1982, Baker *et al.* 1986). These warm, tropical and subtropical breeding areas have low productivity, and thus limited food availability, and the whales do not typically feed while on the breeding grounds (Rasmussen *et*

al. 2012, Villegas-Zurita and Castillejos-Moguel 2013).

In the North Pacific Ocean, humpback whales feed in biologically productive waters along the coasts of California, Oregon, Washington, and Alaska; British Columbia, Canada; and in waters off of Russia (*e.g.,* Kamchatka, Commander Islands). Although these feeding areas have an almost continuous distribution around the North Pacific basin, multiple studies have indicated fairly high levels of fidelity of humpback whales to particular areas and limited movements of whales among feeding areas (*e.g.,* Waite *et al.* 1999, Calambokidis *et al.* 2001, Calambokidis *et al.* 2008, Witteveen *et al.* 2011, Witteveen and Wynne 2016a, Gabriele *et al.* 2017). Understanding of how humpback whale populations are spatially structured while in these feeding areas has been informed by numerous studies, and probably most notably by the results of the Structure of Populations, Levels of Abundance and Status of Humpbacks Study—referred to as the SPLASH study. This study involved the collection of both photographic and genetic data throughout the North Pacific by several hundred researchers working in over 10 countries (Calambokidis *et al.* 2008). Through the SPLASH study, photo-identification data were collected over three breeding seasons (2004, 2005, and 2006) and over two feeding seasons (2004, 2005) in known breeding and feeding areas. Through this effort, a total of 7,971 unique whales were photo-identified (Calambokidis *et al.* 2008). For most analyses, photo-identification data were grouped into six broad feeding regions: Kamchatka (Russia), Aleutian Islands/Bering Sea, Gulf of Alaska, Southeast Alaska/Northern British Columbia, Southern British Columbia/Northern Washington, and California/Oregon (Calambokidis *et al.* 2008, Barlow *et al.* 2011, Wade *et al.* 2016). Analysis of the photo-identification data revealed that both within-season and between-season movements of whales between these six feeding areas were infrequent and any such exchanges were mainly to adjacent areas (Calambokidis *et al.* 2008), which is consistent with previous findings from earlier region-wide studies (*e.g.,* Calambokidis *et al.* 1996, Calambokidis *et al.* 2001).

Genetic analyses of skin samples collected during the SPLASH study provide additional insight into the structuring of humpback whale populations across the feeding areas (Baker *et al.* 2013). Analysis of maternally inherited mitochondrial DNA (mtDNA) from 1,010 unique whales indicated highly significant differences in mtDNA haplotype frequencies among the feeding regions overall (overall $F_{ST} = 0.121$, $\Phi_{ST} = 0.178$, $p < 0.0001$), and pairwise comparisons were also significant (at $p < 0.05$) for 32 of 36 possible comparisons (excluding the western Aleutians due to low sample size, Baker *et al.* 2013). Comparisons of bi-parentally inherited microsatellite DNA indicated very weak but significant differentiation of microsatellite allele frequencies among feeding areas, suggesting male-biased gene flow (overall $F_{ST} = 0.0034$, $p < 0.001$, Baker *et al.* 2013). The high degree of differentiation in mtDNA among feeding areas reflects the influence of maternal fidelity to feeding areas. This result is consistent with findings of previous but more spatially-limited studies (*e.g.,* Baker *et al.* 1998, Witteveen *et al.* 2004). This effect likely stems from the close dependency of calves on their mothers during their first year of life, during which they travel with their mothers and thereby inherit information from their mothers about feeding destinations (Baker *et al.* 1987, Pierszalowski *et al.* 2016).

Overall, while the available photo-identification data indicate varying degrees of mixing of populations across the feeding areas, the overall pattern of structuring of populations among the feeding areas, as well as the pattern of migratory connections between particular feeding areas and breeding areas, contributed to how the various DPSs are described in the listing rule (81 FR 62260, September 8, 2016). In particular, the MX DPS is described as including whales that feed primarily off California-Oregon, northern Washington-southern British Columbia, in the Gulf of Alaska and East Bering Sea (50 CFR 223.102). The CAM DPS is described as including whales that feed along the West Coast of the United States and southern British Columbia (50 CFR 224.101). The WNP DPS is described as including whales that feed primarily in the West Bering Sea and off the Russian coast and the Aleutian Islands (50 CFR 224.101).

Although these feeding areas are broadly distributed and range widely in terms of latitude, they are usually over the continental shelf or near the shelf edge at shallow (~10 m) to moderate water depths (~50–200 m) and in cooler waters (Zerbini *et al.* 2016, Becker *et al.* 2016 and 2017). Often, feeding areas are associated with oceanographic (*e.g.,* upwelling, fronts), bathymetric (*e.g.,* submarine canyons, banks), and/or biological features (*e.g.,* spawning areas for fish) that serve to concentrate or aggregate prey (*e.g.,* Tynan *et al.* 2005, Dalla Rosa *et al.* 2012, Thompson *et al.* 2012, Friday *et al.* 2013, Chenoweth *et al.* 2017, Straley *et al.* 2018, Santora *et al.* 2018). Physical oceanographic mechanisms influencing primary productivity are subject to significant variations on seasonal, inter-annual (*e.g.,* El Niño), and decadal time-scales (*e.g.,* Pacific Decadal Oscillation (PDO) cycles; Barber and Chavez 1983, McGowan *et al.* 1998, 2003), which adds variability to humpback whale prey distributions and abundances within the feeding areas.

Satellite tagging efforts have provided some insights into the fine-scale movements of the whales while on the foraging grounds, indicating the duration, area, and variability in the areas over which the whales feed. For instance, in the summers of 2007 to 2011, Kennedy *et al.* (2014) deployed satellite tags on eight adult humpback whales in Unalaska Bay, Alaska, and tracked the whales for an average of 28 days (range = 8 – 67 days). Position data were then analyzed and categorized into one of three possible behavioral modes: Transiting; area-restricted searching (ARS), or unclassified. The slower speeds and higher turning angles during ARS behavior are considered to be indicative of active foraging (Kennedy *et al.* 2014, citing Kareiva and Odell 1987, Mayo and Marx 1990). Results indicated that whales mainly stayed over shelf and slope habitat (1,000 m or shallower) while in ARS mode, and all but one whale remained relatively close to Unalaska Bay during the tracking period. One whale, however, left Unalaska Bay 3 days after being tagged, traveling along the Bering Sea shelf towards Russia and covering almost 3,000 km in 26 days, indicating that the whales may in fact travel long distances during the feeding season (Kennedy *et al.* 2014). Satellite tags deployed on whales tagged off central California in the summer/fall of 2004–2005 and in summer of 2017 and that were tracked for a minimum of 30 days, exhibited feeding behavior (as detected by ARS data) over an area that averaged 20,435.6 km^2 (n=8, SE = 7322.8) and 17,684.4 km^2 (n=7, SE = 13,927.6 km^2), respectively (Mate *et al.* 2018). In the latter case, this average area extended from the Channel Islands in southern California to central Oregon. Similar tagging work off the Oregon coast in September/October in 2017 indicated the whales actively fed over areas of comparable size (average area = 17,215.6 km^2; n=4; SE = 8,430.6), and for the few whales tagged, the feeding area extended from Point Arena, central California, to the southwest corner of

Vancouver Island, British Columbia (Mate *et al.* 2018). The area over which whales actively feed (as indicated by ARS data over a minimum of 30-days) appears to be somewhat smaller in Southeast Alaska, where the average ARS area for whales tagged in summer of 1997 and in fall of 2014–2015 was 4,904.3 km^2 (n=3, SE = 1,728.8) and 2,862.7 km^2 (n=4, SE = 1,834.2), respectively (Mate *et al.* 2018). Differences in the area over which the whales feed between years likely reflects a seasonal shift in target prey and prey distributions (Witteveen *et al.* 2011, Straley *et al.* 2018).

Migrations of whales between their seasonal habitats have been studied indirectly using genetic data and matching of individual photo-identified whales at feeding and breeding areas, but the specific migratory routes used by the whales remains poorly understood, especially in the North Pacific. Although data are limited, telemetry data from satellite-monitored radio tags have provided additional insights into seasonal migrations. Humpback whales were initially thought to migrate along a coastal route when travelling between their seasonal habitats, but migration routes are now known to be varied, with some whales taking coastal routes and some taking pelagic routes (Fleming and Jackson 2011). For instance, Lagerquist *et al.* (2008) tagged 11 whales off of Socorro Island, Mexico (within the Revillagigedo Archipelago) in February 2003, and, after an average of 13.6 days (range = 3.8–27.0 days), seven of the whales migrated to areas north of the breeding areas in Mexico—three were adult whales without a calf and four were adult females travelling with a calf. Two of these seven whales were tracked all the way to feeding grounds—one to British Columbia (46 d migration) and one to Alaska (49 d migration). The migration routes were well offshore, averaging 444 km from the coast and ranging from 115 to 935 km from the coast (Lagerquist *et al.* 2008). One whale, which travelled the closest to shore overall, came within 41 km of Point Arena, California at the closest point along its migration. An offshore northbound migratory route between the Revillagigedo Archipelago and Alaska was also documented through visual and acoustic detections during a ship-based survey by Norris *et al.* (1999). Southbound migration routes were recorded by researchers from Oregon State University, who conducted satellite tagging efforts in multiple feeding areas during 1997–2017 (Mate *et al.* 2018). Six of 88 tagged whales were tracked along their full migration route to breeding areas, and an additional 20 whales were tracked for the early portion of their migration before transmissions ceased. These tagging efforts indicate that up to three different migration routes were taken by whales departing from Southeast Alaska, with most (n=20) heading towards Hawaii (the breeding destination for the non-listed Hawaiian population of humpback whales), one that headed west into the Gulf of Alaska, and two that headed south along the U.S West Coast. One whale that had been tagged in 2017 off the coast of Oregon was tracked southward along a route that eventually extended well offshore before heading on an eastward trajectory towards mainland Mexico. Another two whales that had been tagged off central California in 2004/2005, took much more coastal routes southward to Mexico and Guatemala.

Diet and Feeding Behaviors

Humpback whales are generalists, taking a variety of prey while foraging and also switching between target prey depending on what is most abundant in the system (Witteveen *et al.* 2015, Fleming *et al.* 2016). Within the California Current marine ecosystem (CCE), the highly productive coastal system that extends from British Columbia, Canada to the southern Baja California Peninsula, humpback whales are known to target Pacific sardine (*Sardinops sagax*), northern anchovy (*Engraulis mordax*), Pacific herring (*Clupea pallasii*), euphausiids (specifically *Thysanoessa, Euphausia, Nyctiphanes,* and *Nematoscelis*), and occasionally juvenile rockfish (*Sebastes;* Rice 1963, Kieckhefer 1992, Clapham *et al.* 1997). In waters off Alaska, the humpback diet includes: Euphausiids, capelin (*Mallotus villosus*), Pacific herring, Atka mackerel (*Pleurogrammus monopterygius*), juvenile walleye pollock (hereafter ''pollock,''*Gadus chalcogrammus* (formerly, *Theragra chalcogramm*a)), Pacific cod (*Gadus macrocephalus*), saffron cod (*Eleginus gracilis*), Arctic cod (*Boreogadus saida*), rockfish (*Sebastes*), Pacific sand lance (*Ammodytes personatus),* eulachon (*Thaleichthys pacificus*), surf smelt (*Hypomesus pretious*), Pacific sandfish (*Trichodon trichodon*), and myctophids (primarily *Stenobrachius leucopsarus;* Nemoto 1959, Klumov 1965, Tomilin 1967, Krieger and Wing 1984, Baker 1985, Witteveen *et al.* 2008, Neilson *et al.* 2015). Euphausiids consumed in Alaska are mainly from genus *Euphausia* and *Thysanoessa* (Krieger and Wing 1984). Additional prey noted in Alaska are mysids, amphipods (*Parathemisto libeelula*), and shrimps (*Eualus gaimardii* and *Pandalus goniurus*) (Tomilin 1967). There have also been observations of humpback whales feeding on hatchery-released juvenile salmon in Southeast Alaska (Chenoweth *et al.* 2017). A more detailed discussion of the humpback whale diet by feeding regions within the North Pacific is provided in the Draft Biological Report (NMFS 2019a).

Humpback whales are gulp feeders, gulping mouthfuls of prey and water at a time (Ingebrigtsen 1929), and use a variety of capture techniques while feeding, including lunges and bubble structures (bubble nets, columns, clouds, and curtains; Jurasz and Jurasz 1979, Hain *et al.* 1982). In general, humpback whales will lunge feed, both towards the surface and at depths, while alternating between periods of short, shallow dives and long, deeper dives and can execute multiple lunges in one dive (Goldbogen *et al.* 2008). Lunge types include lateral lunge feeding, vertical lunge feeding, and inverted lunge feeding (Jurasz and Jurasz 1979). Additionally, humpbacks have been observed using multiple types of bubble structure feeding techniques for capturing prey, such as bubble nets, columns, clouds, and curtains (Jurasz and Jurasz 1979, Hain *et al.* 1982) and techniques that combine clouds with surface disturbances (like lobtail feeding, Weinrich *et al.* 1992). Artificial bubble structures have been shown experimentally to constrain the spatial movement of herring, particularly large schools (Sharpe and Dill 1997), supporting the conclusion that bubble techniques are likely an effective method for herding prey. Additional feeding strategies documented include ''blaze feeding'' (flashing the white side of pectoral flipper at prey; Tomilin 1957 cited in Brodie 1977, Sharpe 2001), swimming/thrashing (roiling the surface and thrashing tail, Hain *et al.* 1982), looping, flick feeding (lashing tail at the surface, Jurasz and Jurasz 1979), vertical rise and subsidence (creates a reduced pressure zone in the water column, Hays *et al.* 1985), ''roiling'' the surface with flippers and flukes (Hain *et al.* 1982), and trap-feeding (McMillan *et al.* 2019).

Humpback whales may also work in groups to herd and capture prey. For instance, in Southeast Alaska, groups of whales have been observed to release bubbles simultaneously in the same area, and then surface through the center of the bubbles together to consume the herded herring (Jurasz and Jurasz 1979, Baker 1985, D'Vincent *et al.* 1985). Vocalizations may be important

in coordinating group feeding efforts (D'Vincent *et al.* 1985).

Feeding techniques likely vary depending on the target prey species and prey density (Jurasz and Jurasz 1979). Dive depth of foraging whales also varies depending on the target prey. In Alaska, Witteveen *et al.* (2015) reported that whales dove deeper to forage on krill than on fish (average depths of 98 m versus 80 m, respectively). Similarly, in areas off California, Szesciorka (2015) documented shallower feeding on the continental shelf where fish were more readily available, and deeper feeding on continental break/slope where krill were present. For dive depths in general, multiple authors have documented varying average and maximum dive depths, with mean depths ranging from around 66 m to 107 m and maximim depths ranging from approximately 115 m to 388 m (in Alaska, California, and Antarctica; Witteveen *et al.* 2008, Simon *et al.* 2012, Tyson 2014, Szesciorka 2015, Witteveen *et al.* 2015).

Because humpback whales only rarely feed on breeding grounds and during migrations, the buildup of fat stores while on the feeding grounds is critical to support migration and successful breeding. Given the energetic costs associated with foraging activity itself, especially at deeper depths (Goldbogen *et al.* 2008), foraging is only expected to be energetically profitable above some lower threshold for an energetic return. Evidence suggests that humpback whales will generally feed when they encounter suitable concentrations of prey. Although humpback whales have often been observed in association with, or specifically targeting, dense aggregations of prey within North Pacific feeding regions (*e.g.,* Bryant *et al.* 1981, Krieger and Wing 1986, Goldbogen *et al.* 2008, Sigler *et al.* 2012, Witteveen *et al.* 2015), minimum prey densities required to support feeding are not generally known.

Geographical Area Occupied by the Species

The phrase ''geographical area occupied by the species,'' which appears in the statutory definition of critical habitat, is defined by regulation as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range) (50 CFR 424.02). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals) (*Id.*). Below, we summarize information regarding the geographical area occupied by each of the three DPSs of humpback whales, each of which is a ''species'' as defined in the ESA. *See* 16 U.S.C. 1532(16) (defining ''species'' to include any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature). Additional details on the range of each DPS are provided in the Draft Biological Report (NMFS 2019a).

Central America DPS

As discussed earlier, the CAM DPS is described as humpback whales that breed in waters off Central America in the North Pacific Ocean and feed along the west coast of the United States and southern British Columbia (50 CFR 224.101(h)). The breeding range of this DPS includes waters off the Pacific coast of Central America, from Panama north to Guatemala, and possibly into southern Mexico (Bettridge *et al.* 2015, Calambokidis *et al.* 2017). Whales from this DPS have been observed within foraging grounds along the coasts of California, Oregon, and Washington (Barlow *et al.* 2011).

In terms of distribution across their foraging range, CAM DPS whales are significantly more common in waters of southern California and occur in progressively decreasing numbers up the coast towards Washington and Southern British Columbia (Steiger *et al.* 1991; Rasmussen *et al.* 2001; Calambokidis *et al.* 2000, 2008, 2017). Of the humpback whales identified off the coast of Central America (n=31) in a photo-identification study conducted between 1981 and 1992, 84 percent were re-sighted off California (Calambokidis *et al.* 2000). This distribution pattern was also confirmed by the results of the SPLASH study, which indicated that out of 29 between-season photo-identification matches of whales from the Central America breeding areas, 26 occurred within the California/Oregon feeding region and 3 occurred within the northern Washington/southern British Columbia region (Barlow *et al.* 2011). Use of the Salish Sea by this DPS may be extremely limited, and has been indicated by the single re-sighting reported in Calambokidis *et al.* (2017), and no observations of these whales have been reported for waters off Alaska or in the Bering Sea.

Mexico DPS

The MX DPS of humpback whales is defined as humpback whales that breed or winter in the area of mainland Mexico and the Revillagigedo Islands, transit Baja California, or feed in the North Pacific Ocean, primarily off California-Oregon, northern Washington/southern British Columbia, northern and western Gulf of Alaska, and East Bering Sea (50 CFR 223.102(e)). Of the three DPSs addressed in this proposed rule, the MX DPS has the broadest distribution within the U.S. portion of their range. Through the SPLASH study, MX DPS whales were photo-identified in all five of the major feeding areas in, or partially in, U.S. waters—*i.e.,* California/Oregon (n=105 whales), northern Washington/southern British Columbia (n=27 whales), southeast Alaska/northern British Columbia (n=35 whales), the Gulf of Alaska (n=97 whales), and the Aleutian Islands/Bering Sea (n=27 whales, Barlow *et al.* 2011).

In terms of their distribution across this range, whales using different portions of the MX DPS breeding area appear to target different feeding destinations. During SPLASH surveys, whales that had been photo-identified along the Pacific coast of mainland Mexico were sighted in highest numbers off the coast of California and Oregon (97 of 164 total matches), suggesting that this is their primary foraging destination (Calambokidis *et al.* 2008, Barlow *et al.* 2011). Although whales sighted off mainland Mexico also travel to the more northern latitude feeding areas, the MX DPS whales sighted around the Revillagigedo Archipeligo had more matches overall to Alaska feeding areas and had higher match rates to the northern Gulf of Alaska feeding area in particular (44 of 87 matches; Calambokidis *et al.* 2008).

Multiple studies have reported sightings of a small number of whales in both the Mexico and Hawaii breeding areas (*e.g.,* n=1, Darling and McSweeney 1985; n=5, Calambokidis *et al.* 2001; n=17, Calambokidis *et al.* 2008). Detections of shared song composition among whales from different breeding locations along with presence of whales in mid-ocean tropical waters during the breeding season also suggest some form of contact between whales from different breeding populations (Darling *et al.* 2019a and 2019b). Overall, interchange among breeding areas appears to be rare, and remains poorly understood in terms of its biological significance.

Western North Pacific DPS

Humpback whales of the WNP DPS are listed as humpback whales that breed or winter in the area of Okinawa and the Philippines in the Kuroshio Current (as well as unknown breeding grounds in the Western North Pacific Ocean), transit the Ogasawara area, or feed in the North Pacific Ocean,

primarily in the West Bering Sea and off the Russian coast and the Aleutian Islands (50 CFR 224.101(h)). Whales from this DPS have been sighted in foraging areas off the coast of Russia, primarily Kamchatka, the Aleutian Islands, as well as in the Bering Sea and Gulf of Alaska, and off northern and southern British Columbia (Figure 13; Darling *et al.* 1996, Calambokidis *et al.* 2001, Barlow *et al.* 2011). Whales from this DPS are not thought to use the feeding areas off Washington, Oregon, and California.

Several studies have reported sightings of a small number of photo-identified whales in both the Asia (off Japan or the Philippines) and Hawaii breeding areas (*e.g.,* n=1, Darling and Cerchio 1993; n=3, Salden *et al.* 1999; n=4, Calambokidis *et al.* 2001; n=2, Calambokidis *et al.* 2008); however, the significance of these movement to either the WNP DPS or the non-listed population of humpback whales that breed around Hawaii has not been established.

In terms of their distribution across the U.S. portion of their range, whales of the WNP DPS are most likely to be found off the Aleutian Islands and in the Bering Sea (Wade *et al.* 2016, Wade 2017). Although very limited in number, photo-identified whales from the breeding areas of this DPS have also been sighted in the Kodiak and Shumagin Island regions of Alaska (Calambokidis *et al.* 2001, Witteveen *et al.* 2004, Calambokidis *et al.* 2008). During the SPLASH study (2004–2006), photo-identified individuals from this DPS were matched to the Gulf of Alaska (n=2), the Aleutian Islands/Bering Sea (n=9), and Kamchatka feeding regions (n=21, Barlow *et al.* 2011).

As indicated by the regulatory definition of this DPS, the breeding range of the WNP DPS is not fully resolved. At the time of listing, the breeding range of this DPS was known to include the waters off Okinawa and the Philippines in the area of the Babuyan Islands (Barlow *et al.* 2011, Bettridge *et al.* 2015, Wade *et al.* 2016), but additional breeding areas were suspected based on the very low match rates for whales from feeding areas used by this DPS (Calambokidis *et al.* 2008). Recent evidence suggests an additional breeding area for the WNP DPS is located off the Mariana Islands. Humpback whale song has been detected on passive acoustic recorders within the Mariana Archipelago in winter months (December–April; Fulling *et al.* 2011, Oleson *et al.* 2015). Humpback whales have also been infrequently sighted near the Mariana Islands, mainly off of Saipan (Fulling *et al.* 2011; Hill *et al.* 2016, 2017); and, although no humpback whales were sighted in this area between 2009–2013 (Fulling *et al.* 2011, Hill *et al.* 2014, Ligon *et al.* 2013), mother-calf pairs have been observed off Saipan in 2015 (n=4 pairs), 2016 (n=4 pairs), and in 2017 (n=2 pairs; Hill *et al.* 2016, 2017, 2018). Individual photo-identification data for whales sampled off Saipan within the Mariana Archipelago in February–March 2015–2018, suggest that these whales belong to the WNP DPS (Hill *et al.* in review). Specifically, comparisons with existing WNP humpback whale photo-identification catalogs showed that 11 of 41 (27 percent) whales within the Mariana Archipelago humpback whale catalog were previously sighted in WNP breeding areas (Japan and Philippines) and/or in a WNP feeding area off Russia (Hill *et al.* in review). Mitochondrial DNA analyses comparing 24 individual humpback whales sampled within the Mariana Archipelago to ones sampled in known breeding areas throughout the Pacific demonstrated significant differentiation from the Philippines, Okinawa, Hawaii, and Central America (Hill *et al.* in review). No population structure was demonstrated between the Mariana Archipelago and Ogasawara or Mexico breeding areas (Hill *et al.* in review). Comparisons of samples from the Mariana Archipelago to known foraging areas demonstrated significant differentiation from foraging areas in Northern British Columbia, the Bering Sea, California/Oregon, Southeast Alaska, and the Northern Gulf of Alaska; no population structure was demonstrated between the Mariana Archipelago and foraging areas in Russia, the Aleutian Islands, Western Gulf of Alaska, and Southern British Columbia/Washington (Hill *et al.* in review). While the available data suggest that the Mariana Archipelago may serve as humpback whale breeding habitat, and that at least some of these whales likely belong to the endangered WNP DPS, additional data are needed to fully resolve the extent to which WNP DPS whales are relying on areas around the Mariana Islands as a breeding/calving habitat and the essential features of the specific area(s) being used for breeding and calving. Thus, at this time, the best available scientific information does not support including such areas within the proposed critical habitat designation for the WNP DPS.

Physical and Biological Features Essential to the Conservation of the Species

The statutory definition of occupied critical habitat refers to ''physical or biological features essential to the conservation of the species,'' but the ESA does not specifically define or further describe these features. ESA-implementing regulations at 50 CFR 424.02 (84 FR 45020; August 27, 2019; effective September 26, 2019), however, define such features as follows:

> The features that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

To assess habitat features that may qualify as ''essential to the conservation'' of humpback whales, the CHRT discussed physical and biological features that are essential to support the life history needs and support the conservation of humpback whales within the areas they occupy within U.S. waters. The CHRT considered and evaluated various features of humpback whale habitat, such as prey, migratory corridors or conditions, and sound/soundscape. Significant considerations, CHRT discussions, and resulting conclusions are summarized below as well as in the Draft Biological Report (NMFS 2019a).

Prey as an Essential Feature

Although written for the taxonomic species and thus now outdated, the 1991 NMFS Recovery Plan for humpback whales, identified four major recovery objectives, the first of which was, ''maintain and enhance habitats used by humpback whales currently or historically'' (NMFS 1991). As part of that objective, we had identified multiple recommended actions to further the species' recovery, including ''providing adequate nutrition'' and ''monitoring levels of prey abundance'' (NMFS 1991). The Recovery Plan states that adequate nutrition is needed for the recovery of the species, and emphasized the need to maintain and optimize levels of, and access to, prey (NMFS 1991). The Recovery Plan also noted that humpback whales require access to prey over a sufficiently widespread feeding range to buffer them from local fluctuations in productivity or fisheries removals (NMFS 1991). As we discuss here, these considerations regarding adequate nutrition and prey abundance and availability are still relevant today

for the MX, CAM, and WNP DPSs of humpback whales.

Whales from each of these three DPSs travel to U.S. coastal waters specifically to access energy-rich feeding areas, and the high degree of loyalty to specific locations indicates the importance of these feeding areas. Although humpback whales are generalist predators and prey availability can very seasonally and spatially, substantial data indicate that the humpback whales' diet is consistently dominated by euphausiid species (of genus *Euphausia, Thysanoessa, Nyctiphanes,* and *Nematoscelis*) and small pelagic fishes, such as northern anchovy (*Engraulis mordax),* Pacific herring (*Clupea pallasii),* Pacific sardine (*Sardinops sagax),* and capelin (*Mallotus villosus;* Nemoto 1957, Nemoto 1959, Klumov 1963, Rice Krieger and Wing 1984, Baker 1985, Kieckhefer 1992, Clapham *et al.* 1997, Neilson *et al.* 2015; See ''Diet and Feeding Behavior'' and Appendix A in NMFS 2019a).

Because humpback whales only rarely feed on breeding grounds and during migrations, humpback whales must have access to adequate prey resources within their feeding areas to build up their fat stores and meet the nutritional and energy demands associated with individual survival, growth, reproduction, lactation, seasonal migrations, and other normal life functions. Essentially, while on feeding grounds, the whales must finance the energetic costs associated with migration to breeding areas, reproductive activities, as well as the energetic costs associated with their return migration to high-latitude feeding areas. Fat storage has been linked to reproductive efficiency in other species of large, migratory, baleen whales (Lockyer 2007), and some evidence suggests that variation in prey availability during summer is directly connected to variation in annual reproductive rates for humpback whales in the following year (Clapham 1993). Calf condition has also been significantly correlated with female body condition (low calf body condition with lower female condition) for humpback whales in Australia (Christiansen *et al.* 2016), and, of all life stages, lactating females have the highest energy demands (McMillan 2014).

Given the energetic demands of lunging and other prey capture techniques, foraging is only expected to be profitable above some lower threshold for an energetic return, and evidence suggests that humpback whales will only feed when they encounter suitable concentrations of prey. Within their North Pacific feeding areas, humpback whales have often been observed in association with, or specifically targeting, dense aggregations of prey (*e.g.,* Bryant *et al.* 1981, Krieger and Wing 1986, Goldbogen *et al.* 2008, Sigler *et al.* 2012, Witteveen *et al.* 2015), but the precise range of prey densities required to support feeding are not generally known and therefore cannot be described quantitatively on the basis of the best scientific data available. Thus, it is essential that the whales not only have reliable access to prey within their feeding areas, but that prey are of a sufficient density to support feeding and the build-up of energy reserves.

Given that each of three humpback whale DPSs very clearly rely on the feeding areas while within U.S. waters, the CHRT identified a prey biological feature that is essential to the conservation of the whales. The prey essential feature was specifically defined as follows:

> Prey species, primarily euphausiids and small pelagic schooling fishes of sufficient quality, abundance, and accessibility within humpback whale feeding areas to support feeding and population growth.

Migratory Corridors and Passage Features

Given the known migratory behaviors of humpback whales and the very significant concerns regarding entanglement and ship strikes of humpback whales, especially along the U.S. West Coast, the CHRT explored the possibility of defining a migratory corridor or a passage-related essential feature. The CHRT considered the best available data and also consulted with biologists with expertise in satellite telemetry and entanglement of humpback whales. Ultimately, and for reasons summarized below, the CHRT concluded that a migratory corridor or passage feature could not be identified, either between or within the seasonal habitats occupied by humpback whales within U.S. waters.

In terms of a migratory ''corridor,'' the available satellite tagging data do not indicate a specific or consistently used route or routes for humpback whales traveling between their seasonal breeding and feeding areas in the North Pacific (Mate *et al.* 2007, Lagerquist *et al.* 2008, Mate *et al.* 2018). However, data to resolve a specific migratory routes are very limited, and, in particular, we are unaware of any telemetry data demonstrating the seasonal migration routes or corridors for whales of the WNP DPS or the CAM DPS. Satellite tagged whales from the MX DPS have been documented to use very nearshore waters, offshore waters within the U.S. Exclusive Economic Zone (EEZ), as well as waters out beyond the U.S. EEZ when transiting between winter breeding areas and summer feeding areas (Lagerquist *et al.* 2008, Mate *et al.* 2018). For MX DPS whales, when complete migratory routes have been captured, the telemetry data also indicate that the whales do not necessarily maintain a constant distance from shore, and at different points along their migration may be closer or farther from shore (D. Palacios, OSU, pers. comm., June 6, 2018, Mate *et al.* 2018). The depth or a depth range that the whales typically occupy while undergoing their seasonal migrations is also not yet resolved.

Satellite tagging of whales within the feeding range of all three DPSs has occurred, and while DPSs of origin was not necessarily confirmed in all studies, results consistently show considerable variation in the fine-scale movement patterns of the individual whales both within and across years, suggesting that the whales are each making independent decisions regarding their movements (Kennedy *et al.* 2014, Mate *et al.* 2018). Thus, the CHRT concluded it is not currently possible, on the basis of the best scientific data available, to spatially identify any consistently used migratory corridors or define any physical, essential migratory or passage conditions for whales transiting between or within habitats of the three DPSs.

The conclusion by the CHRT regarding a potential migratory corridor is consistent with previous critical habitat designations for large, migratory species such as Pacific leatherback sea turtles (77 FR 4170, January 26, 2012) and North Atlantic right whales (81 FR 4837, January 27, 2016). In these cases, NMFS concluded that while supporting and protecting the ability of these species to migrate between important habitats and areas was important to the conservation of the species, there was no clear migratory route or passage feature that could be defined. We also note that, as part of a multi-agency mapping effort (CetSound, *https://cetsound.noaa.gov/cetsound*), Biologically Important Areas (BIAs) were identified in 2015 for cetacean species or populations within the U.S. EEZ. BIAs are non-regulatory delineations that are intended to inform regulatory and management decisions; they are also not intended to be static delineations but can be updated as new data become available. While the effort to develop BIAs was not seeking to identify critical habitat and therefore

does not conclusively establish which areas should be considered to meet the statutory definition of ''critical habitat,'' the CHRT considered (and we agree) the BIA information to be very informative and important part of the best available scientific information. Of the four categories of BIAs—*i.e.,* reproductive areas, feeding areas, migratory corridors, and small and resident populations—no migratory corridor BIAs have been identified to date for any population of humpback whales in any ocean (Ferguson *et al.* 2015b, see ''Specific Areas,'' below). Although we concur with the CHRT that the best scientific data available at this time does not support identification of a migratory feature, we acknowledge the ongoing management concerns of ship strikes and entanglements in fishing gear. Humpback whales are observed regularly in and around fishing gear and in areas of high vessel traffic, and entanglement and ship strikes continue to pose threats to all three of these DPSs. We find that these threats are of a type more appropriately and more directly taken into account in the context of management of activities that pose a risk of harm to individual animals (*i.e.,* ''take'') such as in interagency consultations under section 7 of the ESA, rather than as threats to the underlying habitat. While ship strikes and entanglements will continue to be treated as ''take'' issues and managed as threats to the animals to the extent possible under the ESA and MMPA, should these threats or other activities (*e.g.,* large-scale aquaculture), either independently or in combination, prevent or impede the whales' ability to access prey, we would consider that as constituting a negative impact on the defined prey feature, which inherently includes consideration of ''accessibility.'' In other words, the whale's ability to move freely to access their prey while on the feeding grounds is inherent in the prey essential feature as proposed.

Sound or a Soundscape Feature

The CHRT considered at length the importance of sound to humpback whales and whether the best scientific data available supported the identification of a sound-related essential feature of the whales' occupied habitats. As discussed in detail in the Draft Biological Report, humpback whales generate a variety of sounds and use sound for communicating and for sensing their environment. Ultimately, although the CHRT members fully acknowledged that the whales' sensory ability to perceive and process sounds is an important aspect of their biology, the majority of the CHRT (with 2 members unsure and 1 dissent) concluded that the best available data currently do not enable us to identify particular sound levels or to describe a certain soundscape feature that is essential to the conservation of humpback whales. Reasons for this conclusion are summarized here and discussed in more detail in NMFS (2019a).

Humpback whales occur within a wide range of soundscapes, and conclusions regarding particular sound-related habitat requirements for humpback whales are difficult to draw. Anthropogenic sounds are present in all parts of humpback whale habitat; however, some areas have more sources and higher levels of anthropogenic sound than others. Sightings data clearly demonstrate that humpback whales in the North Pacific routinely use and occupy relatively quieter areas as well as some of the noisiest areas along the U.S. West Coast (*e.g.,* southern California, Redfern *et al.* 2017). Based on the best data available, the threat of anthropogenic noise received a ''low'' rating for all DPSs of humpback whales in the 2015 NMFS Status Review (out of possible ratings of ''unknown,'' ''low,'' ''medium,'' ''high,'' and ''very high;'' Bettridge *et al.* 2015). Several studies have indicated that humpback whales, which are predicted to have a low-frequency hearing range of roughly 7 Hz to 35 kHz (NMFS 2018), may even habituate to certain low-frequency noises (Sivle *et al.* 2016, Di Clemente *et al.* 2018, Teerlink *et al.* 2018)—one of the most ubiquitous sources of which is commercial vessels (Hildebrand 2009).

Behavioral responses of humpback whales to noise are highly variable across habitats and even among individual whales, and many factors can influence whether and how noise will affect a whale, including past exposure to a noise, individual noise tolerance, age, breeding status (with or without calf), and current behavioral state of the whale (*e.g.,* resting versus migrating; Malme *et al.* 1985, Krieger and Wing 1986, Richardson *et al.* 1995, Richardson and Würsig 1997, NRC 2003, Sivle *et al.* 2016, Wensveen *et al.* 2017). Responses to noise are also dependent on characteristics of the noise– *e.g.,* pulse or non-pulse, moving or stationary noise, novel or common, etc. (Richardson *et al.* 1997, Southall *et al.* 2007, Ellison *et al.* 2012). Results of several studies demonstrate that humpback whales exhibit behavioral plasticity in their communication and signaling strategies in response to increases in ambient noise (*e.g.,* Dunlop *et al.* 2010, Dunlop *et al.* 2014, Fournet *et al.* 2018), which in some cases may allow the whales to reduce acoustic interference with natural auditory signal processing (*i.e.,* acoustic masking). Adding to this overall complexity in understanding how noise impacts humpback whales is the fact that scientific understanding of humpback whale hearing remains quite limited (Houser *et al.* 2001, NMFS 2018).

Given the highly diverse and spatially broad areas occupied by humpback whales, as well as the mixed responses of humpback whales to noise, the CHRT could not define a sound-related feature that is essential to the conservation of humpback whales nor identify specific areas where such a feature could be found within the occupied ranges of the DPSs. Ambient sound or the ''soundscape'' is relevant to the whales' ability to communicate and receive sounds within the marine environment no matter where the whales occur, and sound or a soundscape *per se* does not appear to be associated with habitat use or occupancy. Instead, humpback whales appear to be highly flexible in their ability to use and occupy habitats with varying soundscapes. This flexibility may be in contrast to other cetaceans that have very limited or restricted distributions and for which noise impacts, such as habitat displacement, are likely to have measureable effects on stress, foraging success, survival, reproduction, etc. (Forney *et al.* 2017). We note, however, that substantial data gaps and various shortcomings for much of the existing, relevant literature (such as limited duration of assessments, limited geographic scale of observations, uncertainty regarding actual mechanism for observed responses, uncertainty in the received levels of noise, and other confounding factors associated with the particular study locations) prevent a clear understanding of the acoustic ecology of humpback whales. Furthermore, broader and longer-term consequences of noise on the fitness and viability of humpback whales are not yet known (NRC 2003, Wartzok *et al.* 2003, NRC 2005, Bettridge *et al.* 2015, Gomez *et al.* 2016). Thus, although the CHRT ultimately concluded that the best scientific data available do not support identifying or describing a sound-related essential habitat feature at this time, improved understanding of the acoustic ecology of humpback whales in the future may eventually lead to a different conclusion.

We agree with the CHRT's assessment and note that some effects of noise on whales are direct effects on the animals, and that NMFS already analyzes such effects in connection with evaluation of the activities that generate noise under

the MMPA and section 7 of the ESA. We also note that if data indicate that anthropogenic noise from a particular Federal action is impacting the prey such that the whales cannot capture or access prey within their feeding areas (*e.g.,* prey densities are decreased such that whales cannot feed), such an effect would constitute an impact on the proposed prey essential feature.

Special Management Considerations or Protection

A specific area within the geographic area occupied by a species may only be designated as critical habitat if the areas contains one or more essential physical or biological feature that ''may require special management considerations or protection'' (16 U.S.C. 1532(5)(A)(ii); 50 CFR 424.12(b)(iv)). ''Special management considerations or protection'' is defined as methods or procedures useful in protecting the physical or biological features essential to the conservation of listed species (50 CFR 424.02). Courts have made clear that the ''may require'' standard requires that NMFS determine that special management considerations or protection of the features might be required either now or in the future, but such considerations or protection need not be immediately required. *See Cape Hatteras Access Pres. Alliance* v. *U.S. Dept. of Interior,* 344 F. Supp. 2d 108, 123–24 (D.D.C. 2004)*; Home Builders Ass'n of N. California* v. *U.S. Fish and Wildlife Serv.,* 268 F. Supp. 2d 1197, 1218 (E.D. Cal. 2003). The relevant management need may be ''in the future based on possibility.'' *See Bear Valley Mut. Water Co.* v. *Salazar,* No. SACV 11–01263–JVS, 2012 WL 5353353, at *25 (C.D. Cal. Oct. 17, 2012. *See also Center for Biological Diversity* v. *Norton,* 240 F. Supp. 2d 1090, 1098–99 (D. Ariz. 2003) (noting that the ''may require'' phrase can be rephrased and understood as ''can require'' or ''possibly requires'').

Four broad categories of actions, or threats, were identified by the CHRT as having the potential to negatively impact the essential prey feature and the ability of feeding areas to support the conservation of listed humpback whales in the North Pacific: Climate change, direct harvest of the prey by fisheries, marine pollution, and underwater noise. Each of these threats could independently or in combination result in the need for special management or protections of the essential prey feature. The ''may require'' standard is met or exceeded with respect to management of the essential prey feature. Although we do not speculate as to what specific conservation measures might be required in the future through section 7 consultations on particular proposed Federal actions, we can point, for example, to our authorities to manage Federal fisheries under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) to demonstrate that management of the prey feature is not only possible but is ongoing. We therefore conclude that the prey feature may require special management considerations or protection. These threat categories are summarized here and discussed in more detail in the Draft Biological Report (NMFS 2019a).

Climate Change

Multiple studies have detected changes in the abundance, quality, and distribution of species that serve as prey for humpback whales in association with climate shifts, particularly with ocean warming. The nature and extent of impacts have varied across study areas and species; however, in many cases, ocean warming has led to negative impacts on humpback whale prey species. For instance, in the California Current Ecosystem (CCE), during the anomalous warming of the upper ocean and weak upwelling from 2013–2016, often referred to as the ''blob'' or the ''warm blob,'' sharp decreases in euphausiid biomass were observed, as evidenced by declines in both abundance and body length (Harvey *et al.* 2017, Peterson *et al.* 2017). Comparisons of samples collected in the Northern California Current region during years of cool (2011, 2012), warm (2000, 2002), and intermediate (2015, 2016) conditions, also indicated that body condition of northern anchovy, Pacific herring, and Pacific sardine were better in cool years compared to warm years, and significantly so for anchovy and herring (Brodeur *et al.* 2018). During the anomalous warm blob event, sardine spawned earlier and appeared farther north within the Northern California Current than in previous years (Auth *et al.* 2018). Shifts in prey abundance and distributions may lead to corresponding shifts in marine mammal distributions (King *et al.* 2011). In Monterey Bay, California, such a response was reported for blue, fin, and humpback whales, the densities of which all declined with El Niño -associated declines in euphausiids (Benson *et al.* 2002).

Consequences of climate-driven and climate-related reductions in the quality and abundance of prey species can cascade upwardly through ecosystems by decreasing energy transfers to higher trophic levels and potentially even causing reproductive failures and die-offs of some predators (Coyle *et al.* 2011, Zador and Yasumiishi 2017 and 2018, Bordeur *et al.* 2018, Jones *et al.* 2018). Observations of whales with poor body condition, called ''skinny whales'' due to their emaciated appearance, have been reported in recent years in Prince William Sound and Glacier Bay, Alaska (Straley *et al.* 2018; and see *https://irma.nps.gov/DataStore/DownloadFile/620535*). The lowest calving rates on record (since 1985) have also been observed in recent years (2016–2018, *https://irma.nps.gov/DataStore/DownloadFile/620535*) in Southeast Alaska, and juvenile return rates to the area are also low (Gabriele and Neilson 2018). It is not yet clear whether nutritional stress or some other factor (*e.g.,* parasites, disease) is the cause of the poor body condition and observed low calving rates of these whales, but some researchers hypothesize that reduced prey availability and/or quality driven by the marine heat wave of 2013–2016 and other climate factors is the likely cause (Gabriele and Neilson 2018).

Direct Harvest

Within the areas under consideration for designation, a few fisheries directly target prey species that form a major part of the humpback whale diet (*e.g.,* Pacific herring, Pacific sardine, northern anchovy), and other fisheries can incidentally capture important prey species. This creates the potential for direct competition between humpback whales and certain fisheries (Trites *et al.* 1997). In fact, current management of key forage species like Pacific sardine and northern anchovy under their associated Federal fishery management plan includes a specific objective of providing adequate forage for dependent species, like whales and other higher trophic level species (PFMC 2019). Humpback whales target large, dense schools of prey, and the best available data support the conclusion that, though not yet quantifiable, there is a density threshold below which humpback whales will not feed or cannot feed effectively due to trade-offs with the energetic demands of feeding. Consequences of prey depletion as a result of fishing activities are also likely to be exacerbated in years when alternative humpback whale prey species are naturally low in abundance due to climate or environmental factors. Sufficient depletion of prey on the feeding grounds can lead to nutritional stress, which in turn can lead to decreases in body condition, size, reproductive output, and survival (as in Steller sea lions, Trites and Donnelly 2003; gray whales, Bradford *et al.* 2012; right whales, Seyboth *et al.* 2016). For

humpback whales in the Atlantic Ocean, there is some evidence that variation in prey availability during the summer may be connected to variation in annual reproductive rates in the following year (Clapham 1993).

Marine Pollution

Although pollution was not identified as a significant threat to any of the North Pacific DPSs of humpback whales in the recent status review (Bettridge *et al.* 2015), consumption of contaminated or low quality prey may negatively affect the health, population growth, and ultimately the recovery of listed humpback whales. Humpback whales are susceptible to bioaccumulation of lipophilic contaminants because they have long lifespans and large fat deposits in their tissues. Some contaminants may also be passed to young whales during gestation and lactation (as in fin whales, Aguilar and Borrell 1994). In comparisons of samples collected from Northern Hemisphere feeding grounds, Elfes *et al.* (2010) reported that concentrations of contaminants within humpback whale blubber were high in southern California and in the Northern Gulf of Maine. Marine pollution in the form of plastics is also a concern for marine systems worldwide, and microplastics in particular have entered into marine systems and food webs. Microplastics could be consumed via contaminated prey or ingested directly by whales when microplastics co-occur in the water column with target prey.

Marine pollution may also lead to secondary impacts on the whales' habitat. For instance, pollution from untreated industrial and domestic wastewater may be contributing to the occurrences of algal blooms. During some algal blooms, toxins (*e.g.,* saxitoxin, domoic acid) can become increasingly concentrated as they move up the food chain. Although much of the humpback whales' prey are lower trophic-level species, several unusual mortality events have been documented in the Atlantic Ocean, indicating that such toxins can pose a concern for humpback whales. During one event in which 16 humpback whale carcasses were found, some of the humpback whales had saxitoxin poisoning and/or contained domoic acid (Gulland 2006). In another event, 14 humpback whales were determined to have died as a result of consuming Atlantic mackerel containing saxitoxin (Geraci *et al.* 1989).

Ocean Noise

Lastly, effects of noise on fish and zooplankton species, which is a topic of increasing research attention, may range from health and fitness consequences to mortality and reductions in abundance (Popper and Hastings 2009, Kight and Swaddle 2011, Radford *et al.* 2014). For instance, there is evidence that marine seismic surveys can result in behavioral effects as well as significant injury and mortality of fishes and zooplankton (McCauley *et al.* 2017, Carroll *et al.* 2017); however, such impacts may be relatively short in duration and spatially limited (to within the survey footprint and extending out ~15 km) and may be minimized by ocean circulation (Richardson *et al.* 2017). Available research also suggests that other noises in the marine environment from sources such as impact pile driving and underwater explosives may have negative consequences on certain species of fish and invertebrates such as trauma or tissue damage, mortality (of various life stages), stress, disruptions of schooling, or reduced foraging success (Popper and Hastings 2009, Weilgart 2017). Whether and how specific humpback whale prey are currently being impacted by various noise sources and levels is not yet clear, but the available information is sufficient to indicate that ocean noise poses a management concern for many fish and invertebrate species such that they may require management considerations or protection (Hawkins and Popper 2017).

Unoccupied Areas

Section 3(5)(A)(ii) of the ESA authorizes the designation of specific areas outside the geographical area occupied by the species if those areas are determined to be essential for the conservation of the species. Recently revised regulations at 50 CFR 424.12(b)(2), similar to the regulations that were in effect prior to 2016, require that we first evaluate areas occupied by the species and only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species (84 FR 45020; August 27, 2019; effective September 26, 2019).

Within the North Pacific Ocean, humpback whales historically ranged throughout all coastal areas of Asia and North America. Although humpback whale abundances were greatly reduced throughout their range by commercial whaling (Rice 1978, Rice and Wolman 1982, Johnson and Wolman 1984), they still occur in areas where they were once targeted by commercial whaling operations, or to some degree have returned to areas where they had not been observed for many years. For instance, humpback whales are common in the former whaling grounds off Port Hobron and Akutan, Alaska, where they were once heavily exploited (Zerbini *et al.* 2006). The NMFS 2017 Marine Mammal Stock Assessments for the Western and Central North Pacific regions conclude that humpback whales are currently found throughout their historical feeding range (Muto *et al.* 2018). Because ESA-listed humpback whales are considered to occupy their entire historical range that falls within U.S. jurisdiction, we find that there are no unoccupied areas that are essential to their recovery and further conclude that a designation limited to geographical areas occupied by humpback whales would be adequate to conserve the three listed DPSs.

Specific Areas Containing the Essential Feature

To determine what areas qualify as critical habitat within the geographical area occupied by the species, we are required to identify ''specific areas'' that contain the physical or biological features essential to the conservation of the species (50 CFR 424.12(b)(1)(iii)). Delineation of the specific areas is done ''at a scale determined by the Secretary [of Commerce] to be appropriate'' (50 CFR 424.12(b)(1)). Regulations at 50 CFR 424.12(c) also require that each critical habitat area be shown on a map.

In determining the scale and boundaries for the specific areas, the CHRT considered, among other things, the scales at which biological data are available and the availability of standardized geographical data necessary to map boundaries. Because the ESA implementing regulations allow for discretion in determining the appropriate scale at which specific areas are drawn (50 CFR 424.12(b)(1)), we are not required to, nor was it possible to, determine that each square inch, acre, or even square mile independently meets the definition of ''critical habitat.'' A main goal in determining and mapping the boundaries of the specific areas is to provide a clear description and documentation of the areas containing the identified essential feature. This is ultimately crucial to ensuring that Federal action agencies are able to determine whether their particular actions may affect the critical habitat. Another goal of this effort was to delineate specific areas in a manner that would facilitate subsequent analyses for each humpback whale DPS under section 4(b)(2) of the ESA (*e.g.,* consideration of economic impacts). *See* 16 U.S.C. 1533(b)(2).

Ultimately, based on a review of the best available data, the CHRT delineated 19 specific areas along the coasts of Alaska, Washington, Oregon, and

California that meet the definition of critical habitat for one or more of the three DPSs of whales (Figure 1). Each of these areas meets the definition of ''critical habitat'' because the best available scientific data indicate that the essential feature is present, as evidenced by documented feeding behavior of the whales in these areas, humpback whale sightings data, and/or presence of humpback whale prey.

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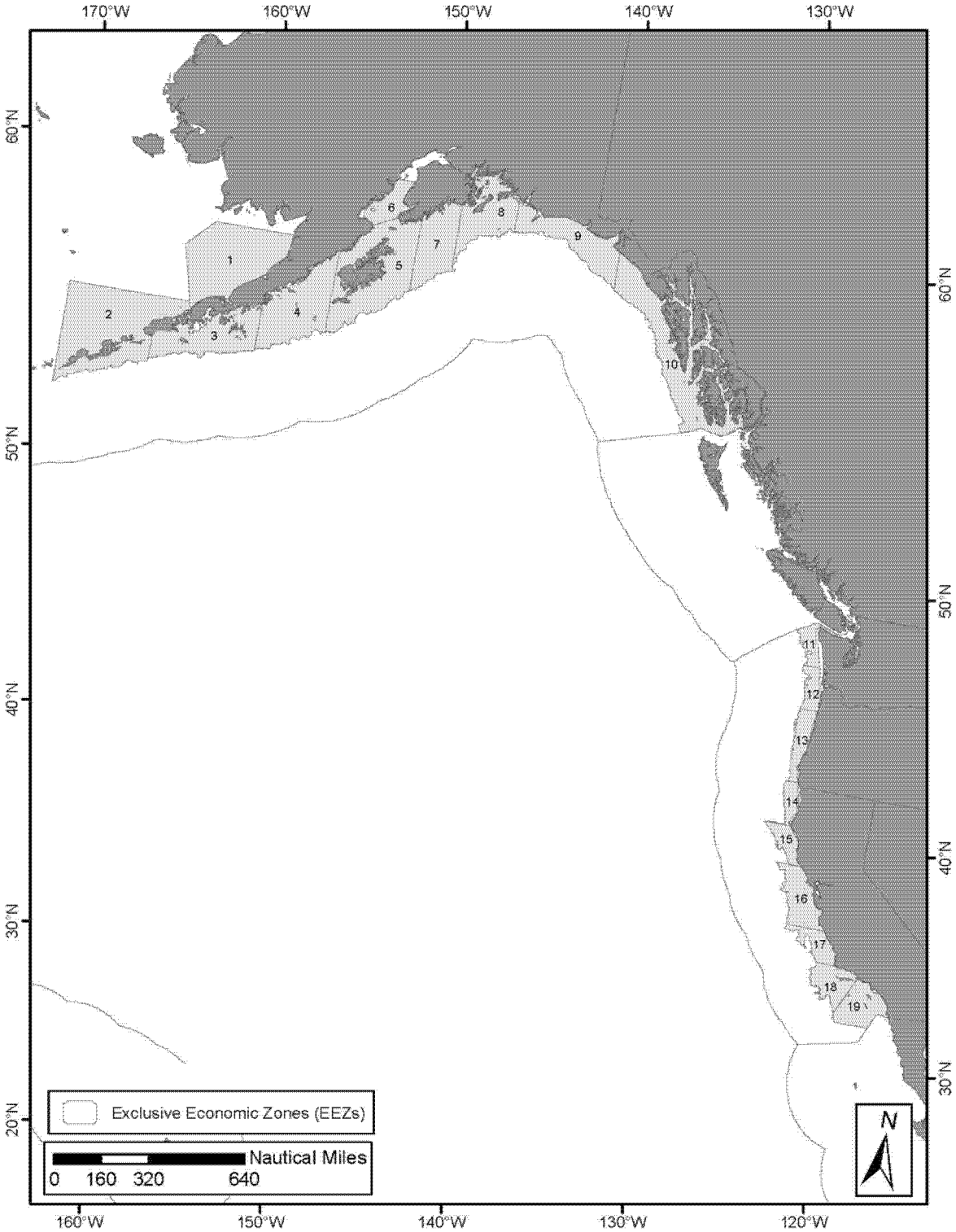

Figure 1. Specific areas (Units 1-19) occupied by one or more of the listed humpback whales DPSs. Units 1-9 are occupied by the WNP DPS; Units 1-19 are occupied by the MX DPSs; and Units 11-19 are occupied by the CAM DPS. .

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In delineating the specific areas, the CHRT applied identified datasets in a systematic way across each region and DPS to ensure consistency in how boundaries were determined. The approach and data used by the CHRT are summarized here; further detail is provided in the Draft Biological Report (NMFS 2019a). First, the CHRT considered the humpback whale BIAs and decided that the BIAs would remain intact within a given specific area unless there was a compelling reason to change or divide it. As noted earlier, the humpback whale BIAs have all been identified as ''feeding'' BIAs, which are defined as follows:

> Areas and times within which aggregations of a particular species preferentially feed. These either may be persistent in space and time or associated with ephemeral features that are less predictable but are located within a larger area that can be delineated (Ferguson *et al.* 2015b).

As discussed in Van Parijs (2015) and Ferguson *et al.* (2015b), BIAs were developed for cetacean species within all regions of the United States through rigorous reviews of survey data and habitat models by multiple teams of scientists. BIAs were identified to inform regulatory, management, and conservation decision-making by NOAA, other Federal agencies, and the public. Although the BIAs are non-regulatory, non-binding, and were not intended to be synonymous with critical habitat under the ESA, they were regarded by the CHRT as an important source of the best available data and very informative to their review of areas that meet the definition of critical habitat for humpback whales. The CHRT was also aware that humpback whale BIAs for Alaska and for the U.S. West Coast were developed by different teams and were supported by very different types and levels of data, and that, therefore, the BIAs for these two major regions were not entirely consistent in terms of how they were ultimately drawn.

For U.S. West Coast areas (Washington, Oregon, and California), the CHRT applied the results of a habitat model for the CCE that incorporated 275 humpback whale sightings from seven systematic line-transect cetacean surveys conducted in summer and fall (July–December) between 1991–2009 (Becker *et al.* 2016) and a habitat model for southern California (*i.e.,* Units 16–19) that incorporated 53 humpback whale sighting from 20 surveys conducted between 2005 and 2015 during winter and spring (January- April, Becker *et al.* 2017). Predictions from the summer/fall models were made for the entire U.S. West Coast from the coast to 300 nmi offshore (the study area was approximately 1,141,800 km^2). Predictions from the winter/spring models were made in a subset of this region: south of 38° N and east of 125° W (the study areas was approximately 385,460 km^2.) The Becker *et al.* 2016 and 2017 models summarize expected humpback whale distributions in the CCE over a long time-period and incorporate oceanographic variability observed during the surveys.

The Becker *et al.* (2016 and 2017) models predicted humpback whale abundance in approximately 10 by 10 km grid cells. Cells containing the highest 90 percent of the predicted study area abundance were used to help delineate the offshore extent of the specific areas. (All or 100 percent of the predicted abundance had a distribution that extended out to and even beyond the U.S. EEZ.) The Becker *et al.* (2016 and 2017) predictions also contributed to delineating the north/south boundaries between the specific areas. As no such coast-wide habitat model is available for Alaska, the CHRT relied on published surveys and available sightings data. Where available, humpback whale sightings data were mapped and overlaid with the BIAs to inform selection of boundaries between specific areas.

For applicable habitat units, the CHRT also considered the polygons derived from ARS data from satellite-tagged whales (Mate *et al.* 2018). These polygons provided the CHRT with additional information and support regarding where humpback whales feed and over what size area they may feed. When considering these data, the CHRT only used polygons representing the overlay of two or more individual whales (*i.e.,* data representing movements of just a single whale were not determinative of specific area boundaries).

To determine where to draw nearshore boundaries for the specific areas, the CHRT created depth-frequency histograms using sightings data from multiple studies (*e.g.,* Calambokidis *et al.* 2008, Zerbini *et al.* 2006, Baker *et al.* 2016). Collectively, the sightings datasets represent results of different types of sampling efforts (*e.g.,* targeted small boat surveys, systematic line-transect surveys), different time-periods (2001–2003, 2004, 2005), and different study locations. Rather than select any one particular data set or study over another, the CHRT generated depth frequency histograms from all these sightings in Alaska and for all sightings off of Washington, Oregon, and California to delineate the shoreward boundary for critical habitat units in each of those respective regions. Based on the depth-frequency histograms for Alaska, the 1-m depth contour (relative to mean lower low water (MLLW)) or a BIA boundary, whichever was closer to shore, was selected as the nearshore boundary for the habitat units in Alaska. Humpback whales in Alaska have frequently been observed feeding extremely close to shore during high tide (J. Moran, AFSC, pers. comm., May 23, 2018), which comports with the CHRT's selection of the 1-m depth contour (or isobath). Based on the depth frequency histograms for the U.S. West Coast, the CHRT selected the 50-m isobaths as the shoreward boundary for each specific area unless it clipped out a portion of a BIA. Cases where this occurred (*i.e.,* Units 16 and 17) and how it was addressed are discussed in more detail in the descriptions of each specific area.

In the following sections, we provide additional details regarding the boundaries of each of the 19 specific areas and briefly describe humpback whales' use of the specific area. We note that these delineations of specific units of habitat do not necessarily represent discrete feeding aggregations or populations of humpback whales—individual whales generally move across many of these boundaries. More detailed information regarding whale and prey distributions is provided in the Draft Biological Report (NMFS 2019a).

Unit 1—Bristol Bay

This unit is bounded along the northern edge by a line extending due west from Egegik (at 58°14′ N, 157°28′ W) to encompass the humpback whale BIA within Bristol Bay. The boundary then extends southwest and then southward tangentially along the BIA to the coastline at Moffet Point (55°27′ N, 162°35′ W). The nearshore boundary of this unit follows the 1-m isobath (relative to MLLW). This unit covers 19,279 nmi^2 and includes waters off Bristol Bay and Lake and Peninsula Boroughs, and a small portion of Aleutians East Borough.

Unit 1 boundaries were drawn based largely on the location of a humpback whale feeding BIA, which was in turn identified largely based on results of systematic surveys reported in Clapham *et al.* 2012, Friday *et al.* 2012, and Friday *et al.* 2013, indicating high densities of humpback whales in this area (see Ferguson *et al.* 2015c). However, Unit 1 extends farther into Bristol Bay relative to the BIA to reflect sightings from 1999 aerial surveys of Bristol Bay (Friday *et al.* 2012) and

sightings from the 2017 IWC Pacific Ocean Whale and Ecosystem Research Program (POWER) survey (Matsuoka *et al.* 2018) indicating that humpback whales may also be common in these waters. The southern, nearshore boundary was drawn to accommodate the nearshore areas (around the 50 m isobath) indicated by sightings reported in Friday *et al.* (2013). Unit 1 does not extend into the intertidal portions of northern Bristol Bay based on the lack of detections of humpbacks in the small bays along the coast of northern Bristol Bay (Friday *et al.* 2012, Matsuoka *et al.* 2018, and J. Moran, AFSC, pers. comm. May 23, 2018). Humpback whale sightings collected within North Pacific right whale critical habitat during systematic vessel and aerial surveys conducted by the National Marine Mammal Laboratory (NMML) were considered but were not determinative of the area's boundaries given the high intensity of effort represented by those surveys and the resulting significant upwards bias in the humpback whale sightings documented in this area. Surveys conducted during 2004 and 2006–2010 within the eastern Bering Sea and that overlapped with a portion of Unit 1, indicated widespread and persistent concentrations of euphausiids in the survey area (Sigler *et al.* 2012). Stomach content analyses and corresponding fish distributions indicate humpback whales may also feed on various species of schooling fish, such as capelin and sand lance, in this region (Nemoto 1959, Ormseth 2015, Andrews *et al.* 2016).

Photo-identification data are not available to validate occurrences of particular DPSs within this unit; however, the available data suggest this area is a destination for whales from the Hawaii (HI, which are not listed), WNP, and MX DPSs (Baker *et al.* 2013). Five marked whales are also documented to have moved between this general region and the WNP breeding grounds (Omura and Ohsumi 1964).

Unit 2—Aleutian Island Area

This unit includes waters along the northern side of Unimak Island, waters around Umnak and Unalaska Islands, and waters within Umnak and Unimak Pass. At its eastern edge, the northern boundary of this area extends from 55°41N/162°41′ W, tangentially along the northern edge of a humpback whale BIA west out to 169° 30' W. The western boundary extends southward through Samalga Pass to the BIA boundary on the south side of the islands, which corresponds closely to a line drawn along the 2,000-m isobath. This southern boundary follows the edge of the BIA and extends eastward to 164°25′ W. The nearshore boundary of this unit is the 1-m isobath (relative to MLLW). This unit includes waters off the Aleutian East and Aleutian West Boroughs. Unit 2 covers 28,829 nmi² of marine habitat.

This area encompasses a humpback whale feeding BIA, which was drawn to include high density sightings of humpback whales as reported in Zerbini *et al.* 2006, Clapham *et al.* 2012, Friday *et al.* 2012, and Friday *et al.* 2013 (See Ferguson *et al.* 2015c). Telemetry and sightings data indicate that humpback whales use the coastal waters to the north and south of the islands as well as within the passes (Zerbini *et al.* 2006, Sigler *et al.* 2012, Kennedy *et al.* 2014). The western edge of the Unit 2, however, does not include the small portion of the BIA that extends west of Samalga Pass. The reason why the boundary was selected for the critical habitat unit is that this pass coincides with an abrupt oceanographic break, and the frequency of humpback whale sightings have been very low or absent west of Samalga Pass (Zerbini *et al.* 2006; P. Wade, pers. comm., May 23, 2018). The northwestern edge of the Unit 2 also extends slightly north of the BIA, because available sightings data indicate humpback whales use waters north of Unimak Pass and along the middle and outer Bering Sea shelf and slope (Calambokidis *et al.* 2008, Friday *et al.* 2012, Friday *et al.* 2013, Matsuoka *et al.* 2018). Surveys conducted during 2004 and2006–2010 within the eastern Bering Sea indicated widespread and persistent concentrations of euphausiids in this area (Sigler *et al.* 2012), and general additive models using environmental datasets from summers 2008–2010 for the Eastern Bering Sea also predict relatively high levels of euphausiid biomass occurring within this area (Zerbini *et al.* 2016). In addition to targeting euphausiids, humpback whales also consume multiple fish species occurring in this region such as capelin, sand lance, Atka mackerel, and walleye pollock (Nemoto 1959, Ormseth 2015, 2017).

Photo-identification data indicate this area is a destination for whales from the HI, WNP, and MX DPSs (Calambokidis *et al.* 2008).

Unit 3—Shumagin Islands Area

This area extends from 164°25′ W eastward to 158°39′ W and encompasses the feeding BIA around the Shumagin Islands. The area is bounded on its southern (offshore) edge by a line drawn along the 1,000-m isobath, which also runs along the southern edge of the BIA. The nearshore boundary of this unit follows the 1-m isobath (relative to MLLW). This unit is mainly within the Aleutians East Borough but includes a small portion of the Lake and Peninsula Borough. Unit 3 covers 13,162 nmi² of marine habitat.

This area was drawn from the boundary of Unit 2 eastward to encompass an identified BIA (Ferguson *et al.* 2015a). This BIA is within the 1,000-m isobath, which was selected as the offshore boundary for this unit. Surveys conducted within this area indicate that feeding aggregations of humpback whales consistently occur in coastal areas south of these islands and around the Shumagin Islands (Waite *et al.* 1999, Witteveen *et al.* 2004, Zerbini *et al.* 2006, Wynne and Witteveen 2013), where the whales have been observed targeting dense schools of krill (Wynne and Witteveen 2013). During the University of Alaska's Gulf Apex Predator-Prey (GAP) Study surveys within this area, conducted across 14 feeding seasons, 654 individual humpback whales were identified out of 1,437 total sightings. Analyses of these sightings indicate a fairly high degree of site fidelity to this area, with an average annual rate of return of 37 percent (SD = 11.8%; Witteveen and Wynne 2016a). Surveys conducted in 1985 indicated that humpback whales were widely distributed throughout this area but were typically observed near island complexes, the shelf break, and banks, such as Sanak Bank, Shumagin Bank, and an additional unnamed bank, with repeated observations of whales at both Shumagin Bank and the unnamed bank (Brueggeman *et al.* 1987).

Photo-identification data indicate this area is a destination for whales from the HI, MX, and WNP DPSs (Witteveen *et al.* 2004, Calambokidis *et al.* 2008).

Unit 4—Central Peninsula Area

The western edge of this area extends along 158°39′ out to a line corresponding to the 1,000-m isobath, which marks the offshore boundary. The eastern boundary is at 154°54′ W, just east of the Shumagin Islands. The nearshore boundary of this unit follows the 1-m isobath (relative to MLLW). This unit is within the Lake and Peninsula Borough. Unit 4 covers 15,026 nmi² of marine habitat.

This area captures the waters between two identified feeding BIAs. Survey data indicate that humpback whales are consistently found in these waters (Brueggeman *et al.* 1989, Zerbini *et al.* 2006) and at least occasionally transit between the Shumagin Island area and Kodiak Island (5 of 171 whales; Witteveen *et al.* 2004). Results of systematic surveys conducted in the

summers of 2001, 2002, and 2003, indicate that fin whales occurred in high densities in Unit 4, and in particular around the Semidi Islands, relative to the adjacent areas (Units 3 and 5); while humpback whales had the opposite distribution pattern (Zerbini *et al.* 2006). Brueggeman *et al.* (1989) report a fairly similar pattern based on their aerial and shipboard surveys conducted in 1985 and 1987, respectively. Although these two whale species are often sympatric and have overlapping diets, previous surveys and isotope analyses have provided evidence of trophic niche partitioning between fin and humpback whales, with the latter being more piscivorous (Wynne and Witteveen 2013, Gavrilchuk *et al.* 2014, Witteveen *et al.* 2015, Witteveen *et al.* 2016).

Photo-identification data demonstrate that this area is a destination for whales from the HI and MX DPSs (Calambokidis *et al.* 2008). WNP DPSs whales have not been photo-identified in this area but their presence has been inferred based on documented occurrences in the adjacent units (*i.e.,* Units 3 and 5).

Unit 5—Kodiak Island Area

This area includes the waters around Kodiak Island and the Barren Islands. The western boundary runs southward along 154°54′ W to a line that follows the 1,000-m isobath, and then extends eastward to a boundary at 150°40′ W. The area also extends northward to the mouth of Cook Inlet where it is bounded by a line that extends from Cape Douglas across the inlet to Cape Adam. The nearshore boundary of this unit follows the 1-m isobath (relative to MLLW). This unit is within the Kodiak Island Borough but includes a small portion of the Kenai Peninsula Borough. Unit 5 covers 17,420 nmi² of marine habitat.

This area was drawn to capture the Kodiak Island BIA, as well as documented aggregations of humpback whales around the Barren Islands and in waters to the east of Kodiak (Rice and Wolman 1982, Zerbini *et al.* 2006, Ferguson *et al.* 2015a, Rone *et al.* 2017). Waters around Kodiak Islands have been surveyed extensively since 1999 as part of the GAP study. Over 17 years of GAP surveys in this area, 1,187 unique humpback whales were identified in the Kodiak region (out of 2,173 total sightings), with an average annual rate of return of 35 percent (SD = 15.2 percent, Witteveen and Wynn 2016), indicating a high degree of site fidelity to this area. Some inter-annual movement of whales has also been observed between this area and lower Cook Inlet and Prince William Sound (Waite *et al.* 1999, Witteveen *et al.* 2011). Waite *et al.* (1999) estimated that only 3 to 6 percent of the Kodiak whales also visit Prince William Sound, and the two areas are viewed as supporting largely separate feeding groups (Waite *et al.* 1999, Witteveen *et al.* 2011). Humpback whales were also historically common in this area and were taken in a commercial whale fishery that operated out of Port Hobron, off the southeastern coast of Kodiak Island (Witteveen *et al.* 2007). While the whales occur throughout this area, they appear to be most abundant off the northeastern and southern coastlines, and are less frequently observed within Shelikof Strait (Zerbini *et al.* 2006). Relative proportions of prey items within the humpback diet have been shown to vary between years, but key prey targeted by the whales within this unit include krill, capelin, juvenile pollock, sand lance (Witteveen *et al.* 2012, Wright *et al.* 2016).

Photo-identification data demonstrate this area is a destination for whales from the HI, MX, and WNP DPSs (Calambokidis *et al.* 2008).

Unit 6—Cook Inlet

This area extends from the mouth of Cook Inlet where it is bounded by a line that extends from Cape Douglas across the inlet to Cape Adam. The northern boundary is the 60°20′ N latitude line, just south of Kalgin Island. The nearshore boundary of this unit is the 1-m isobath (relative to MLLW). This area borders the Kenai Peninsula Borough. This unit covers 3,366 nmi² of marine habitat.

The southern boundary of this area approximates the ecological shift between the Kodiak Island Area (Unit 5) and Cook Inlet. Unit 6 does not include the upper portions of Cook Inlet, because humpback sightings are rare north of Kalgin Island despite extensive, routine aerial surveys of this area for Cook Inlet beluga whales (K. Sheldon, NMML, pers. comm., August 2, 2018). North of the Forelands, the inlet becomes shallow and highly turbid due to deposition of glacial silt. With its extreme tidal range, mudflats, and low visibility, the upper inlet does not provide suitable feeding habitat for humpback whales despite the presence of prey species (*e.g.,* eulachon). Humpback whales are routinely sighted in the lower portions of the inlet (NMML, unpubl. data, 1994–2018), but the density of whales and level of site fidelity of humpback whales to this feeding area has not been established. Inter-annual movements of humpback whales between lower Cook Inlet and the Kodiak Island area (Unit 5) have been observed (Witteveen *et al.* 2011), indicating that the whales feeding in this area do not comprise a completely distinct feeding aggregation. Based on stable isotope analyses of pooled skin samples collected from whales found during the feeding season (May—December) in lower Cook Inlet, Kenai Fjords, and Prince William Sound region, humpback whales in this area appear to primarily consume fish species (Witteveen *et al.* 2011).

Photo-identification data demonstrate that HI and MX DPS whales occur in this area (Calambokidis *et al.* 2008). WNP DPS whales have not been photo-identified in this specific area; however, their presence in this area has been inferred based on available data indicating that humpback whales from WNP wintering areas occur in this general region of Alaska (NMFS 2019a, Table C8).

Unit 7—Kenai Peninsula Area

This area extends eastward from 150°40′ W at the boundary with Unit 5 (Kodiak Island Area) to 148°31′ W, and extends offshore to a boundary marked by the 1,000-m isobath. The nearshore boundary of this unit is the 1-m isobath (relative to MLLW). This unit measures 8,496 nmi² and is within the Kenai Peninsula Borough.

This area captures the region separating the Kodiak Island and Prince William Sound BIAs and includes feeding areas around the Kenai Fjords. Estimated densities of humpback whales within the shelf portion of the Navy Temporary Maritime Activities Area, which overlaps with a portion of Unit 7, has ranged from 0.0930 in 2013 (CV = 0.74) to 0.0050 in 2015 (CV = 0.32, Rone *et al.* 2017). Based on results reported in Witteveen *et al.* 2011, site fidelity of humpback whales to this area can be inferred to be fairly high. Inter-annual movement of whales has also been observed between this area and the coastal waters around Kodiak Island (Witteveen *et al.* 2011). As noted previously for Unit 6, stable isotope analyses of pooled skin samples collected from whales found during the feeding season (May—December) in Kenai Fjords, lower Cook Inlet, and Prince William Sound region, suggest that humpback whales in this area primarily consume fish species (Witteveen *et al.* 2011).

Photo-identification data demonstrate this area is a destination for whales from the HI and MX DPSs (Calambokidis *et al.* 2008). Satellite telemetry data also indicate this is a destination for MX DPS whales. A calf tagged off the Revillagigedo Islands in 2003, travelled

to the Gulf of Alaska with its mother and spent 30 days feeding on Portlock Bank (located largely within Unit 7) until tracking ceased (Lagerquist *et al.* 2008). WNP DPS whales have not been photo-identified in this specific area, but presence of WNP DPS whales has been assumed based on available data indicating that humpback whales from WNP wintering areas occur within the Gulf of Alaska (NMFS 2019a, Table C8).

Unit 8—Prince William Sound Area

This area extends from 148°31′ W eastward to 145°27′ W, and extends offshore to a boundary drawn along the 1,000-m isobath. The nearshore boundary of this unit is the 1-m isobath (relative to MLLW). This unit is within the Valdez-Cordova Borough and covers 8,166 nmi² of marine habitat.

This area was drawn to encompass the Prince William Sound feeding BIA (Ferguson *et al.* 2015a), which was identified based on studies conducted mainly in the western and southern portions of the sound (*e.g.,* von Ziegesar *et al.* 2001, Rice *et al.* 2011). The BIA encompasses the portion of this unit where humpback whale densities have been documented to be high and where feeding aggregations have been consistently observed. Survey effort has been very limited in the areas outside of the BIA, especially the shelf waters. This unit was drawn to include waters beyond the boundaries of the BIA based on the additional sightings reported in Witteveen *et al.* (2011, and as detected during SPLASH surveys) and observations reported by von Ziegesar (2013) indicating that humpback whales move between the sound and the fiords along the coast. Minor aggregations of humpback whales (8–13 whales) were also observed near Middleton Island during systematic surveys conducted in summer 1980 in the Gulf of Alaska (Rice and Wolman 1982). Humpback whales occur year-round in Prince William Sound, but densities are greatest during summer and fall, and decline in late December to early January (Straley *et al.* 2018). Presence of humpback whales in the sound is strongly associated with the seasonal formation of Pacific herring aggregations (Rice *et al.* 2011, Straley *et al.* 2018, Moran and Straley 2018). Results of surveys conducted during fall/winter of 2007–2009 indicated that a small percentage of photo-identified whales (under 2 percent, n = 4) overwintered in the sound (Rice *et al.* 2011). Inter-annual movements of whales have been observed between the sound and the coastal waters around Kodiak Island (Waite *et al.* 1999, Witteveen *et al.* 2011). However, Waite *et al.* (1999) estimated that only 3 to 6 percent of the Kodiak whales also visit Prince William Sound, and the two areas are thought to support largely separate feeding groups (Waite *et al.* 1999, Witteveen *et al.* 2011).

Photo-identification data confirm this area is a destination for whales from the HI and MX DPSs (Baker *et al.* 1986, Calambokidis *et al.* 2008). WNP DPS whales have not been photo-identified in this specific area; however, presence has been assumed based on available data indicating that humpback whales from WNP wintering areas occur in the Gulf of Alaska (NMFS 2019a, Table C8).

Unit 9—Northeastern Gulf of Alaska

This area extends from 145°27′ W to 139°24′ W and to an offshore drawn along the 1,000-m isobath. The nearshore boundary of this unit is the 1-m isobath (relative to MLLW). This unit mainly borders Yakutat Borough, but also borders a small portion of Valdez-Cordova. Unit 9 covers 9,065 nmi² of marine habitat.

This area was drawn to capture a section of the Gulf of Alaska between two feeding BIAs (in Units 8 and 10). Surveys within this unit have been relatively limited. Surveys conducted in June–August of 1980 by Rice and Wolman (1982) indicated that humpback whales were sparsely distributed in the Gulf of Alaska (populations were still depleted), but they noted minor aggregations of humpback whales in Yakutat Bay (13 whales). More recently, 21 groups (33 individuals) of humpbacks were sighted in this area during an IWC-POWER survey in July/August of 2012 (Matsuoka *et al.* 2013). Sightings of humpback whales were also recorded in this area by the NMFS Southwest Fisheries Science Center (SWFSC) as part of the SPLASH surveys in 2004 and 2005 (Calambokidis *et al.* 2008; see also Witteveen *et al.* 2011). Based on limited sampling, results of stable isotope analyses suggest that whales in this area have a mixed diet of fish and zooplankton (Witteveen *et al.* 2011).

Photo-identification data confirm this area is a destination for whales from the non-listed HI DPS (Baker *et al.* 1986, Calambokidis *et al.* 2008; and SPLASH data courtesy of C. Gabriele, NPS). Satellite telemetry data indicate this area is also a destination for MX DPS whales. A calf tagged off Socorro Island (in Revillagigedo Archipelago) in 2003 travelled with its mother to this area (Lagerquist *et al.* 2008). (The mother/calf pair remained in this area for only about 4 days before travelling to other areas of Alaska (Lagerquist *et al.* 2008).) There are no reported sightings of photo-identified whales of the WNP DPS in this specific area; however, presence of these whales has been assumed based on available data suggesting that humpback whales from WNP wintering areas could occur in this general region (NMFS 2019a, Table C8). Given the increased distance of this unit from other confirmed sighting of whales from the WNP DPS, there is greater uncertainty regarding whether WNP DPS whales occur in this unit.

Unit 10—Southeastern Alaska

This area extends from 139°24′ W, southeastward to the U.S. border with Canada and encompasses a humpback whale BIA. The area also extends offshore to a boundary drawn along the 2,000-m isobath, which corresponds to the offshore extent of the BIA. The nearshore boundary of this unit also corresponds to the BIA boundary. This unit borders unorganized boroughs, but includes water off of Skagway-Hoonah-Angoon, Haines, Juneau, Sitka, Petersburg, Wrangell, and Ketchikan Gateway. Unit 10 covers 22,152 nmi² of marine habitat.

This area was drawn to encompass well established feeding grounds in southeast Alaska and an identified feeding BIA (Andrews 1909, Baker *et al.* 1985, Straley 1990, Dahlheim *et al.* 2009, Ferguson *et al.* 2015a). Humpback whales occur year-round in this unit, with highest densities occurring in summer and fall (Baker *et al.* 1985, 1986). Periods of occupancy of over 100 days have been reported for a significant portion of the whales using this area (Baker *et al.* 1985). Based on sighting data for summer months during 1985–2014 in Glacier Bay and Icy Strait, over 60 percent of the adult whales remained in this area to feed for more than 20 days, and average residency time for whales seen on more than 1 day within a season was 67 days (SD = 38.3; Gabriele *et al.* 2017). Photo-identification data collected in Southeast Alaska from 1979 to 1983 indicate a high degree of site fidelity to this area, with 47.2 percent of whales being sighted in more than one year (154 whales out of 326 unique individuals; Baker *et al.* 1986). Sightings histories for three female humpback whales in particular indicate these whales returned in each of 12 or 13 years during 1977–1992 (Straley *et al.* 1994). Evaluation of sighting histories in Glacier Bay and portions of Icy Strait from 1985 to 2013 also indicate a high degree of site fidelity with 63 percent (244 of 386 total whales identified) of non-calves returning to the survey area in more than 1-year, 17 percent (n = 66) returning every year, and an additional 10 percent (n = 39) returning in all but

1 year (Gabriele *et al.* 2017). Humpback whales are known to feed on krill, herring, capelin, sand lance, myctophids, and juvenile pollock within Southeast Alaska, but dominant prey within the diet vary among the specific locations and seasons (Bryant *et al.* 1981, Straley *et al.* 2018).

Photo-identification data confirm this area is a destination for whales from the HI and MX DPSs (Baker *et al.* 1985, 1986; Calambokidis *et al.* 2008). Although sightings of WNP DPS whales are reported for general areas to either side of this unit (Kodiak, Alaska and Vancouver Island, British Columbia, *e.g.,* Calambokidis *et al.* 2001), portions of Unit 10 have been surveyed extensively, and those survey data do not indicate that the WNP DPS occurs in Unit 10.

Unit 11—Coastal Washington

This area extends southward from the U.S. EEZ to 46°50′ N, just north of Willapa Bay, WA. The unit extends offshore to a boundary corresponding to the 1,200-m isobath, which also aligns with the seaward extent of a BIA. The unit includes waters within the U.S. portion of the Strait of Juan de Fuca to an eastern boundary line at Angeles Point (123°33′ W). The 50-m isobath forms the shoreward boundary. The unit includes waters off Clallam and Jefferson Counties, and a portion of Grays Harbor County. Unit 11 covers 3,441 nmi^2 of marine habitat.

This area was drawn to encompass the Northern Washington BIA (Calambokidis *et al.* 2015), located at the northern edge of this unit, and cells containing the highest 90 percent of the study area abundance predicted by the Becker *et al.* (2016) habitat model. The BIA typically supports humpback whale feeding aggregations from May to November. In addition to the habitat model results, clusters of humpback whale sightings just off Grays Harbor area (see Calambokidis *et al.* 2015) and movement data collected from five humpback whales with LIMPET satellite tags (Schorr *et al.* 2013) support inclusion of waters beyond the BIA in this unit. The unit also includes waters within the Strait of Juan de Fuca where whales have been observed foraging in recent years (and which falls outside of the area covered by surveys used to generate the habitat model predictions). Although humpback whales have been increasingly observed within the Salish Sea (*i.e.,* the waters of the Strait of Georgia, the Strait of Juan de Fuca, Puget Sound, and around the San Juan Islands, Calambokidis *et al.* 2017), Unit 11 does not extend beyond the strait farther into the Salish Sea. High reporting rates from areas within the Salish Sea have likely resulted in a biased understanding of humpback whale abundance in these waters; however, hundreds of whales appear to be using the strait (J. Calambokidis, CRC, pers. comm., May 23, 2018). The offshore boundary for Unit 11 was selected to follow the contour of cells containing the highest 90 percent of the study area abundance predicted by the Becker *et al.* (2016) habitat model, which generally coincided with the 1,200-m isobath. Multiple, persistent, dense aggregations (hotspots) of krill (humpback prey) occur near the Juan de Fuca canyon in this area, likely due to the canyon feature (Santora *et al.* 2018). Humpback whales have also been shown to associate with the shelf edge, particularly near submarine canyons off Washington (Green *et al.* 1992). Humpback whales also target various forage-fish species within this unit, with Pacific herring being one of the most prevalent forage fish off Washington and Northern Oregon (Brodeur *et al.* 2005, Zwolinski *et al.* 2012).

Photo-identification data confirm this area is a destination for whales from the HI, MX, and Central America (CAM) DPSs (Calambokidis *et al.* 2008).

Unit 12—Columbia River Area

This area extends southward from 46°50′ N to 45°10′ N and extends out to a seaward boundary corresponding to the 1,200-m isobath. The 50-m isobath forms the shoreward boundary. This area includes waters off of Pacific County, WA and Clatsop County, OR. This unit covers 3,636 nmi^2 of marine habitat.

This unit was drawn to capture the Columbia River plume system, which supports foraging by many predators, including concentrations of humpback whales. The unit extends both north and south of the mouth of the Columbia River to capture the spatial variation of the plume system. Within this unit, as well as others along the West Coast, hotspots with persistent, heightened abundance of krill also occur in association with submarine canyons (Santora *et al.* 2018). The area extends out to the 1,200-m isobath to capture the outer edge of cells containing the highest 90 percent of the study area abundance predicted by the Becker *et al.* (2016) habitat model. The area also encompasses areas over which humpback whales have been observed to feed based on ARS data from satellite tagged whales (Mate *et al.* 2018). The southern boundary at 45°10′ N was drawn to encompass the available ARS areas and to reflect where the habitat model predictions begin to shift farther offshore.

Photo-identification data are not available to validate occurrences of particular DPSs within this unit; however, the best available data support a conclusion that this area is a destination for whales from the MX and CAM DPSs (Calambokidis *et al.* 2000). Some available data also suggest that HI DPS whales may occur in this unit (Mate *et al.* 2018).

Unit 13—Coastal Oregon

This area extends southward from 45°10′ latitude to 42°10′, and extends offshore to a boundary at the 1,200-m isobath. The 50-m isobath forms the shoreward boundary. This area includes the BIA at Stonewall and Heceta Bay, and includes waters off of Tillamook, Lincoln, Lane, Douglas, Coos, and Curry Counties. Unit 13 covers 5,750 nmi^2 of marine habitat.

This unit includes the Stonewall and Heceta Bank BIA, which supports humpback whale feeding aggregations from May to November (Calambokidis *et al.* 2015). The northern and offshore boundaries of this unit correspond to cells containing the highest 90 percent of the study area abundance predicted by the Becker *et al.* (2016) habitat model. The southern boundary of this unit was drawn just north of another BIA. Based on surveys conducted in spring and summer of 2000 as part of the US Global Ocean Ecosystem Dynamics (GLOBEC) Northeast Pacific program, concentrations of humpback whales on Heceta Bank were shown to correspond to high densities of fish (Pacific sardine and juvenile salmon) and large, high density patches of krill (Tynan *et al.* 2005, Ressler *et al.* 2005). Within this unit, large, persistent aggregations of krill have been observed inshore of Heceta Bank, off Cape Blanco, in association with submarine canyons (Ressler *et al.* 2005, Santora *et al.* 2018).

Photo-identification data confirm this area is a destination for whales from the MX DPS (Calambokidis *et al.* 2008). Presence of CAM DPS whales in this area is indicated by genetic data as well as modelling of sightings data (Wade 2017, Mate *et al.* 2018).

Unit 14—Southern Oregon/Northern California

This area is bounded in the north at 42°10′ and extends south to the Mendocino escarpment at 40°20′. The area extends offshore to a boundary drawn along the 2,000-m isobath. The 50-m isobath forms the shoreward boundary. The area includes the marine waters off Del Norte County, CA, and most of Humboldt County, CA, and

borders a small portion of Curry County, OR. Unit 14 covers 3,412 nmi² of marine habitat.

This unit includes the Point St. George BIA, which typically supports whale feeding aggregations during July–November (Calambokidis *et al.* 2015). The northern boundary of this unit corresponds to the boundary of this BIA. The southern boundary corresponds with the Cape Mendocino/the Mendocino escarpment, where the predicted abundance from the habitat model shows a somewhat abrupt shift offshore (Becker *et al.* 2016). The seaward boundary for this unit extends out to the 2,000-m isobath to capture the habitat model predictions. ARS areas derived from satellite tracking data (n = 26 whales, Mate *et al.* 2018) indicate that feeding behavior occurs throughout this unit, and although some ARS data indicate whales feed seaward of the 2,000-m isobath, the majority of the ARS behavior is captured within the boundaries of this unit. Multiple, recurring, high density aggregations (hotspots) of krill occur off of Cape Mendocino and elsewhere in this unit, in association with submarine canyons (Santora *et al.* 2018). Within this unit and southward along the coast to Southern California (*i.e.,* Unit 19), Fleming *et al.* (2016) collected 259 skin samples from humpback whales during 1993–2012 and used stable carbon and nitrogen isotope analyses to evaluate the relative contribution of euphausiids versus fish to the diet. Shifts over the 20-year study period in isotope signatures in whale skin samples observed by Fleming *et al.* (2016) indicate trophic-level shifts in the humpback whale diet, and these shifts corresponded to shifts in relative prey abundance (krill versus anchovy and sardine) and changing oceanographic conditions within the CCE. These results suggest that the dominant prey in humpback whale diet switched from krill to fish, and back to krill during the 20-year period, depending on the relative abundance of each prey. Temporal shifts in diet composition (*e.g.,* from euphausiids and sardine in the 1920s to mainly anchovy in the 1950s and 1960s) are also reflected in historical whaling data and stomach content data from harvested whales (Rice 1963, Clapham *et al.* 1997).

Photo-identification data confirm this area is a destination for whales from the MX and CAM DPSs (Calambokidis *et al.* 2008).

Unit 15—California North Coast Area

This unit is bounded along its northern edge by the Mendocino escarpment at approximately 40°20′ N and extends southward to 38°40′ N, which corresponds to the approximate southern boundary of an identified BIA. The area extends offshore to a boundary drawn at the 3,000-m isobath. The 50-m isobath forms the shoreward boundary. This area includes marine waters off the coasts of Humboldt and Mendocino counties, CA, and covers 4,898 nmi² of marine habitat.

The northern boundary of this unit corresponds to the Mendocino escarpment and a shift farther offshore in the habitat model predictions (Becker *et al.* 2016). The offshore boundary of this unit extends out to the 3,000-m isobath to more closely correspond to cells containing the highest 90 percent of the study area abundance predicted by the Becker *et al.* (2016) habitat model. This boundary is also supported by ARS data indicating that whales are feeding farther from shore (Mate *et al.* 2018). Encompassed within this unit is a BIA that extends from Fort Bragg to Point Arena and that typically supports feeding aggregations of humpback whales from July to November (Calambokidis *et al.* 2015). The southern boundary of the unit corresponds to the northern boundary of another BIA. High-density, persistent aggregations of krill occur off Cape Mendocino and in association with canyon features within this unit (Santora *et al.* 2018). Krill hotspots, measuring about 216–320 km², have also been documented offshore of Point Arena near the 2,000-m isobath (Santora *et al.* 2011, Dorman *et al.* 2015).

Photo-identification data are not available to validate occurrences of particular DPSs within this unit; however, the available data strongly support the conclusion that this area is a destination for whales from the MX and CAM DPSs (Calambokidis *et al.* 2000).

Unit 16—San Francisco and Monterey Bay Area

This area extends from 38°40′ N southward to 36°00′ N to encompass a BIA. The seaward boundary is drawn along the 3,700-m isobath. The inshore boundary is mainly defined by the 15-m isobath, but also extends up to the Golden Gate Bridge within San Francisco Bay. This area includes waters off of the southern edge of Mendocino County, and Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, and Monterey counties. Unit 16 covers 12,349 nmi² of marine habitat.

This unit encompasses the Gulf of the Farallones-Monterey Bay BIA (Calambokidis *et al.* 2015) as well as cells containing the highest 90 percent of the study area abundance predicted by the Becker *et al.* (2016) habitat model. In this unit, the habitat model predictions extend farther offshore relative to the more northern West Coast units, and extend even farther offshore based on modeled whale distributions in colder months (January–April, see Becker *et al.* 2017). Therefore, the offshore boundary was placed at the 3,700-m isobath to capture areas of higher predicted abundances in both summer and winter. (The area covered by the Becker *et al.* (2017) winter model starts at 38°00′, and we are not aware of any other models based on winter distributions for areas north of this unit.) This area also extends into the mouth of the San Francisco Bay to capture a recently recognized important foraging area for humpback whales (Calambokidis *et al.* 2017) as well as ARS data indicating that whales are feeding in and around the mouth of the bay (Mate *et al.* 2018). The highest densities of whales are seen at the entrance to San Francisco Bay, with a few extending into the Bay (J. Calambokidis pers. comm., May 23, 2018). Based on data from hydroacoustic surveys spanning multiple years between 2000–2009, persistent and recurring, high-density aggregations of krill ranging in size from about 578 km² to 950 km² have been shown to occur in multiple areas within this unit, including Bodega Head, Cordell Bank, Gulf of the Farallones, Pescadora, and Monterey Bay (Santora *et al.* 2011, Dorman *et al.* 2015, Santora *et al.* 2018).

Photo-identification data confirm this area is a destination for whales from the MX and CAM DPSs (Baker *et al.* 1986, Calambokidis *et al.* 2008).

Unit 17—Central California Coast Area

This area extends from 36°00′ N to a southern boundary at 34°30′ N, just south of an identified BIA. The nearshore boundary is defined by the 30-m isobath, and the seaward boundary is drawn along the 3,700-m isobath. This unit includes waters off of southern Monterey county, and San Luis Obispo and Santa Barbara counties. Unit 17 covers 6,697 nmi² of marine habitat.

This unit encompasses a BIA that extends from Morro Bay to Point Sal and typically supports high density feeding aggregations of humpback whales from April to November (Calambokidis *et al.* 2015). In this area, as with Unit 16, the predicted abundance extends farther offshore in the warmer months (July–December) and even more so in cooler months (January–April) relative to the northern units (Becker *et al.* 2016 and 2017).

Therefore, the offshore boundary was placed at the 3,700-m isobath to capture areas of higher predicted abundance in both summer and winter. The southern boundary for this area was drawn just south of the BIA. Based on acoustic survey data collected during 2004–2009, large krill hotspots, ranging from 700 km² to 2,100 km², occur off Big Sur, San Luis Obispo, and Point Sal (Santora *et al.* 2011). Hotspots with persistent, heightened abundance of krill were also reported in this unit in association with bathymetric submarine canyons (Santora *et al.* 2018).

Photo-identification data confirm this area is a destination for whales from the MX and CAM DPSs (Calambokidis *et al.* 2008).

Unit 18—Channel Islands Area

This area extends from a northern boundary at 34°30′ N to a boundary line that extends from Oxnard, CA seaward to the 3,700-m isobath, along which the offshore boundary is drawn. The 50-m isobath forms the shoreward boundary. This unit includes waters off of Santa Barbara and Ventura counties. This unit covers 9,799 nmi² of marine habitat.

This unit encompasses the Santa Barbara Channel-San Miguel BIA, which supports high density feeding aggregations of humpback whales during March through September (Calambokidis *et al.* 2015). The seaward boundary at the 3,700-m isobath encompasses cells containing the highest 90 percent of the study area abundance predicted by both the summer and winter habitat models (Becker *et al.* 2016 and 2017). The southern boundary of this unit was selected to correspond to where the habitat model predictions for both models show a clear decline in predicted densities. The area to the south (*i.e.,* Unit 19) is predicted to have much lower summer densities of whales. Based on acoustic survey data collected during 2004–2009, a krill hotspot of about 780 km² has been documented off Point Conception (Santora *et al.* 2011). Some additional krill hotspots have also been observed in this unit in association with bathymetric submarine canyons (Santora *et al.* 2018).

Photo-identification data confirm this area is a destination for whales from the MX and CAM DPSs (Calambokidis *et al.* 2008).

Unit 19—California South Coast Area

The northern boundary for this unit extends southwest from Oxnard, CA through the Santa Cruz Basin and out to a seaward boundary along the 3,700-m isobath. The unit is also bounded in the south by the U.S. EEZ. The 50-m isobath forms the shoreward boundary. This unit includes waters off of Los Angeles, Orange, and San Diego counties, and covers 12,966 nmi² of marine habitat.

This area does not contain a BIA but was drawn to capture cells containing the highest 90 percent of the study area abundance predicted by the Becker *et al.* (2017) habitat model. This area falls outside of the predicted high use area in the summer/fall months but is predicted to support high densities of whales in the winter/spring months (Becker *et al.* 2017). The higher densities of humpback whales in winter may stem from the fact that some of the whales sighted in this area are likely transiting through the area, rather than occupying the area as a feeding destination. Within this unit, krill hotspots ranging in size from about 210 km²–430 km² have been observed off San Nicolas and Santa Barbara Islands (Santora *et al.* 2011), and additional hotspots have been observed in association with submarine canyons (Santora *et al.* 2018).

Photo-identification data are not available to validate occurrences of particular DPSs within this unit; however, the available data support the conclusion that this area is a destination for whales from the MX and CAM DPSs (Calambokidis *et al.* 2000, Rasmussen *et al.* 2012).

Application of ESA Section 4(a)(3)(B)(i) (Military Lands)

Section 4(a)(3)(B)(i) of the ESA precludes designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD) or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. *See* 16 U.S.C. 1533(a)(3)(B)(i); 50 CFR 424.12(h). Where these standards are met, the relevant area is ineligible for consideration as potential critical habitat. The regulations implementing the ESA set forth a number of factors to guide consideration of whether this standard is met, including the degree to which the plan will protect the habitat of the species (50 CFR 424.12(h)(4)). This process is separate and distinct from the analysis governed by section 4(b)(2) of the ESA, which directs us to consider the economic impact, the impact on national security, and any other relevant impact of designation and affords the Secretary discretion to exclude particular areas if the benefits of exclusion outweigh the benefits of inclusion of such areas. *See* 16 U.S.C. 1533(b)(2).

After identifying specific areas that we concluded would potentially meet the definition of critical habitat for humpback whales, we contacted DOD representatives and requested information regarding relevant INRMPs. In response, the U.S. Navy (Navy) provided descriptions and locations of four areas adjacent to the humpback whale specific areas and that are managed under Sikes Act-compliant INRMPs: (1) Pacific Beach Annex, WA; (2) Naval Base Ventura County, Point Mugu, CA; (3) Naval Outlying Field, San Nicolas Island, CA; and (4) Naval Auxiliary Landing Field, San Clemente Island, CA. The Navy also provided information regarding how in their view, each of their approved INRMPs provides a conservation benefit to humpback whales and their habitat. An additional fifth INRMP, associated with the Navy's Southeast Alaska Acoustic Measurement Facility, AK (SEAFAC) was mentioned as being under development. The SEAFAC INRMP is not yet available for review; however, a draft is expected to be completed in December 2019. After reviewing the information and maps provided, we found that the Pacific Beach Annex INRMP addresses an entirely upland property and does not overlap with the areas under consideration for designation as critical habitat. Therefore, this INRMP was not considered further.

Based on our initial review of the remaining three, approved, Navy INRMPs pursuant to the considerations indicated in 50 CFR 424.12(h), the plans appeared to provide a measure of conservation benefit to humpback whales. However, because each of the areas addressed by the INRMPs were very small relative the potential critical habitat units in which they are located (Units 18 and 19), and because a few additional components of the approved INRMPs were required from the Navy to complete our review (*e.g.,* maps, appendices to an INRMP listing specific management activities), we deferred further review of these INRMPs pending conclusion of our analyses under section 4(b)(2), because that analysis could lead to proposed exclusion of the larger specific area or areas. Once we concluded our analysis under section 4(b)(2) and had developed our list of potential exclusions, we ultimately found it necessary to complete a final review of only two INRMPs—the Naval Outlying Field San Nicolas Island (SNI) and Naval Base Ventura County (NBVC), Point Mugu. These are not fully

encompassed by areas that we are proposing to exclude under 4(b)(2).

The relevant areas addressed under the NBVC Point Mugu INRMP are submerged lands and resources 3 nmi out from Point Mugu (relative to MLLW) and a zone that extends 0.25 nmi offshore around San Miguel and Prince Islands. This INRMP thus includes areas that overlap with Units 18 (*i.e.,* the area around San Miguel and Prince Islands) and 19 (*i.e.,* the area off Point Mugu). Relevant areas within the footprint of the SNI INRMP are the waters surrounding SNI and Begg Rock within the 300-foot (91-m) isobath or 1 nmi from shore, whichever is greater. This INRMP covers an area that lies mainly within Unit 19, but the area around Begg Rock extends into Unit 18. Management efforts described within both of these INRMPs, which are discussed in detail in the Draft Section 4(b)(2) Report (NMFS 2019b), include actions such as water quality monitoring within nearshore waters and storm-water management; surveys of intertidal, subtidal, and deep water habitats; and area closures to minimize impacts of noise or other disturbances on marine mammals. Based on our consideration of the activities listed in the INRMPs and their relevance to humpback whales and their habitat, the certainty that the relevant management actions would be implemented, the frequency of use of the areas by humpback whales, and the extent of humpback prey occurrences within the areas, we ultimately concluded that the areas covered by the applicable INRMPs provide a conservation benefit to humpback whales. Thus, we determined that these areas are not eligible for designation as critical habitat and removed them from Units 18 and 19.

Analysis of Impacts Under Section 4(b)(2) of the ESA

The first sentence of section 4(b)(2) of the ESA requires the Secretary to designate critical habitat for threatened and endangered species on the basis of the best scientific data available 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. Regulations at 50 CFR 424.19(b) also specify that the Secretary will consider the probable impacts of the designation at a scale that the Secretary determines to be appropriate, and that such impacts may be qualitatively or quantitatively described. The Secretary is also required to compare impacts with and without the designation (50 CFR 424.19(b)). In other words, we are required to assess the incremental impacts attributable to the critical habitat designation relative to a baseline that reflects existing regulatory impacts in the absence of the critical habitat.

The second sentence of section 4(b)(2) describes an optional process by which, the Secretary may go beyond the mandatory consideration of impacts and weigh the benefits of excluding any particular area (that is, avoiding the economic, national security, or other relevant impacts) against the benefits of designating it (primarily, the conservation value of the area). If the Secretary concludes that the benefits of excluding particular areas outweigh the benefits of designation, he may exclude the particular area(s), so long as he concludes on the basis of the best available scientific and commercial information that the exclusion will not result in extinction of the species (16 U.S.C. 1533(b)(2)). NMFS and the U.S. Fish and Wildlife Service have adopted a joint policy setting out non-binding guidance explaining generally how we exercise our discretion under 4(b)(2). *See* Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (''4(b)(2) Policy,'' 81 FR 7226, February 11, 2016).

While section 3(5) of the ESA defines critical habitat as ''specific areas,'' section 4(b)(2) requires the agency to consider the impacts of designating any ''particular area.'' Depending on the biology of the species, the characteristics of its habitat, and the nature of the impacts of designation, ''particular'' areas may be—but need not necessarily be—delineated so that they are the same as the already identified ''specific'' areas of potential critical habitat. For this designation, we analyzed two types of particular areas. When we considered economic impacts, we used the same biologically-based ''specific areas'' we had identified under section 3(5)(A) (*i.e.,* Units 1–19, Figure 1). This delineation allowed us to most effectively compare the biologically-based conservation benefits of designation against economic benefits of exclusion, which we elected to do, and led us to propose excluding some units. For our consideration of impacts on national security, however, we instead used a delineation of particular areas based on DOD ownership or control of the area. As discussed below, this consideration of national security impacts led in some cases to propose excluding smaller areas from within the specific areas (units) we described, *i.e.,* redrawing the boundaries of those units. Similarly, for our consideration of other relevant impacts, such as the impacts designation of a particular area would have on Tribes, we used a delineation of particular areas that corresponded to tribal lands, associated treaty rights, and/or relevant resources.

Below, we summarize the economic, national security, and other relevant impacts of designating the areas identified as meeting the definition of critical habitat for the three DPSs of humpback whales. Additional detail is provided in the Draft Economic Analysis (IEc 2019a) and the Draft Section 4(b)(2) Report (NMFS 2019b).

National Security Impacts

To gather information on potential national security impacts of our proposed designation, we contacted representatives from DOD and the Department of Homeland Security (DHS) by letter dated October 9, 2018. We asked for information regarding impacts of a potential critical habitat designation for humpback whales on military operations and national security. Under the 4(b)(2) Policy, a requesting agency must provide a reasonably specific justification for the assertion that there is an incremental impact on national security that would result from the designation of that specific area as critical habitat (81 FR 7226, 7231, February 11, 2016). Requests for exclusion due to national security impacts were initially received from the both the Navy and the U.S. Air force (USAF); however, following subsequent discussions with USAF representatives, the USAF withdrew their requests for exclusions.

On December 5, 2018, the Navy provided a written assessment of potential national security impacts and detailed descriptions of training and testing operations occurring in the following ranges:

(1) Gulf of Alaska Temporary Maritime Activities Area (GOA TMAA), which overlaps with portions of critical habitat Units 5, 7, and 8;

(2) Southeast Alaska Acoustic Measurement Facility (SEAFAC), which lies within critical habitat Unit 10;

(3) Quinault Range Site (QRS; a component of the Naval Undersea Warfare Center Division Keyport Range Complex), which overlaps with a portion of Unit 11;

(4) Pacific Northwest Ocean Surface/Subsurface Operating Area (OPAREA, a component of the Northwest Training Range Complex and within the Northwest Training and Testing Study Area), which overlaps with portions of Units 11–15;

(5) Southern California Range Complex (SOCAL) portion of the Hawaii-Southern California Training and Testing Study Area, which overlaps with Unit 19; and,

(6) Point Mugu Sea Range (PMSR), which overlaps with portions of Unit 17, 18, and 19.

Based on their consideration of ongoing and planned Naval operations, the location of the potential critical habitat areas, and the essential prey feature, the Navy concluded that, at this time, they did not anticipate national security impacts resulting from a critical habitat destination that overlapped with the GOA TMAA, OPAREA, and PMSR. The Navy indicated that there were, however, anticipated national security impacts for operations at SEAFAC, QRS, and SOCAL, and requested that these range areas be excluded from any proposed humpback whale critical habitat designation.

SEAFAC is small area, covering 48 nmi^2 (164 km^2) in the Western Behm Canal near the city of Ketchikan, Alaska, and serves as the Navy's primary acoustic engineering measurement facility in the Pacific. This facility comprises an instrumented site that has in-water assets (such as piers, hydrophones, sensors, and in-water communication systems) that may be deployed on permanent or long-term bases, and an adjacent land-based support site located within 15 acres (0.06 km^2) on Back Island. This area is under Navy controlled restricted use, and no other Federal activities are expected to occur in this area. Public access to SEAFAC areas can be restricted by the Navy with notification in accordance with 33 CFR 334.1275. Testing activities planned for the foreseeable future include, but are not limited to, submarine sonar testing/maintenance, acoustic component testing, countermeasure testing, and hydrodynamic and submarine maneuverability testing. Although the Navy indicated they did not anticipate impacts to humpback whale critical habitat or humpback whale prey as a result of the majority of current testing activities, they expressed concern regarding future testing activities. They specifically noted that this area is used to evaluate cutting edge systems and platforms, which could affect future determinations regarding impacts on the habitat. The Navy discussed that the nature of the testing that is undertaken at this site requires prescriptive procedures and use of specific areas and that any additional mitigation resulting from a critical habitat designation has the potential to impact military readiness by impeding the testing of new systems, platforms, and capabilities. The Navy stated that any impact on the full utilization of SEAFAC would impact their ability to perform critical research, development, test and evaluation activities, thereby impacting military readiness and national security.

The QRS is a defined space off the coast of Washington that encompasses air, surface (~5,228 nmi^2 (6,924 km^2)) and subsurface space (with variable depths up to 1.8 km), as well as a surf zone area off the coast of Pacific Beach, Washington. The Navy does not own or outright control the sea space of QRS, which is largely defined by the boundaries of the special use airspace, known as W–237A, above it. The Navy has internal control of subareas for scheduling purposes only. The Navy issues notices to mariners (NOTMARs) when the Navy engages in activities that may be hazardous to vessels engaged in innocent passage, and/or recreational and commercial activities. Compliance with NOTMARS are voluntary, but help to protect public safety and prevent damage to test equipment. The QRS overlaps with approximately 44 percent of Unit 11, which covers an area of 3,441 nmi^2 of marine habitat. Access to areas within the QRS is controlled during testing events for public safety and to prevent damage to test equipment. Activities planned in the QRS to the year 2020 and beyond include activities such as at-sea sonar testing, anti-submarine warfare testing, acoustic and oceanographic research, countermeasure testing, torpedo testing, undersea warfare testing, etc. The Navy stated that use of explosives within the QRS is likely to have adverse effects on humpback prey species, although in their view these would not have effects at the population level. The Navy concluded that humpback whale critical habitat would impact the ability of the Navy to test and field new systems and platforms and thus impact national security if ESA section 7 consultations resulted in additional mitigation requirements or restrictions on testing activities in the QRS.

Subsequent to their initial request for exclusion of QRS, the Navy conducted further analysis and, in September 2019, submitted additional information relative to this particular national security exclusion. Specifically, the Navy requested that an additional 5.4-nmi (10-km) buffer around QRS be excluded to avoid impacts to ongoing and future testing activities that would result should Naval Sea Systems Command have to halt, reduce in scope, or geographically/seasonally constrain testing activities to prevent adverse effects or adverse modification of critical habitat. The Navy determined that sound and energy levels that may cause injuries to humpback whale prey species within critical habitat from the largest explosives that could be used on the range could extend beyond the QRS boundaries, and that excluding a buffer of 10-km around QRS from the critical habitat designation would avoid additional mitigation requirements. The Navy indicated that they determined this specific buffer distance after taking into account the site specific oceanographic conditions and the best available science establishing fish injury thresholds (which Navy cited as Popper *et al.,* 2014).

The SOCAL range complex is located between Dana Point and San Diego, CA and extends more than 1,111 km southwest into the Pacific Ocean. Most activities occur within the eastern portion of the SOCAL range complex, closer to shore and to the Navy's largest homeport location in the Pacific. The spatial extent of overlap between the SOCAL range and Unit 19 is 10,731.5 nmi^2 (36,808 km^2), which is approximately 54 percent of the Navy's core training area within SOCAL and approximately 83 percent of Unit 19, which measures 12,966 nmi^2 (44,472.1 km^2). A wide variety of training and testing activities occur within the SOCAL range complex on a routine and sometimes fairly high frequency basis. A few types of Navy testing activities in this area are those related to anti-submarine warfare, torpedo, mine countermeasure, gun, missile and rocket, and propulsion testing. The activities that occur in the SOCAL range complex have the potential to impact the water surface or water column, with the degree of impact depending on the nature of the particular activity. The Navy referred to the detailed discussions on particular impacts provided in the Navy's 2018 Final Environmental Impact Statement for Hawaii-Southern California Training and Testing. Ultimately, the Navy concluded that designation of Unit 19 as critical habitat could lead to requirements for additional mitigations (avoidance, limitations, etc.) that could hinder Navy testing and training activities, and thereby impact military readiness and national security. Therefore, Navy requested that we exclude Unit 19 from any critical habitat designation.

Economic Impacts

The primary impact of a critical habitat designation stems from the ESA section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining the extent of this impact in practical terms is complicated by the fact that section 7(a)(2) contains the

associated but distinct requirement that Federal agencies must also ensure their actions are not likely to jeopardize the species' continued existence. The incremental economic impacts of a critical habitat designation stem from the additional effort to engage in consultation regarding potential adverse effects to the critical habitat as part of section 7 consultations (often referred to as administrative costs), and any conservation measures that may be necessary to avoid adverse modification and that would not otherwise be implemented (often referred to as project modification costs). Thus, the incremental impacts attributable to critical habitat stem from conservation efforts that would not already be required due to the need to avoid jeopardy to humpback whales or due to other existing protections (*e.g.,* for other listed species, other Federal, state, or local regulations). Additional economic impacts of designation would include any state and local protections that are likely to be triggered as a result of designation. However, as discussed in chapter 3 of the Draft Economic Analysis (DEA), we did not identify state or local protections that may be triggered by a proposed humpback whale critical habitat designation (IEc 2019a).

The analysis methods and the estimated, incremental, economic impacts stemming from designation of the identified specific critical habitat areas for the WNP, MX, and CAM DPSs of humpback whales are described in detail in the DEA prepared by Industrial Economics (IEc 2019a). To quantify the economic impacts associated with designating the 19 units of habitat under consideration, IEc followed the following general steps:

(1) Identify the baseline of economic activity and the statutes and regulations that constrain that activity in the absence of the critical habitat designation;

(2) Identify the types of activities that are likely to be affected by critical habitat designation;

(3) Estimate the costs of administrative effort and, where applicable, conservation efforts recommended for the activity to comply with the ESA's critical habitat provisions;

(4) Project over space and time the occurrence of the activities and the likelihood they will in fact need to be modified; and

(5) Aggregate the costs up to the particular area level and provide economic impacts as present value impacts and annualized impacts.

The first step in the economic analysis involved identifying the baseline level of protection already afforded the humpback whales in the areas being considered for designation as critical habitat. The baseline for this analysis is the existing state of regulation prior to the designation of critical habitat, including protections afforded due to the listing of the species under the ESA, and other Federal, state and local laws and guidelines, such as the MMPA, Clean Water Act, and state environmental quality laws. Next, in order to complete steps 2–4, we searched the NMFS consultation database (for 2007–2018) to compile a list of Federal actions and the projected number of those actions occurring in each of the 19 areas under consideration as critical habitat. Outreach to some Federal agencies was also conducted by IEc to obtain additional information about planned activities. As applicable and appropriate, NMFS biologists were also consulted to verify the nature and number of consultations expected to occur over the next 10 years.

The following categories of activities with a Federal nexus were identified as having the potential to affect the essential prey feature and as being expected to occur within the specific critical habitat areas under consideration: (1) Commercial fishing, (2) oil and gas activities (including seismic surveys), (3) alternative energy development, (4) in-water construction (including dredging and offshore mining), (5) vessel traffic (specifically, activities related to establishment of the shipping lanes established by the U.S. Coast Guard (USCG) (6) aquaculture, (7) military activities, (8) liquefied natural gas (LNG) terminal activities, (9) space vehicle and missile launches, (10) water quality management (including pesticide registration, establishment of water quality standards, and Clean Water Act general permits), (11) U.S. Forest Service activities (related to timber and forest management), and (12) inland activities (including power plant operations, land management pesticide/herbicide application, and National Pollutant Discharge Elimination System (NPDES) permitting). These activities have the potential to affect the essential feature by altering or reducing the quantity, quality, or the availability of the prey feature essential to the conservation of one or more of the listed DPSs of humpback whales.

As discussed in chapter 2 of the DEA, the costs quantified in the economic analysis include only the additional administrative effort associated with consideration of potential impacts to critical habitat as part of future section 7 consultations (IEc 2019a). No additional conservation measures were identified as likely to result from the projected consultations, largely due to the baseline protections in place. Depending on the specific area at issue and the Federal action, relevant baseline protections include, for example, protections for co-occurring listed species such as North Pacific right whales, Southern Resident killer whales, salmon, Southern DPS of Pacific eulachon, and the Southern DPS of green sturgeon; designated critical habitat for listed species; as well as protections for humpback whales under both the ESA and the MMPA. The number, location, and/or effects on prey of some other activities, particularly seismic surveys and alternative energy activities, are speculative at this time. Therefore, we did not identify any probable conservation recommendations that would likely be made specifically to avoid adverse modification of the humpback whale critical habitat as a result of these activities, nor was it possible to estimate the cost of any probable project modifications. However, we solicit public comments and relevant data that would further inform this analysis.

The DEA indicates that, if designated, the 19 units of critical habitat may increase administrative costs of consultations involving humpback whales by an estimated $630,000 to $720,000 over the next ten years, assuming a seven percent discount rate (IEc 2019a). This equates to an annualized cost of $72,000 to $82,000 over the next ten years (IEc 201a9). The largest portion of administrative costs are anticipated in Unit 10 (17 to 22 percent of total costs), followed by Unit 13 (11 to 12 percent) and Unit 17 (9 to 10 percent). In-water construction activities represent the largest share of estimated costs (34 to 42 percent), while 18 to 21 percent of costs are associated with commercial fishing, and 9 to 10 percent is associated with consultations regarding military activities (IEc 2019a). (See the DEA for the specific estimated impacts for each of the 19 habitat units and for each of the 12 categories of Federal activities.)

These economic impacts are largely associated with the administrative costs borne by NMFS and other Federal agencies and not by private entities or small governmental jurisdictions. However, some consultations may include third parties (*e.g.,* project proponents or landowners) that may be small entities. These third parties may bear some portion of the administrative consultation costs. Ultimately, the analysis found that consultations on in-

water and coastal construction activities may generate costs borne by small entities. All other activities are either not expected to involve small entities or are associated with no more than two consultations per year spread across the entire critical habitat. As described in chapter 5 of the DEA, the analysis anticipates approximately eight consultations on in-water and coastal construction activities per year, six of which are concentrated in proposed critical habitat Unit 10 in Alaska. This analysis estimates that the small entities involved in these consultations will incur $4,900 in annualized administrative costs (IEc 2019a). (See ''Initial Regulatory Flexibility Act'' section of this document for information regarding impacts on small entities.)

Tribal Impacts

Section 4(b)(2) of the ESA also allows for the consideration of other relevant impacts associated with the designation of critical habitat. We identified potential impacts on Federally recognized tribes as a possible source of other impacts relevant to the humpback whale critical habitat designation. A broad array of activities that occur on Indian lands may trigger ESA section 7 consultations. Indian lands are those defined in Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997), and include: (1) Lands held in trust by the United States for the benefit of any Indian tribe; (2) land held in trust by the United States for any Indian tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians.

In developing this proposed rule, we reviewed maps and did not find overlap between the areas under consideration as critical habitat and Indian lands. Based on this, we preliminarily found that there were no Indian lands subject to consideration for possible exclusion. However, it is not clear whether there may be some nearshore areas that could be considered for possible exclusion. In particular, we lack information regarding where boundaries of tribal-owned lands lie in relation to shoreward boundary of the specific critical habitat areas in Alaska, which are generally bounded by the 1-m isobath (relative to MLLW).

As discussed further under the Classification section of this preamble, there are Indian tribes and Alaska Native corporations that have lands that are in close proximity to areas under consideration for designation as critical habitat for humpback whales, have usual and accustomed areas that overlap with critical habitat areas, or may otherwise be affected in coastal Alaska, Washington, Oregon, and California. Thus, at an early stage in the course of developing a proposed critical habitat rule, we contacted all potentially affected tribes. Specifically, in November 2018, and in coordination with the NMFS regional tribal liaison, we reached out to 27 tribes located in Washington, Oregon, and California, and 149 tribes and tribal organizations located within Alaska to offer the opportunity to consult on critical habitat for humpback whales and discuss any concerns they may have. We provided maps and descriptions of all areas under consideration as potential critical habitat, and we (1) invited input regarding tribal resources and issues, usual and accustomed areas, or the exercise of tribal rights that may be affected by a coastal critical habitat designation for humpback whales; (2) requested any information to assist us in determining the conservation value of nearshore areas of Indian lands as well as other possible areas of interest to the tribes, such as deep-water habitats outside the nearshore areas; and (3) invited discussion on the tribal government's position regarding the designation of those areas as critical habitat.

We received no requests for consultation in response to our outreach efforts. We did, however, receive responses from two tribes in Washington, the Quinault Indian Nation and the Quileute Tribe. Both tribes expressed concern regarding the potential impact of the critical habitat designation on tribal fisheries, particularly within usual and accustomed fishing areas located in coastal marine waters. We had multiple follow-up communications with these tribes; however, neither tribe elected to submit formal comment or information regarding impacts on tribal resources or treaty rights, nor did they request additional meetings or consultation. As described in the Draft Economic Analysis (IEc 2019a), while it is possible that the critical habitat designation could result in recommendations for changes in fishery management, we consider that unlikely at this time, given the existing requirement to consider the effect of harvesting prey on the listed humpback whales and given existing Federal fisheries management measures (*e.g.,* prohibition on krill fishing). We will continue to coordinate and consult with potentially affected tribes and Native corporations as we move forward with the rulemaking process.

Analysis of the Benefits of Designation

The primary benefit of critical habitat designation—and the only regulatory consequence—stems from the ESA section 7(a)(2) requirement that all Federal agencies ensure that their actions are not likely to destroy or adversely modify the designated habitat. This benefit is in addition to the section 7(a)(2) requirement that all Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. Another benefit of designation is that it provides notice of areas and features important to species conservation, and information about the types of activities that may reduce the conservation value of the habitat. Critical habitat designation may also trigger additional protections under state or local regulations.

In addition to the benefits of critical habitat designation to the whales, there may be ancillary benefits. These other benefits may be economic in nature, or they may result in improvement of the ecological functioning of the designated areas. Chapter 4 of the DEA (IEc 2019a) discusses other forms of benefits that may be attributed to the conservation and recovery of humpback whales (although not specifically attributed to the designation of critical habitat), including use benefits (*e.g.,* for wildlife viewing), non-use benefits (*e.g.,* existence values), and ancillary ecosystem service benefits (*e.g.,* water quality improvements and enhanced habitat conditions for other marine and coastal species). Humpback whales are also valued in terms of the utility gained from whale watching experiences. In Washington, Oregon, California, and Alaska, humpback whales are a target species for whale watchers (IEc 2019a). Whale watch participants in these states generate tens of millions of dollars in economic activity annually (Pendelton 2006). Although humpback whales have value to people nationally and serve as an economic engine regionally, we are unable to apply the available literature to quantify or monetize associated use and non-use economic benefits that would be attributable to a critical habitat designation. More information about these types of benefits and values may be found in chapter 4 of the DEA (IEc 2019a).

It would be ideal if the best available information allowed the benefits of designation to be monetized so they could be directly compared to the economic benefits of excluding a particular area. However, sufficient and

relevant data are not available to monetize the benefits of designation (*e.g.,* estimates of the monetary value of the protecting the feature within areas designated as critical habitat, or the monetary value of education and outreach benefits). For this reason, the ESA regulations recognize that benefits may be quantitatively or qualitatively described (50 CFR 424.19(b)). Further, we cannot isolate and quantify the effect that a critical habitat designation would have on recovery of humpback whales separate from other ongoing or planned conservation actions. In addition, it is difficult to accurately predict the future harm to the habitat that would otherwise have been realized in the absence of a critical habitat designation. Ultimately, given these challenges and lack of sufficient information, the associated incremental use and non-use economic benefits of designating particular areas of the potential designation cannot be quantified. As an alternative approach, we assessed the benefits of designation using a biologically-based analysis of the specific areas. In this particular case, the CHRT considered relevant humpback whale datasets to qualitatively rate the conservation impact or value for the DPSs if a particular area is designated as critical habitat. These qualitative conservation value ratings were then used to represent the benefits of designation. The Draft Biological Report (NMFS 2019a) provides a detailed discussion of the methods and datasets used by the CHRT to systematically assign a qualitative conservation value rating to each of the habitat units (specific areas) under consideration.

In general, the multiple datasets considered by the CHRT provided information about the importance of a given area for humpback whale feeding, the level of use of the critical habitat units by all humpback whales, and the level of use of the units by whales of each particular DPS (see Appendix C, NMFS 2019a). The first dataset contained information about the feeding BIAs that have been identified for humpback whales (see Ferguson *et al.* 2015a, c and Calambokidis *et al.* 2015). Rather than simply considering presence/absence of a BIA and to make this information comparable across units, the CHRT considered the size of the BIAs relative to the size of the particular critical habitat unit. Specifically, the CHRT calculated the percent of total area (km^2) of a unit that was covered by the BIA within that unit (see Table C4 in NMFS (2019a) for calculations).

The second dataset included data on the density of humpback whales' occurrence within each critical habitat unit (regardless of which DPS the whales belong to). For habitat units along the West Coast, density of whales was determined using the habitat model results of Becker *et al.* (2016), which allowed for calculations of predicted density within each specific critical habitat unit (*i.e.,* predicted abundance per area of the critical habitat unit). As no comparable modelling data exist for the habitat units within Alaska (*i.e.,* Units 1–10), whale density information was instead compiled from the most recent, available literature, which covered various years and time periods, and addressed study areas that did not necessarily align with the critical habitat unit boundaries (see Tables C5 and C6 for details). These non-uniform data prevented the CHRT from making any strong inferences about humpback whale densities within Units 1–10 and complicated their ability to compare densities across units. The density data pulled from the literature were therefore considered in a very qualitative way and did not directly determine any votes or conclusions.

A third dataset addressed the presence of whales from each particular DPS within each critical habitat unit. Three different pieces of information were presented in this dataset. First, using results of the SPLASH study, the CHRT calculated the percentage of whales identified to a particular DPS out of all the matched sightings within a specific unit. (Matched sightings are the total number of whales photo-identified in both the relevant breeding areas for the DPS and the critical habitat unit. Note that most whales sighted in feeding areas have not been identified as belonging to a particular DPS.) (See Table C7 in NMFS (2019a) for total matches and calculations.) Secondly, the CHRT considered the probabilities of whales from a particular DPS moving from their winter, breeding area to a feeding area (critical habitat unit) as calculated by Wade (2017). These movement probabilities were also derived from SPLASH data. The feeding areas from the SPLASH study and from Wade (2017) represent larger geographic areas than the critical habitat units, so in many cases the same movement probability applied to multiple, adjacent critical habitat units. Lastly, the CHRT compiled available documentation of whales from a specific DPS occurring in each unit (*i.e.,* confirmed presence). These data came from both the SPLASH study as well as other references, a complete list of which is provided in Table C8 of NMFS (2019a).

After reviewing the datasets as a group, each member of the CHRT independently rated the habitat unit for each relevant DPS through a structured decision-making process. To do this, each team member distributed four ''points'' across the following four conservation value categories for each of the critical habitat units:

(1) Very high—meaning areas where the available data indicate the area is very important to the conservation of the DPS;

(2) high—meaning areas where the available data indicate the area is important to the conservation of the DPS;

(3) medium—meaning the available data indicate the area is moderately important to the conservation of the DPS; and,

(4) low conservation value—meaning the available data suggest the DPS does not rely on this area for feeding.

CHRT members could place all four points for a given habitat unit and DPS in one of these qualitative categories or spread those four points across any or all of the four categories. The degree to which votes were spread across the conservation value categories thus served as a measure of uncertainty in the conservation value of a particular unit. Because the CHRT consists of 10 team members, each unit of critical habitat received a total of 40 points. However, CHRT members were permitted to forego assigning their four points for a specific critical habitat unit if they concluded the available data were either too limited to support drawing a particular conclusion or there was too much uncertainty associated with the available data. In these instances, CHRT members could instead categorize the unit as ''data deficient.'' Units receiving ''data deficient'' votes from one or more CHRT member meant those particular units received less than 40 points.

Following an initial round of scoring, the CHRT met to discuss their assessments of the data and results. Following that team discussion, CHRT members were given the opportunity to independently re-evaluate their own point distributions and make any changes (*if* they elected to do so). The CHRT's conservation ratings for each of the habitat units are provided in Tables 1–3; complete results are presented and discussed within the Draft Biological Report (NMFS 2019a).

Proposed Exclusions Based on Economic Impacts

As is clear from the preceding discussion, the conservation benefits to the humpback whale DPSs that would result from the designation of any particular critical habitat unit,

expressed as a qualitative rating, are not directly comparable to the economic benefits that would result from exclusion of the particular unit from designation, which is expressed as a quantified cost. However, to weigh the benefits of designation against the economic benefits of exclusion, we have to compare these two types of information. As noted previously, the Secretary has discretion to determine the weight to assign to the relevant factors and may exclude any particular area from the critical habitat designation upon a determination that the benefits of such exclusion outweigh the benefits of specifying the particular area as part of the critical habitat (50 CFR 424.19(c)). The Secretary, however, cannot exclude any particular area if, based on the best scientific and commercial data available, the Secretary determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned (50 CFR 424.19(c)). For this analysis, we note that each of the units identified for potential designation meet the definition of critical habitat because they are in the occupied range of the species and contain the identified physical or biological feature; however, the areas vary as to the level of conservation value anticipated to result from the designation. We (exercising the delegated authority of the Secretary) determined that the conservation benefits of including areas with medium, high, or very high conservation ratings should have significant weight in this analysis.

Overall, the projected economic impacts to Federal agencies and non-Federal entities of designating each of the 19 habitat units are low, with annualized impacts ranging from $430–$18,000 per habitat unit (IEc 2019a). If all 19 units were designated, the total annualized impact is estimated to range from $72,000 to $82,000 over the next 10 years (IEc 2019a). This estimated economic impact is well below the annualized costs associated with several, large, marine critical habitats that have been previously designated in the Pacific (*e.g.,* leatherback sea turtle, 77 FR 4169, January 26, 2012; black abalone, 76 FR 66806, October 27, 2011). Relative to these other designations, the probable economic impacts projected for the humpback whale critical habitat are comparatively very low.

Results of the biological and economic analyses (see Tables 1–3) indicate that habitat units rated as having ''very high'' or ''high'' conservation value are associated with annualized impacts ranging from $430 (Unit 1, WNP and MX DPSs) to $7,500 (Unit 11, CAM and MX DPS). Habitat units rated as having ''medium'' conservation value are associated with annualized impacts ranging from $680 (Unit 4, MX DPS) to $18,000 (Unit 10, MX DPS). Lastly, specific areas rated as having ''low'' conservation value were associated with annualized impacts ranging from $680 (Unit 4, WNP DPS) to $5,200 (Unit 19, CAM and MX DPSs). After reviewing the costs and conservation values for each specific area and for each DPS, the CHRT concluded that the economic impacts for units with very high, high, and medium conservation ratings were not outweighed by the relatively low costs attributed to any of those units. Given the data-driven process by which the CHRT carefully evaluated the relative conservation value of each critical habitat unit, the CHRT was confident that areas receiving these rating classifications are all important to the conservation of their respective DPSs. In other words, these higher value feeding areas are viewed as being critical in supporting the overall life history of the whales, and their conservation value is not outweighed by the relatively low economic impacts projected to occur as a result of their designation as critical habitat. The CHRT, however, concluded that the economic impacts, though objectively low, do outweigh the benefits of designating specific areas rated as having a ''low'' conservation value. By definition, these low value habitat units are those specific areas, based on the CHRT's assessment of the best available data, upon which humpback whales of the particular DPS do not appear to rely on as extensively for feeding, given the lower density or level of occurrence of whales relative to other units with higher conservation value. Therefore, even though the estimated annualized impacts only ranged from $680–$5,200 across all of the low conservation value areas for all DPSs, the CHRT concluded that these costs outweighed the minimal conservation benefits to the whales of designating these areas. We concurred with the CHRT's assessment and note that even with the potential exclusions, the resulting designation includes extensive areas of medium, high, and very high conservation value; and therefore, we propose to exclude all low conservation value areas from the critical habitat designations. Specifically, we proposed to exclude the following five units from the critical habitat designation for the WNP DPS: Unit 4—Central Peninsula Area, Unit 6—Cook Inlet, Unit 7—Kenai Peninsula Area, Unit 8—Prince William Sound Area, and Unit 9—Northeastern Gulf of Alaska. Based on the application of this same decision rule, we also propose to exclude one specific area, Unit 19—California South Coast, from critical habitat for the CAM DPS. Lastly, we propose to exclude the three low-conservation-value habitat units from the critical habitat designation for the MX DPS: Unit 7—Kenai Peninsula Area, Unit 9—Northeastern Gulf of Alaska, and Unit 19—California South Coast. As discussed in the Draft Section 4(b)(2) Report (NMFS 2019b), we conclude that exclusion of these low conservation-value areas from the critical habitat designations will not result in extinction of any of the three humpback whale DPSs.

TABLE 1—CONSERVATION RATINGS AND ESTIMATED, INCREMENTAL, ANNUALIZED ECONOMIC IMPACTS ASSOCIATED WITH SECTION 7 CONSULTATIONS OVER THE NEXT 10 YEARS FOR THE SPECIFIC AREAS OF POTENTIAL CRITICAL HABITAT FOR THE WESTERN NORTH PACIFIC DPS OF HUMPBACK WHALES

Unit No.	Area	Conservation rating	Annualized impacts
1	Bristol Bay	high	$430
2	Aleutian Islands Area	very high	690–2,400
3	Shumagin Islands Area	very high	430–810
4	Central Peninsula Area	low	680–860
5	Kodiak Island Area	high	2,800–3,600
6	Cook Inlet	low	3,400–3,700
7	Kenai Peninsula Area	low	1,000
8	Prince William Sound Area	low	1,800

TABLE 1—CONSERVATION RATINGS AND ESTIMATED, INCREMENTAL, ANNUALIZED ECONOMIC IMPACTS ASSOCIATED WITH SECTION 7 CONSULTATIONS OVER THE NEXT 10 YEARS FOR THE SPECIFIC AREAS OF POTENTIAL CRITICAL HABITAT FOR THE WESTERN NORTH PACIFIC DPS OF HUMPBACK WHALES—Continued

Unit No.	Area	Conservation rating	Annualized impacts
9	Northeastern Gulf of Alaska	low	1,000

TABLE 2—CONSERVATION RATINGS AND ESTIMATED, INCREMENTAL, ANNUALIZED ECONOMIC IMPACTS ASSOCIATED WITH SECTION 7 CONSULTATIONS OVER THE NEXT 10 YEARS FOR THE SPECIFIC AREAS OF POTENTIAL CRITICAL HABITAT FOR THE CENTRAL AMERICA DPS OF HUMPBACK WHALES

Unit No.	Area	Conservation rating	Annualized impacts
11	Coastal Washington	high	$6,800–$7,500
12	Columbia River Area	medium/low	6,300
13	Coastal Oregon	medium	8,600–9,400
14	Southern Oregon/Northern California	high	2,300
15	California North Coast	medium	1,600
16	San Francisco/Monterey Bay	very high	2,700
17	California Central Coast	very high	7,200
18	Channel Islands	high	3,500
19	California South Coast	low	5,000–5,200

TABLE 3—CONSERVATION RATINGS AND ESTIMATED, INCREMENTAL, ANNUALIZED ECONOMIC IMPACTS ASSOCIATED WITH SECTION 7 CONSULTATIONS OVER THE NEXT 10 YEARS FOR THE SPECIFIC AREAS OF POTENTIAL CRITICAL HABITAT FOR THE MEXICO DPS OF HUMPBACK WHALES

Unit No.	Area	Conservation rating	Annualized impacts
1	Bristol Bay	high	$430
2	Aleutian Island Area	very high	690–2,400
3	Shumagin Islands Area	very high	430–810
4	Central Peninsula Area	medium	680–860
5	Kodiak Island Area	high	2,800–3,600
6	Cook Inlet	medium	3,400–3,700
7	Kenai Peninsula Area	low	1,000
8	Prince William Sound Area	high	1,800
9	Northeastern Gulf of Alaska	low	1,000
10	Southeastern Alaska	medium	12,000–18,000
11	Coastal Washington	very high	6,800–7,500
12	Columbia River Area	medium	6,300
13	Coastal Oregon	medium	8,600–9,400
14	Southern Oregon/Northern California	high	2,300
15	California North Coast	medium	1,600
16	San Francisco/Monterey Bay Area	very high	2,700
17	California Central Coast	very high	7,200
18	Channel Islands Area	high	3,500
19	California South Coast Area	low	5,000–5,200

Proposed Exclusions Based on National Security Impacts

Based on the written information provided by the Navy in December 2018 and information provided through subsequent discussions with Navy representatives, we evaluated whether there was a reasonably specific justification indicating that designating certain areas as critical habitat would have a probable incremental impact on national security. In accordance with our 4(b)(2) Policy (81 FR 7226, February 11, 2016), in instances where the Navy provided a reasonably specific justification, we deferred to their expert judgement as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected by the critical habitat designation. In conducting a review of these exclusion requests under section 4(b)(2) of the ESA, we also gave great weight to the Navy's national-security concerns. To weigh the national security impacts against conservation benefits of a potential critical habitat designation, we also considered the following: (1) The size of the requested exclusion and the percentage of the specific critical habitat area(s) that overlaps with the Navy area; (2) the relative conservation value of the specific area for each particular humpback whale DPS; (3) the likelihood that the Navy's activities would destroy or adversely modify critical habitat, and the likelihood that NMFS would require project modifications to reduce or avoid these impacts; and, (4) the likelihood that other Federal actions may occur in the site that would no longer be subject to the critical habitat provision if the

particular area were excluded from the designation.

As noted above, SEAFAC is a small installation (48 nmi^2), comprising only 0.22 percent of Unit 10, which covers 22,152 nmi^2 of marine habitat within Southeast Alaska, and lies entirely outside of the recognized feeding BIA in this region (Ferguson *et al.* 2015). Unit 10 was found to have a medium conservation value for the MX DPS of humpback whales. Given the Navy's substantial and specific concerns regarding the potential impact of a designation on their activities within SEAFAC, the extremely small relative size of the requested exclusion, the medium conservation rating of the habitat, and fact that other Federal activities are unlikely to occur in this area, we determined that benefits of excluding this area due to national security impacts outweigh the benefits of designating this area as critical habitat for the MX DPS. Therefore, we are proposing to exclude the SEAFAC area from the designation of critical habitat for the MX DPS of humpback whales, and the boundaries of Unit 10 have been adjusted accordingly.

After considering the information provided by the Navy regarding potential impacts on national security stemming from the designation of a portion of Unit 11 as critical habitat, we found that the Navy had provided a reasonably specific justification for their requested exclusion of the area overlapping with the QRS as well the 10-km buffer surrounding the QRS. The requested exclusion comprises about 44 percent of the area of Unit 11, which was rated as having a high conservation value for the CAM DPS and a very high conservation value for the MX DPS. To get a more precise sense of the value of the specific QRS area (including the buffer) to the whales, we reviewed the overlap of the QRS with the location of the BIA and the predicted whale densities from Becker *et al.* (2016), which modeled predicted densities in approximately 10 km by 10 km grid cells. Those comparisons indicated that the QRS is entirely outside of, and south of, the BIA, and overlaps partially with the area where the highest densities of humpback whales are predicted to occur within Unit 11. In other words, an exclusion of the QRS and buffer area would not remove from the designation much of the comparatively high value locations within Unit 11. The Navy also indicated that while access to this area is not as tightly controlled as with SEAFAC, they do exert significant influence in terms of limiting other Federal activities within this the QRS. Overall, given the Navy's substantial and specific concerns regarding the potential impact of a critical habitat designation on their unique testing and training activities that occur within the QRS and the potential delay in critical missions in order to complete adverse modification analyses, we determined that the benefits of excluding the QRS and buffer due to national security impacts outweighs the benefits of designating this portion of Unit 11 as critical habitat for the MX and CAM DPSs. Thus, we propose to exclude this DOD area from the critical habitat designations for both the MX and CAM DPSs, and the boundaries of Unit 11 have been adjusted accordingly.

We considered the information provided by the Navy concerning potential impacts on national security stemming from the designation of Unit 19 as critical habitat, and found that the Navy had provided a reasonably specific justification for their requested exclusion. We considered the information provided by the Navy regarding the nature and types of training and testing activities that occur within the SOCAL range complex (*e.g.,* anti-submarine warfare, torpedo, mine countermeasure, gun, missile and rocket, and propulsion testing) to evaluate their potential to affect humpback whale critical habitat. We also reviewed the discussions about particular impacts provided in the Navy's 2018 Final Environmental Impact Statement for Hawaii-Southern California Training and Testing (*e.g.,* impacts to fish and invertebrates). We agree with the Navy's assessment that the activities that occur in the SOCAL range complex, many of which occur with high frequency, have the potential to impact humpback whale prey species, with the degree of impact depending on the nature of the particular activity. We also considered that Unit 19 had been assessed as having low conservation value to both the MX and CAM DPSs of humpback whales. Although this exclusion request extended over the entirety of Unit 19, given the low conservation value rating this area received for each DPS, we concluded that the benefit of exclusion of this particular area outweighs the benefit of including it in either designation. Overall, we concurred with the Navy that designation of Unit 19 would likely have national security impacts that outweigh the benefits of designating this low conservation value area. Thus, even though we had previously determined that Unit 19 should be proposed for exclusion based on economic impacts, we made an independent determination to propose to exclude this area as a result of national security impacts. This conclusion further supports the proposed exclusion of Unit 19 under section 4(b)(2) of the ESA.

Proposed Critical Habitat Designations

For the endangered WNP DPS of humpback whales, we propose to designate 78,690 nmi^2 of marine habitat off the coast of Alaska as occupied critical habitat. (The proposed designation encompasses Units 1, 2, 3, and 5 as shown in Figure 1.) The specific areas included in the proposed designation are seasonal feeding areas for humpback whales and contain the essential prey feature. A total area of 44,119 nmi^2 is proposed for exclusion, because the benefits of exclusion were found to outweigh the benefits of inclusion of these areas. Specifically, the limited conservation benefits of designating the relevant specific areas (*i.e.,* Units 4, 6, 7, 8, and 9) were found to be outweighed by the economic impact of designating these areas. Each of the areas recommended for inclusion in the designation for the WNP DPS (*i.e.,* Units 1, 2, 3, and 5) contains a humpback whale feeding BIA and was rated as having high or very high conservation value for the WNP DPS. Although one of the areas proposed for exclusion (*i.e.,* Unit 8) also contains a humpback whale feeding BIA, whales from the WNP DPS have not been directly observed within this unit and presence has only been inferred based on the available data. We also find that the exclusion of Units 4, 6, 7, 8, and 9 from a designation of critical habitat for the WNP DPS of humpback whales would not result in extinction of this DPS, because these whales are not expected to rely on these areas for feeding (NMFS 2019a). No other exclusions are proposed for this DPS. We have not identified any unoccupied areas that are essential to the conservation of this DPS, thus we are not proposing to designate any unoccupied areas.

For the endangered CAM DPS of humpback whales, we propose to designate 48,459 nmi^2 of marine habitat off the coasts of Washington, Oregon, and California as occupied critical habitat. (The proposed designation encompasses part of Unit 11 and Units 12–18 as shown in Figure 1.) The areas being proposed for designation contain the essential prey feature and serve as the only major feeding areas for the CAM DPS; thus, these areas are critical to supporting population growth and recovery of this endangered DPS. A total of 14,489 nmi^2 of marine habitat is proposed for exclusion, because the

benefits of exclusion were found to outweigh the benefits of inclusion of this area. Specifically, the limited conservation benefits of designating the relevant specific area (*i.e.,* Unit 19—California south Coast Area) were found to be outweighed by the economic impact of designating this area. Exclusion of this area, which is not predicted to be a high use area in the summer/fall, will not result in the extinction of this DPS. An area of about 1,522 nmi² corresponding to a Navy testing and training area off the coast of Washington (QRS and buffer) is being proposed for exclusion as a result of national security impacts. While this exclusion does fall within high to very high conservation-value feeding habitat for this DPS, it does fall outside of the recognized feeding BIA and is small relative to the total size of the proposed designation, which extends over 48,459 nmi² of marine waters off of Washington, Oregon, and California. Therefore, we conclude that this proposed exclusions will not result in the extinction of this DPS.

The boundary for Unit 18 (Channel Island Area) was also adjusted so that the footprint of the SNI INRMP (around Begg Rock) and of the NBVC Point Mugu INRMP (*i.e.,* waters around San Miguel and Prince Islands) are not included in the proposed designation, as these areas were determined to be ineligible for designation as critical habitat under section 4(a)(3)(B)(i) of the ESA. We have not identified any unoccupied areas that are essential to the conservation of the CAM DPS, thus we are not proposing to designate any unoccupied areas.

For the threated MX DPS of humpback whales, we propose to designate 175,812 nmi² of marine habitat off the coasts of Alaska, Washington, Oregon, and California as occupied critical habitat. (The proposed designation encompasses Units 1–6, 8, most of Unit 10, part of Unit 11, and Units 12–18; Figure 1.) The areas being proposed for designation are seasonal feeding areas that contain the essential prey feature, and are critical in supporting population growth and recovery of this wide-ranging threatened DPS. A total of 32,097 nmi² of marine habitat is proposed for exclusion, because the benefits of exclusion were found to outweigh the benefits of inclusion of these areas. Specifically, the limited conservation benefits of designating the relevant specific areas (*i.e.,* Unit 7—Kenai Peninsula Area, Unit 9—Northeastern Gulf of Alaska, and Unit 19—California south Coast Area) were found to be outweighed by the economic impact of designating these areas. Given the limited conservation benefits of designating these areas, exclusion of these areas will not result in extinction of this DPS. About 1,570 nmi² of marine habitat corresponding to two Navy areas, one in Southeast Alaska (SEAFAC) and one off the coast of Washington (QRS) are being proposed for exclusion as a result of national security impacts. Although these proposed exclusions are within feeding habitat of medium and high conservation value for this DPS, they are both outside of recognized BIAs, and they comprise a small area relative to the total size of the proposed designation, which includes coastal marine waters off Alaska, Washington, Oregon, and California. Therefore, we conclude that these proposed exclusions will not result in the extinction of the MX DPS.

As described above for the CAM DPS, the boundary for Unit 18 (Channel Island Area) was also adjusted so that the footprint of the SNI INRMP (around Begg Rock) and of the NBVC Point Mugu INRMP (*i.e.,* waters around San Miguel and Prince Islands) are not included in the proposed designation, as these areas were determined to be ineligible for designation as critical habitat under section 4(a)(3)(B)(i) of the ESA. We have not identified any unoccupied areas that are essential to the conservation of the MX DPS, thus we are not proposing to designate any unoccupied areas.

Effects of Critical Habitat Designations

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to ensure that any action authorized, funded or carried out by the agency (agency action) is not likely to jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. Federal agencies must consult with us on any proposed agency action that may affect the listed species or its critical habitat. During interagency consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issue our finding in a biological opinion. The potential effects of a proposed action may depend on, among other factors, the specific timing and location of the action relative to seasonal presence of essential features or seasonal use of critical habitat by the listed species for essential life history functions. While the requirement to consult on an action that may affect critical habitat applies regardless of the season, NMFS addresses the varying spatial and temporal considerations when evaluating the potential impacts of a proposed action during consultation. If we conclude in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, we would also recommend any reasonable and prudent alternatives to the action.

Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat. The Service may also provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some Federal agencies may request reinitiation of consultation or conference with NMFS on actions for which formal consultation has been completed, if those actions may affect designated critical habitat for the WNP, CAM, or MX DPSs of humpback whales.

Activities subject to the ESA section 7 consultation process include activities on Federal lands, as well as activities requiring a permit or other authorization from a Federal agency (*e.g.,* a section 10(a)(1)(B) permit from NMFS), or some other Federal action, including funding (*e.g.,* Federal Emergency Management Agency funding). ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat, and would not be required for actions on non-Federal and private lands that are not carried out, funded, or authorized by a Federal agency.

Activities That May Be Affected

ESA section 4(b)(8) requires, to the maximum extent practicable, in any proposed regulation to designate critical habitat, an evaluation and brief

description of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect the proposed critical habitat and may be subject to the ESA section 7 consultation processes when carried out, funded, or authorized by a Federal agency. These include: (1) Federal fisheries, (2) oil and gas activities (including seismic surveys), (3) alternative energy development, (4) in-water construction (including dredging and offshore mining), (5) vessel traffic (specifically, activities related to establishment of the shipping lanes established by the USCG), (6) aquaculture, (7) military activities, (8) LNG terminal activities, (9) space vehicle and missile launches, (10) water quality management (including pesticide registration, establishment of water quality standards, and Clean Water Act general permits), (11) U.S. Forest Service activities (related to timber and forest management), and (12) inland activities (including power plant operations, land management pesticide/herbicide application, and NPDES permitting).

Private or non-Federal entities may also be affected by the proposed critical habitat designation if there is a Federal nexus in that a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. These activities would need to be evaluated with respect to their potential to destroy or adversely modify humpback whale critical habitat. As noted in the solicited comments section below, NMFS also requests information on the types of non-Federal activities that may be affected by this rulemaking.

Public Comments Solicited

To ensure the final action resulting from this proposed rule will be as accurate and effective as possible, we solicit comments and information from the public, other concerned government agencies, Federally recognized tribes and organizations, the scientific community, industry, non-governmental organizations, and any other interested party concerning the proposed designations of critical habitat for the WNP, CAM, and MX DPSs of humpback whales. In particular, we are interested in data and information regarding the following: (1) The distribution and habitat use of whales of the WNP, CAM, or MX DPS in coastal waters within the North Pacific; (2) the relative conservation value of the 19 specific units of critical habitat to the specific, relevant DPSs of humpback whales that occur in each area; (3) how medium conservation value areas were assessed and weighed relative to the impacts associated with designating these particular areas (*i.e.,* should the designation include particular medium conservation-value areas or exclude them?); (4) the boundaries of the specific areas and of the proposed critical habitats; (5) the nearshore distribution of humpback whales in waters off Alaska, and whether the benefits of excluding areas closest to shore outweigh the benefits associated with designating these areas; and, if nearshore areas are excluded, what would be an appropriate distance; (6) information regarding potential benefits of designating any particular area as critical habitat; (7) information regarding the types of Federal actions that may trigger an ESA section 7 consultation and the possible modifications that may be required of those activities; (8) information regarding current or planned activities in the areas proposed as critical habitat, including both Federal and non-Federal activities, that may be impacted by the proposed critical habitat designation; (9) any foreseeable economic, national security, Tribal, or other relevant impact resulting from the proposed designations, including costs arising from project delays due to section 7 consultations; (10) whether any data used in the economic analysis needs to be updated; (11) additional costs arising specifically from humpback whale critical habitat that have not been identified in the Draft Economic Analysis or improved costs estimates for activities that are included in the Draft Economic Analysis; (12) additional information regarding impacts on small businesses and Federally recognized tribes that were not identified in the Draft Economic Analysis or the initial regulatory flexibility analysis; and, (13) any information relevant to potential exclusions of particular areas that are smaller than those considered (*e.g.,* a particular area encompassing the San Francisco Traffic Separation Scheme). To the extent possible, we request that the data or information provided be clearly specific to one or more of the DPS addressed in this proposed rule.

You may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The proposed rule and supporting documentation can be found on the Federal e-Rulemaking Portal at *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0066.* In preparing the final rule, we will consider all comments pertaining to the proposed designations received during the comment period. Accordingly, the final decision may differ from this proposed rule.

Public Hearings

Agency regulations at 50 CFR 424.16(c)(3) require the Secretary to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed rule to designate critical habitat. Public hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters. Public hearings and the dates and specific locations for these hearings will be announced in a separate **Federal Register** notice. Requests for additional public hearings must be made in writing (see **ADDRESSES**) by November 25, 2019.

References Cited

A complete list of all references cited in this proposed rule can be found on the Federal e-Rulemaking Portal at *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0066,* and is available upon request from the NMFS Office of Protected Resources (see **ADDRESSES**).

Classifications

National Environmental Policy Act

We have determined that an environmental analysis as provided for under the National Environmental Policy Act of 1969 for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). We have prepared an initial regulatory flexibility analysis (IRFA), which is provided in chapter 5 of the Draft Economic Analysis (IEc 2019a). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is summarized below.

As discussed previously in this preamble and in our IRFA (see chapter 5 of IEc 2019a), the designation of critical habitat is required under the ESA, and in this particular case, is also required pursuant to a court-approved settlement agreement. Section 4 of the ESA, requires us to designate, to the maximum extent prudent and determinable, the specific areas that contain the physical or biological features essential to the conservation of the species and that may require special management considerations or protections. This proposed critical habitat rule does not directly apply to any particular entity, small or large. The rule would operate in conjunction with ESA section 7(a)(2), which requires that Federal agencies ensure, in consultation with NMFS, that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Consultations may result in economic impacts to Federal agencies and proponents of proposed actions (*e.g.,* permittees, applicants, grantees). Those economic impacts may be in the form of administrative costs of participating in a section 7 consultation and, if the consultation results in required measures to protect critical habitat, project modification costs.

This proposed rule will not impose any recordkeeping or reporting requirements on small entities. The critical habitat designations would require that Federal agencies initiate a section 7 consultation to ensure their actions do not destroy or adversely modify critical habitat. During formal consultation under the ESA, there may be communication among NMFS, the action agency, and a third party participant applying for Federal funding or permitting in an effort to minimize potential adverse impacts to the habitat or essential feature. Communication may include written letters, phone calls, and/or meetings. Project variables such as the type of consultation, the location of the activity, impacted essential features, and activity of concern, may in turn dictate the complexity of these interactions. Third party costs may include administrative work, such as cost of time and materials to prepare for letters, calls, or meetings. The cost of analyses related to the activity and associated reports may be included in these administrative costs. In addition, following the section 7 consultation process, as a requirement of the funding or permit received from the Federal action agency, entities may be required to monitor progress during the said activity to ensure that impacts to the habitat and features have been minimized.

The proposed rule will not duplicate or conflict with any other laws or regulations. However, the protection of listed species and habitat under critical habitat may overlap other sections of the ESA. The protections afforded to threatened and endangered species and their habitat are described in section 7, 9, and 10 of the ESA. A final determination to designate critical habitat requires Federal agencies to consult, pursuant to section 7 of the ESA, with NMFS on any activities the Federal agency funds, authorizes, or carries out, including permitting, approving, or funding non-Federal activities (*e.g.,* a Clean Water Act, Section 404 dredge or fill permit from USACE). The requirement to consult is to ensure that any Federal action authorized, funded, or carried out will not likely jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. The incremental impacts contemplated in this IRFA are expected to result from the critical habitat designation and not from other Federal regulations.

While we do not here prejudge the outcome of any interagency consultation, the best available information supports the conclusion that for most, if not all, of the Federal activities predicted to occur over the time horizon of the analysis (*i.e.,* in the next 10 years), if the effects to critical habitat will be adverse and require formal consultation, those effects are also expected to constitute adverse effects to listed humpback whales or other listed species or designated critical habitat, either directly or indirectly. Thus, as discussed previously, projects that might adversely affect the proposed essential feature and proposed humpback whale critical habitat are not expected to result in incremental project modification costs. Therefore, the only costs of this class of actions that are attributable to this rule are the administrative costs of adding critical habitat analyses to a consultation that would otherwise occur anyway.

The designation of critical habitat humpback whales is expected to have a limited economic impact, on the order of $6,900–$9,700 annualized over ten years (at a 7 percent discount rate) for the WNP DPS, $42,000–$43,000 for the CAM DPS, and $64,000–$75,000 for the MX DPS. The nature of these costs are administrative efforts to consider potential for adverse modification as part of future ESA section 7 consultations. Primarily, consultations are between NMFS and Federal action agencies to evaluate the potential for projects and activities to result in adverse modification of critical habitat. Therefore, most incremental impacts are borne by NMFS and other Federal agencies and not by private entities or small governmental jurisdictions. However, some consultations may include third parties (*e.g.,* project proponents or landowners) that may be small entities.

The best available information was used to identify the potential impacts of critical habitat on small entities. However, there are uncertainties that complicate quantification of these impacts, particularly with respect to the extent to which the quantified impacts may be borne by small entities. As a result, the IRFA employed a conservative approach (*i.e.,* more likely to overestimate than underestimate impacts to small entities) in assuming that the quantified costs that are not borne by the Federal government are borne by small entities. Because the critical habitat under consideration occurs in marine waters, the analysis also focused on small entities located in counties along the Pacific Coast of California, Oregon, and Washington, and in coastal counties in Alaska.

For all activities categories relevant to this analysis except in-water and coastal construction (*i.e.,* commercial fishing, oil and gas, alternative energy, aquaculture, LNG facilities, water quality management, and inland activities), the expected costs borne by third parties in related industries is expected to be negligible. For each of these activities, two or fewer consultations are anticipated per year spread across the area that was under consideration for humpback whale critical habitat. As a result, the annualized incremental costs that may be borne by small entities in related industries is estimated to be less than $2,200. The analysis, therefore, focused on the costs of consultations on in-water and coastal construction activities, which occur more frequently within the critical habitat area. As described in chapter 5 of the DEA (IEc 2019a), approximately eight consultations per year focus on in-water and coastal construction activities. The majority of these (six per year) are concentrated within critical habitat Unit 10 in Alaska. As such, the analysis focused on the small businesses and government jurisdictions in the region surrounding critical habitat Unit 10.

Relevant businesses in North American Industry Classification

System (NAICS) included the following industry sectors: Sand, Gravel, Clay and Ceramic Mining and Quarrying; Water and Sewer Line and Related Structures Construction; Oil and Gas Pipeline and Related Structures Construction; Power and Communication Line and Related Structures Construction; Highway, Street, and Bridge Construction; Other Heavy and Civil Engineering Construction; Dredging and Surface Cleanup Activities. Along with private businesses, there also may be consultations for which small governmental jurisdictions (*i.e.,* jurisdictions with populations of less than 50,000 people) are the third parties participating in the consultations rather than businesses. The IRFA identified 21 small government jurisdictions adjacent to critical habitat units that may be involved in future consultations. Seven of these areas—Juneau Borough, Sitka Borough, Haines Borough, Ketchikan Gateway Borough, Prince of Wales-Outer Ketchikan Census Area, Skagway-Hoonah-Angoon Census Area, and Wrangell-Petersburg Census Area—are adjacent to critical habitat Unit 10.

Ultimately, based on the IRFA, up to eight small entities per year may bear costs associated with participation in consultation regarding humpback whale critical habitat. The total annualized administrative costs that may be borne by these small entities (businesses or governments) engaged in in-water and coastal construction activities is $4,900 (discounted at seven percent). Across all in-water and coastal construction NAICS codes, the average annual revenues are $1.3 million for the small businesses identified. As a result, the total estimated annualized administrative costs of $4,900 represent less than 0.4 percent of average annual revenues at these businesses.

The RFA, as amended by SBREFA, requires us to consider alternatives to the proposed regulation that will reduce the impacts to small entities. We considered three alternatives. First, we considered the alternative of not designating critical habitat for any of the three humpback whale DPSs. This alternative would impose no additional economic, national security or other relevant impacts. However, after compiling and reviewing the biological information for these DPSs, we rejected this alternative because it would violate section 4 of the ESA, which specifically requires that we designate critical habitat to the maximum extent prudent and determinable based on consideration of the best available scientific information. A second alternative we considered was to propose to designate all areas meeting the ESA section 3 definition of critical habitat. However, following our consideration of probable national security, economic, and other relevant impacts of designating all the specific areas, we rejected this alternative. In particular, and as described in our Draft Section 4(b)(2) Report, we determined that the benefits of excluding some specific areas outweighed the conservation benefits of designating those specific areas, and thus, pursuant to section 4(b)(2) of the ESA, we are exercising our discretion to propose to exclude some of the specific areas for each of the three DPSs (see NMFS 2019b). A third alternative of designating a subset of the specific areas meeting statutory definition of critical habitat was considered and is the preferred alternative. As stated previously, under section 4(b)(2) of the ESA, we have the discretion to exclude a particular area from designation as critical habitat even though it meets the definition of ''critical habitat'' if the benefits of exclusion (*i.e.,* the impacts that would be avoided if an area was excluded from the designation) outweigh the benefits of designation (*i.e.,* the conservation benefits to the humpback whale if an area was designated), so long as exclusion of the area will not result in extinction of the species. Exclusion under section 4(b)(2) of the ESA of one or more of the areas considered for designation would reduce the total impacts of designation. This alternative—which is the approach taken in the proposed rule—would result in a critical habitat designation that provides for the conservation of the species while potentially reducing the economic, national security and other relevant impacts on entities.

Coastal Zone Management Act

Under section 307(c)(1)(A) of the Coastal Zone Management Act (CZMA) (16 U.S.C. 1456(c)(1)(A)) and its implementing regulations, each Federal activity within or outside the coastal zone that has reasonably foreseeable effects on any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State coastal management programs. We have determined that the proposed designation of critical habitat designation for the CAM and MX DPSs of humpback whales is consistent to the maximum extent practicable with the enforceable policies of the approved Coastal Zone Management Programs of Washington, Oregon, and California. This determination has been submitted to the responsible agencies in the aforementioned states for review.

By operation of Alaska State law, the Federally approved Alaska Coastal Management Program expired on July 1, 2011, resulting in a withdrawal from participation in the CZMA's National Coastal Management Program (76 FR 39857, July 7, 2011). The CZMA Federal consistency provision, section 307, no longer applies in Alaska.

Paperwork Reduction Act

The purpose of the Paperwork Reduction Act is to minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, and other persons resulting from the collection of information by or for the Federal government. This proposed rule does not contain any new or revised collection of information. This rule, if adopted, would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

The designation of critical habitat does not impose an ''enforceable duty'' on state, local, tribal governments, or the private sector and therefore does not qualify as a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an ''enforceable duty'' upon non-Federal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.''

This proposed rule will not produce a Federal mandate. The designation of critical habitat does not impose an enforceable or legally-binding duty on non-Federal government entities or private parties. The only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7 of the ESA. Non-Federal entities that receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, but the Federal agency has the legally binding duty to avoid destruction or adverse modification of critical habitat. We do not find that this proposed rule would significantly or uniquely affect small governments because it is not likely to produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. In addition, the designation of critical

habitat imposes no obligations on local, state or tribal governments. Therefore, a Small Government Agency Plan is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

As all of the specific areas under consideration as potential critical habitat area were located seaward of the coast line, we preliminarily found that there were no Indian lands subject to consideration for possible exclusion. However, the areas we were considering as potential critical habitat overlap with areas used by Indian tribes and Alaska Natives for subsistence, cultural, usual and accustomed fishing, or other purposes. Thus, consistent with the Secretarial Order (#3206), *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,* and Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (2000), we notified Native corporations and tribal governments early on in the process to develop this proposed rule to provide time for meaningful consultation and/or collaboration with appropriate staffs to inform any proposed critical habitat designation. Specifically, we contacted potentially affected tribes and Native groups by mail and offered them the opportunity to consult on and discuss any concerns regarding the designation of critical habitat for humpback whales. We received no requests for consultation in response to this mailing. However, in November 2018, we received requests for technical-to-technical meetings from the Quileute Tribe and the Quinault Indian Nation.

A technical meeting with representatives from the Quinault Indian Nation was held on December 14, 2018, to share information and discuss concerns regarding a designation of critical habitat for humpback whales. Immediately following that meeting, we provided additional materials and maps to the Quinault representatives. We did not receive any further correspondence from the Quinault Indian Nation. We made several attempts to schedule the requested meeting with the Quileute Tribe; however, we did not receive further correspondence in response to our last effort to schedule a meeting. If we receive any additional requests in response to this proposed rule, we will individually respond to each request prior to issuing a final rule. However, at this time and on the basis of the foregoing communications, it does not appear that this designation will have ''tribal implications'' (defined as having a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes) such as would trigger a requirement to conduct Government to Government consultations.

Information Quality Act and Peer Review

The data and analyses supporting this proposed action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (Section 515 of Pub. L. 106–554).

On December 16, 2004, the Office of Management and Budget (OMB) issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of ''influential scientific information'' and ''highly influential scientific information'' prior to public dissemination. ''Influential scientific information'' is defined as ''information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of ''highly influential scientific assessments,'' defined as information whose ''dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.''

The information in the Draft Biological Report (NMFS 2019a) and the DEA (IEc 2019a) supporting this proposed critical habitat rule are considered influential scientific information and subject to peer review. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the information used to draft both of these reports, and incorporated the peer reviewer comments as applicable into the draft reports prior to dissemination of this proposed rulemaking. Comments received from peer reviewers of the DEA and the Draft Biological Report are available online at *https://www.cio.noaa.gov/services_programs/prplans/ID404.html* and *https://www.cio.noaa.gov/services_programs/prplans/ID400.html,* respectively.

Executive Order 12630, Takings

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property that substantially affect its value or use. In accordance with E.O. 12630, the proposed rule does not have significant takings implications. The designation of critical habitat affects only Federal agency actions. Further, no areas of private property exist within the proposed critical habitat and therefore none would be affected by this action. Therefore, a takings implication assessment is not required.

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

OMB has determined that this proposed rule is significant for purposes of E.O. 12866 review. A Draft Economic Report (IEc 2019a) and Draft ESA Section 4(b)(2) Report (NMFS 2019b) have been prepared to support the exclusion process under section 4(b)(2) of the ESA and our consideration of alternatives to this rulemaking as required under E.O. 12866. To review

these documents, see the **ADDRESSES** section above.

Based on the Draft Economic Report (IEc 2019a), the total estimated present value of the quantified incremental impacts of the proposed critical habitat designation for the WNP DPS are approximately $61,000–$85,000 over the next 10 years. Assuming a 7 percent discount rate on an annualized basis, the impacts are estimated to be $6,900–$9,700 per year. These total impacts include the additional administrative efforts necessary to consider critical habitat in section 7 consultations. These impacts are also not additive with those associated with the MX DPS, as the areas proposed for the WNP DPS are entirely overlapping with areas being proposed for the MX DPS. Overall, economic impacts are expected to be small and largely associated with the administrative costs borne by Federal agencies. While there are expected beneficial economic impacts of designating critical habitat for the WNP DPS, insufficient data are available to monetize those impacts (see Benefits of Designation section).

Based on the Draft Economic Report (IEc 2019a), the total estimated present value of the quantified incremental impacts of the proposed critical habitat designation for the CAM DPS are approximately $370,000–$380,000 over the next 10 years. Assuming a 7 percent discount rate on an annualized basis, the impacts are estimated to be $42,000–$43,000 per year. These total impacts include the additional administrative efforts necessary to consider critical habitat in section 7 consultations. These impacts are also not additive with those associated with the MX DPS, as the areas proposed for the CAM DPS are entirely overlapping with areas being proposed for the MX DPS. Overall, economic impacts are expected to be small and largely associated with the administrative costs borne by Federal agencies. While there are expected beneficial economic impacts of designating critical habitat for the CAM DPS, insufficient data are available to monetize those impacts (see Benefits of Designation section).

Based on the Draft Economic Report (IEc 2019a), the total estimated present value of the quantified incremental impacts of the proposed critical habitat designation for the MX DPS are approximately $570,000–$660,000 over the next 10 years. Assuming a 7 percent discount rate on an annualized basis, the impacts are estimated to be $64,000–$75,000 per year. These total impacts include the additional administrative efforts necessary to consider critical habitat in section 7 consultations. Overall, economic impacts are expected to be small and largely associated with the administrative costs borne by Federal agencies. These impacts are also not additive with those associated with the WNP and CAM DPSs, as the areas proposed for the MX DPS are almost entirely overlapping with areas being proposed for another DPS. Because the proposed designation for the this DPS extends over all other areas proposed as critical habitat for the other two DPSs, the estimated economic impacts associated with the proposed designation for the MX DPS actually represent the total estimated impacts across all DPSs. As with the other DPSs, there are expected beneficial economic impacts of designating critical habitat for the MX DPS; however, insufficient data are available to monetize those impacts (see Benefits of Designation section).

This proposed rulemaking is expected to be considered ''regulatory'' under E.O. 13771.

Executive Order 13132, Federalism

Executive Order 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations in which a regulation may preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Pursuant to E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. The designation of critical habitat directly affects only the responsibilities of Federal agencies. As a result, the proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. State or local governments may be indirectly affected by the proposed designation if they require Federal funds or formal approval or authorization from a Federal agency as a prerequisite to conducting an action. In these cases, the State or local government agency may participate in the section 7 consultation as a third party. However, in keeping with Department of Commerce policies and consistent with ESA regulations at 50 CFR 424.16(c)(1)(ii), we will request information for this proposed rule from the appropriate state resources agencies in Alaska, Washington, Oregon, and California.

Executive Order 13211, Energy Supply, Distribution, and Use

E.O. 13211 requires agencies to prepare a Statement of Energy Effects when undertaking a significant energy action. Under E.O. 13211, a significant energy action means any action by an agency that is expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. We have considered the potential impacts of this proposed action on the supply, distribution, or use of energy and find that the designation of critical habitat would not have impacts that exceed the thresholds identified in OMB's memorandum M–01–27, Guidance for Implementing E.O. 13211. Thus, this proposed designation, if finalized, would not have a significant adverse effect within the meaning of the executive order. The energy impacts analysis is presented in chapter 5 of the Draft Economic Analysis (IEc 2019a).

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 226

Endangered and threatened species.

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 parts 223, 224, and 226 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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

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

■ 2. In § 223.102, in paragraph (e), add a new citation, in alphabetical order, under the critical habitat column for the ''whale, humpback (Mexico DPS)'' under Marine Mammals to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					
*	*	*	*	*	*
Whale, humpback (Mexico DPS).	*Megaptera novaeangliae.*	Humpback whales that breed or winter in the area of mainland Mexico and the Revillagigedo Islands, transit Baja California, or feed in the North Pacific Ocean, primarily off California-Oregon, northern Washington-southern British Columbia, northern and western Gulf of Alaska and East Bering Sea.	81 FR 62260, Sept. 8, 2016.	*[Insert 226.227]*	223.213
*	*	*	*	*	*

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

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 4. In § 224.101, in the table in paragraph (h), add a new citation, in alphabetical order, under the critical habitat column for ''Whale, humpback (Central America DPS)'' and ''Whale, humpback (Western North Pacific DPS) under the Marine Mammals heading to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					
*	*	*	*	*	*
Whale, humpback (Central America DPS).	*Megaptera novaeangliae.*	Humpback whales that breed in waters off Central America in the North Pacific Ocean and feed along the west coast of the United States and southern British Columbia.	81 FR 62260, Sept. 8, 2016.	*[Insert 226.227].*	
Whale, humpback (Western North Pacific DPS).	*Megaptera novaeangliae.*	Humpback whales that breed or winter in the area of Okinawa and the Philippines in the Kuroshio Current (as well as unknown breeding grounds in the Western North Pacific Ocean), transit the Ogasawara area, or feed in the North Pacific Ocean, primarily in the West Bering Sea and off the Russian coast and the Aleutian Islands.	81 FR 62260, Sept. 8, 2016.	*[Insert 226.227].*	
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).
[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

PART 226—DESIGNATED CRITICAL HABITAT

■ 5. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 6. Add § 226.227, to read as follows:

§ 226.227 Critical habitat for the Central America, Mexico, and Western North Pacific distinct population segments (DPSs) of humpback whales (*Megaptera novaeangliae*).

Critical habitat is designated for the Central America, Mexico, and Western North Pacific humpback whale DPSs as described in this section. The maps, clarified by the textual descriptions in this section, are the definitive source for determining the critical habitat boundaries.

(a) *List of States and Counties.* Critical habitat is designated in waters off the coast of the following states and counties for the listed humpback whale DPSs:

DPS	State-counties
(1) Central America	(i) WA—Clallam, Jefferson, Grays Harbor, Pacific. (ii) OR—Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, and Curry. (iii) CA—Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura.
(2) Mexico	(i) AK—Bristol Bay, Lake and Peninsula, Aleutians East, Aleutian West, Kodiak Island, Kenai Peninsula, Valdez-Cordova, unorganized boroughs, Skagway-Hoonah-Angoon, Haines, Juneau, Sitka, Petersburg, Wrangell, Ketchikan Gateway. (ii) WA—Clallam, Jefferson, Grays Harbor, Pacific.

DPS	State-counties
	(iii) OR—Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, and Curry.
	(iv) CA—Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura.
(3) Western North Pacific	AK—Bristol Bay, Lake and Peninsula, Aleutians East, Aleutian West, Kodiak Island, Kenai Peninsula.

(b) *Critical habitat boundaries for the Central America DPS.* Critical habitat for the Central America DPS includes all marine waters within the designated areas as shown by the maps, including those prepared and made available by NMFS pursuant to 50 CFR 424.18.

(1) *Washington.* The nearshore boundary is defined by the 50-m isobath, and the offshore boundary is defined by the 1,200-m isobath relative to MLLW. Critical habitat also includes waters within the U.S. portion of the Strait of Juan de Fuca to an eastern boundary line at Angeles Point at 123°33′ W.

(2) *Oregon.* The nearshore boundary is defined by the 50-m isobath. The offshore boundary is defined by the 1,200-m isobath relative to MLLW; except, in areas off Oregon south of 42°10′, the offshore boundary is defined by the 2,000-m isobath.

(3) *California.* The nearshore boundary is defined by the 50-m isobath relative to MLLW except, from 38°40′ N to 36°00′ N, the nearshore boundary is defined by the 15-m isobath relative to MLLW; and from 36°00′ N to 34°30′ N, the nearshore boundary is defined by the 30-m isobath relative to MLLW. North of 40°20′ N, the offshore boundary of the critical habitat is defined by a line corresponding to the 2,000-m isobath, and from 40°20′ N to 38°40′ N, the offshore boundary is defined by the 3,000-m isobath. From 38°40′ N southward, the remaining areas have an offshore boundary defined by a line corresponding to the 3,700-m isobath.

(c) *Critical habitat boundaries for Mexico DPS.* Critical habitat for the Mexico DPS of humpback whales includes all marine waters within the designated areas as shown by the maps, including those prepared and made available by NMFS pursuant to 50 CFR 424.18.

(1) *Alaska.* The nearshore boundaries are generally defined by the 1-m isobath relative to mean lower low water (MLLW). In Bristol Bay and on the north side of the Aleutian Islands, the seaward boundary of the critical habitat is defined by a line extending due west from Egegik (at 58°14′ N, 157°28′ W) out to 58°14′ N, 162°0′ W, then southwest to 57°25′ N, 163°29′, then southward to 55°41 N, 162°41′ W; and from this point, west to 55°41′ N, 169°30′ W, then southward through Samalga Pass to a boundary drawn along the 2,000-m isobath on the south side of the islands. This isobath forms the southern boundary of the critical habitat, eastward to 164°25′ W. The 1,000-m isobath forms the offshore boundary for the remainder of the critical habitat (along Aleutian Island and in the Gulf of Alaska areas), except in Southeast Alaska, where the offshore boundary extends out the 2,000-m isobath. Critical habitat extends into Cook Inlet as far north as 60°20′ N, just south of Kalgin Island.

(2) *Washington.* The nearshore boundary is defined by the 50-m isobath, and the offshore boundary is defined by the 1,200-m isobath relative to MLLW. Critical habitat also includes waters within the U.S. portion of the Strait of Juan de Fuca to an eastern boundary line at Angeles Point at 123°33′ W.

(3) *Oregon.* The nearshore boundary is defined by the 50-m isobath. The offshore boundary is defined by the 1,200-m isobath relative to MLLW; except, in areas off Oregon south of 42°10′, the offshore boundary is defined by the 2,000-m isobath.

(4) *California.* The nearshore boundary is defined by the 50-m isobath relative to MLLW except, from 38°40′ N to 36°00′ N, the nearshore boundary is defined by the 15-m isobath relative to MLLW; and from 36°00′ N to 34°30′ N, the nearshore boundary is defined by the 30-m isobath relative to MLLW. North of 40°20′ N, the offshore boundary of the critical habitat is defined by a line corresponding to the 2,000-m isobath, and from 40°20′ N to 38°40′ N, the offshore boundary is defined by the 3,000-m isobath. From 38°40′ N southward, the remaining areas have an offshore boundary defined by a line corresponding to the 3,700-m isobath.

(d) *Critical habitat boundaries for Western North Pacific DPS.* Critical habitat for the Western North Pacific DPS of humpback whales includes all marine waters within the designated areas as shown by the maps, including those prepared and made available by NMFS pursuant to 50 CFR 424.18.

(1) *Alaska.* The nearshore boundaries are generally defined by the 1-m isobath relative to mean lower low water (MLLW). In Bristol Bay and on the north side of the Aleutian Islands, the seaward boundary of the critical habitat is defined by a line extending due west from Egegik (at 58°14′ N, 157°28′ W) out to 58°14′ N, 162°0′ W, then southwest to 57°25′ N, 163°29′, then southward to 55°41 N, 162°41′ W; and from this point, west to 55°41′ N, 169°30′ W, then southward through Samalga Pass to a boundary drawn along the 2,000-m isobath on the south side of the islands. This isobath forms the southern boundary of the critical habitat, eastward to 164°25′ W. From this point, the 1,000-m isobath forms the offshore boundary, which extends eastward to 158°39′ W. Critical habitat also includes the waters around Kodiak Island and the Barren Islands. The western boundary for this area runs southward along 154°54′ W to the 1,000-m depth contour, and then extends eastward to a boundary at 150°40′ W. The area also extends northward to the mouth of Cook Inlet where it is bounded by a line that extends from Cape Douglas across the inlet to Cape Adam.

(e) *Essential feature.* Prey species, primarily euphausiids and small pelagic schooling fishes of sufficient quality, abundance, and accessibility within humpback whale feeding areas to support feeding and population growth.

(f) *Sites owned or controlled by the Department of Defense.* Critical habitat does not include the following particular areas owned or controlled by the Department of Defense, or designated for its use, where they overlap with the areas described in paragraph (b) of this section:

(1) Pursuant to ESA section 4(a)(3)(B), all areas subject to the Naval Base Ventura County, Point Mugu, CA, and the Naval Outlying Field, San Nicolas Island, CA approved Integrated Natural Resource Management Plans (INRMPs);

(2) Pursuant to ESA section 4(b)(2), the Quinault Range Site (QRS) with an additional 10-km buffer around QRS and the Southeast Alaska Acoustic Measurement Facility (SEAFAC).

(g) *Maps of humpback whale critical habitat.*

(1) Overview map of critical habitat for the Central America DPS of humpback whales:

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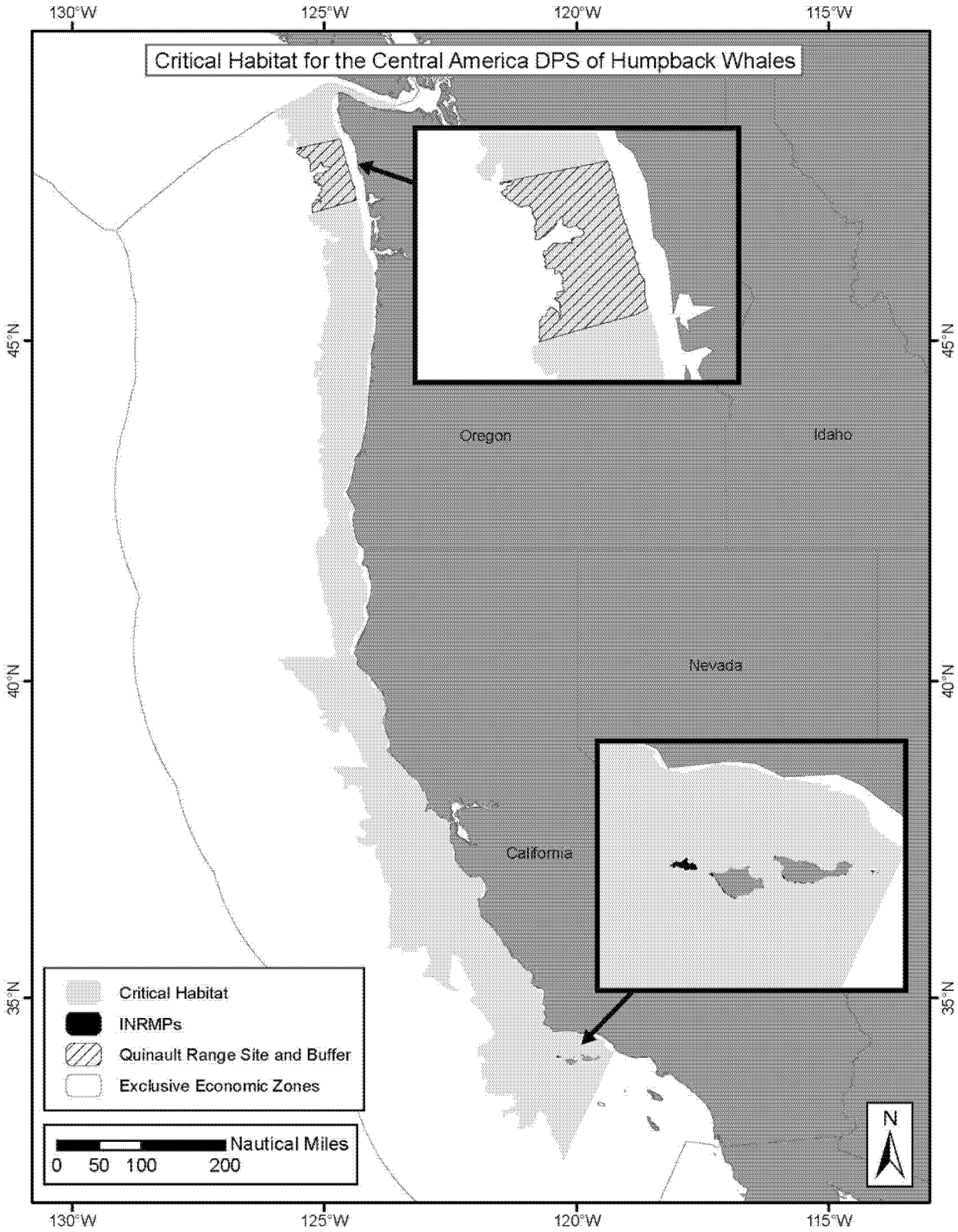
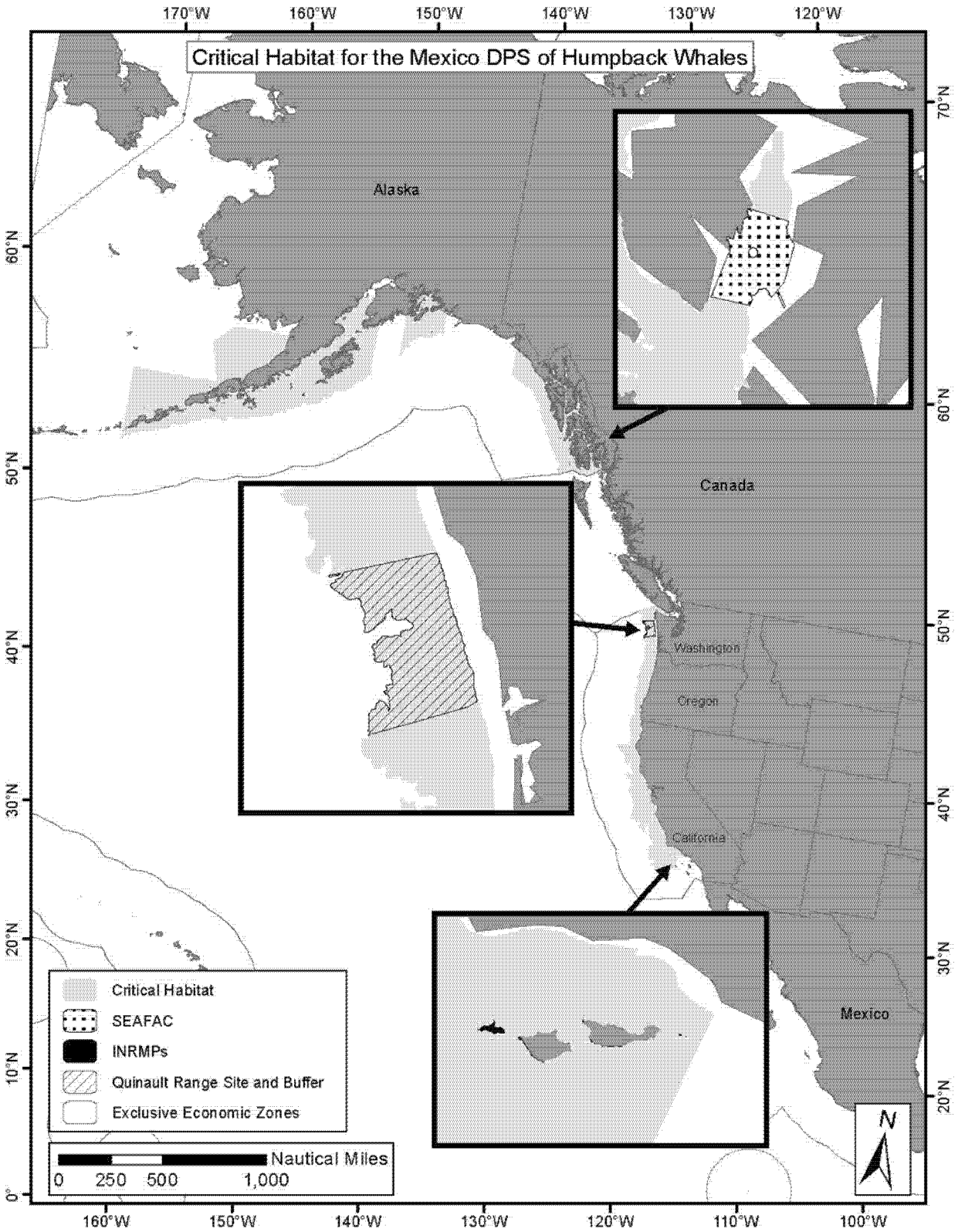
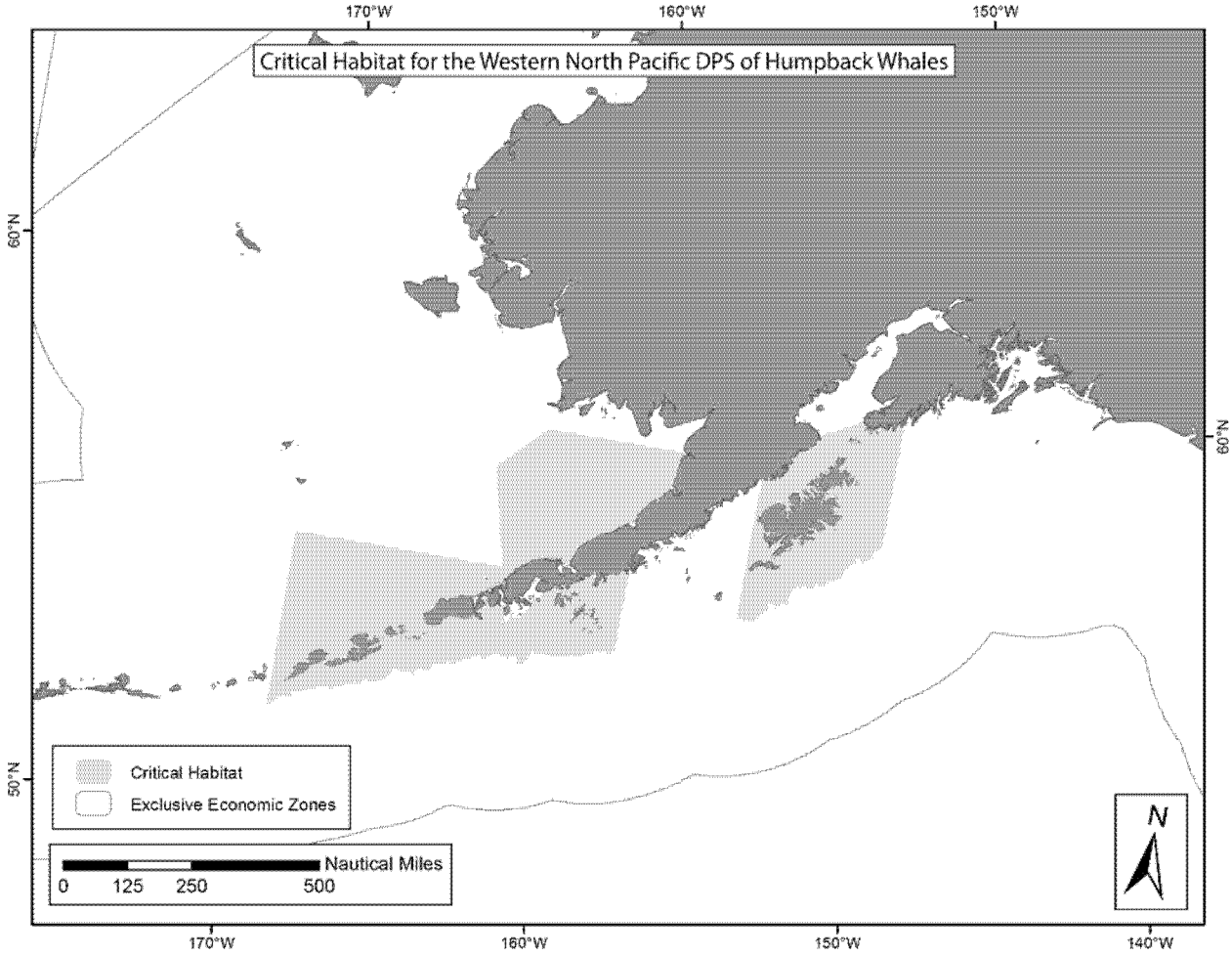


(2) Overview map of critical habitat for the Mexico DPS of humpback whales:



(3) Overview map of critical habitat for the Western North Pacific DPS of humpback whales:



[FR Doc. 2019–21186 Filed 10–8–19; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Iron and Steel Foundries Residual Risk and Technology Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2019–0373; FRL–10000–13–OAR]

RIN 2060–AT30

National Emission Standards for Hazardous Air Pollutants: Iron and Steel Foundries Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action presents the proposed results of the U.S. Environmental Protection Agency's (EPA's) residual risk and technology review (RTR) required under the Clean Air Act (CAA) for the National Emission Standards for Hazardous Air Pollutants (NESHAP) for major source Iron and Steel Foundries, initially promulgated in 2004 and amended in 2008. Pursuant to the CAA, this action also presents the proposed results of the technology review for the NESHAP for area source Iron and Steel Foundries, initially promulgated in 2008. In this proposed action, the EPA is also proposing to remove exemptions for periods of startup, shutdown, and malfunction (SSM) and specify that the emissions standards apply at all times; require electronic reporting of performance test results and compliance reports; and make minor corrections and clarifications for a few other rule provisions for major sources and area sources. Implementation of these proposed rules is not expected to result in significant changes to the emissions from iron and steel foundries, human health, or environmental impacts associated with those emissions. However, this action, if finalized, would result in improved monitoring, compliance, and implementation of the existing standards.

DATES: *Comments.* Comments must be received on or before November 25, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 8, 2019.

Public hearing. If anyone contacts us requesting a public hearing on or before October 15, 2019, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/iron-and-steel-foundries-national-emissions-standards-hazardous-air* and *https://www.epa.gov/stationary-sources-air-pollution/iron-and-steel-foundries-national-emission-standards-hazardous-air.* See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2019–0373, 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–2019–0373 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2019–0373.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2019–0373, 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. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Phil Mulrine, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5289; fax number: (919) 541–4991; and email address: *mulrine.phil@epa.gov.* For specific information regarding the risk modeling methodology, contact Ted Palma, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5470; fax number: (919) 541–0840; and email address: *palma.ted@epa.gov.* For questions about monitoring and testing requirements, contact Kevin McGinn, Sector Policies and Programs Division (D230–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3796; fax number: (919) 541–4991; and email address: *mcginn.kevin@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–7027; and email address: *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Adrian Gates at (919) 541–4860 or by email at *gates.adrian@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2019–0373. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. 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 EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2019–0373. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through *https://www.regulations.gov/* or email. 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 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 (CFR) 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–2019–0373.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ERPG emergency response planning guideline
ERT Electronic Reporting Tool
GACT generally available control technology
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.5.5
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
IRIS Integrated Risk Information System
km kilometer
MACT maximum achievable control technology
mg/m^3 milligrams per cubic meter
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
PAH polycyclic aromatic hydrocarbons
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PCS pouring, cooling, and shakeout
PM particulate matter
POM polycyclic organic matter
ppm parts per million
ppmv parts per million by volume
RBLC Reasonably Available Control Technology, Best Available Control Technology, and Lowest Achievable Emission Rate Clearinghouse
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RTR residual risk and technology review
SAB Science Advisory Board
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
UF uncertainty factor
$\mu g/m^3$ microgram per cubic meter
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
USGS U.S. Geological Survey

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
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I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (*see* EPA–450/3–91–030, July 1992), the major source Iron Foundries and Steel Foundries were initially listed as two separately defined source categories. However, in the proposed and final NESHAP for major sources (in 2002 and 2004, respectively), the two source categories were combined into one major source category known as the Iron and Steel Foundries major source category. A single NESHAP (40 CFR part 63, subpart EEEEE) was developed to regulate both iron and steel major source foundries because of the similarities in the processes and because many ferrous foundries produce both iron and steel castings. Subsequently, on June 26, 2002, the EPA added Iron Foundries area sources and Steel Foundries area sources as two separate area source categories to the source category list, and the EPA established one area source NESHAP (40 CFR part 63, subpart ZZZZZ) that applies to the two area source categories. This proposed action addresses the major source NESHAP that applies to the major source Iron Foundries and the major source Steel Foundries and this action also addresses the area source NESHAP that applies to the Iron Foundries area source category and the Steel Foundries area source category. An iron and steel foundry is any facility engaged in the production of final shape ferrous castings from the melting of scrap, ingot, and/or other forms of iron and/or steel and pouring the molten metal into molds. Iron and steel foundries include the following four main process operations: Raw materials handling and preparation, metal melting, mold and core production, and casting and finishing.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Iron and Steel Foundries	40 CFR part 63 subpart EEEEE 40 CFR part 63 subpart ZZZZZ	331511 331512 331513

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/iron-and-steel-foundries-national-emissions-standards-hazardous-air* and *https://www.epa.gov/stationary-sources-air-pollution/iron-and-steel-foundries-national-emission-standards-hazardous-air*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at these same websites. Information on the overall RTR program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

A redline version of the regulatory language that incorporates the proposed changes is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2019–0373).

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of hazardous air pollutants (HAP) from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are ''developments in practices, processes, or control technologies'' that may be appropriate to incorporate into the standards. This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA

promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [1] of approximately 1 in 10 thousand.'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

B. What are the source categories and how do the current NESHAP regulate the HAP emissions?

Iron and steel foundries manufacture metal castings by melting iron and/or steel in a furnace, pouring the molten iron or steel into a mold of a desired shape, allowing the casting to cool (solidify) in the mold, removing the casting from the mold, and finishing (grinding and cleaning) the final cast product. The primary processing units of interest at iron and steel foundries, because of their potential to generate HAP emissions, are the following: Metal melting furnaces; mold and core making lines; pouring, cooling, and shakeout (PCS) lines; and, if present, scrap preheaters. Melting furnaces primarily emit metal HAP. The three types of metal melting furnaces are cupolas (a blast-type furnace), electric arc furnaces, and electric induction furnaces. Mold and core making and PCS lines primarily emit organic HAP. Molds, which define the outer shape of the castings, are primarily made of sand, clay, and water (referred to as ''green sand'') with small amounts of coke added to maintain a reducing atmosphere and prevent oxidation of the metal while it is cooling. Cores, which are used to create internal void spaces in the casting, generally require more mechanical strength than molds and consist of sand mixed with a chemical binder to create a hard, durable form for the internal shapes. Depending on the size and shape of the casting, chemical binders may also be used in the mold sand to increase the strength of the molds. Many of the binder systems contain organic solvents, some of which may volatilize and be emitted when the binder is mixed with the sand (*i.e.,* mold and core making emissions). When the molten metal is poured in the sand molds, the hot metal causes the coke and/or organic chemical binders in the mold/cores to degrade and pyrolyze, which creates a variety of organic HAP emissions during the cooling and subsequent shakeout process (where the hardened casting is removed from the sand molds).

[1] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

The EPA promulgated MACT standards for major source iron and steel foundries on April 22, 2004, under 40 CFR part 63, subpart EEEEE (69 FR 21906). The MACT standards established: Particulate matter (PM) emission limits (as a surrogate for metal HAP) and alternative metal HAP emission limits for metal melting furnaces; triethylamine emission limits from phenolic urethane cold box mold and core making operations and included work practice standards prohibiting methanol to be used as a specific component of furan (also known as furfuryl alcohol) warm box mold and core making lines; and organic HAP emission limits for new and existing cupola melting furnaces and scrap preheaters and for new automated cooling and shakeout lines. For other ancillary sources at the foundry, such as casting finishing, the MACT standards include a building opacity limit. The MACT standards also instituted scrap selection and inspection requirements to limit the amount of mercury, lead, chlorinated plastics, and free liquids present in the scrap fed to metal melting furnaces. There are approximately 45 major source iron and steel foundries in the United States.

The EPA promulgated GACT standards for area source iron and steel foundries on January 2, 2008, under 40 CFR part 63, subpart ZZZZZ (73 FR 252). The area source standards subcategorized foundries by size. Existing area source foundries with annual metal melt production of 20,000 tons or less and new area source foundries with annual metal melt capacity of 10,000 tons or less are defined as ''small'' foundries; area source foundries exceeding these metal melt rates are defined as ''large'' foundries. Small and large area source iron and steel foundries are required to operate according to scrap selection and inspection requirements to limit the amount of mercury, lead, chlorinated plastics, and free liquids present in the scrap fed to metal melting furnaces and to operate furan warm box mold and core making lines without the use of methanol as a component of the catalyst formulation. The GACT standards for large iron and steel foundries also include PM emission limits (as a surrogate for metal HAP) and alternative metal HAP emission limits for metal melting furnaces and include building opacity limits for other ancillary sources at the foundry. The GACT standards for metal melting furnaces at area source foundries are less stringent than the MACT standards for major source foundries and include an allowance to use emissions averaging. We estimate there are approximately 390 area source iron and steel foundries in the United States.

C. What data collection activities were conducted to support this action?

For the Iron and Steel Foundries NESHAP RTR, the EPA used emissions and supporting data from the 2014 National Emissions Inventory (NEI) as the primary data to develop the model input files for the residual risk assessments for major source iron and steel foundries. The NEI is a database that contains information about sources that emit criteria air pollutants, their precursors, and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint, and mobile sources in the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The EPA collects this information and releases an updated version of the NEI database every 3 years. The NEI includes data necessary for conducting risk modeling, including annual HAP emissions estimates from individual emission sources at facilities and the related emissions release parameters. In certain cases, we contacted state inventory compilers and facility owners or operators to confirm and clarify the sources of emissions, emissions estimates, and release parameters that were reported in the NEI. Additional information on the development of the modeling file can be found in Appendix 1 to the *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2019–0373).

D. What other relevant background information and data are available?

For the risk review portion of the RTR, there was no other relevant background information obtained beyond that used to develop the model input file as described above. For the technology review portion of the RTR, we collected information from the Reasonably Available Control Technology, Best Available Control Technology, and Lowest Achievable Emission Rate Clearinghouse (RBLC). This is a database that contains case-specific information on air pollution technologies that have been required to reduce the emissions of air pollutants from stationary sources. Under the EPA's New Source Review (NSR) program, if a facility is planning new construction or a modification that will increase the air emissions above certain defined thresholds, an NSR permit must be obtained. The RBLC promotes the sharing of information among permitting agencies and aids in case-by-case determinations for NSR permits. We examined information contained in the RBLC to determine what technologies are currently used for these source categories to reduce air emissions. Additional information about these data collection activities for the technology reviews is contained in the technology review memorandum titled *Major and Area Source Technology Review for the Iron and Steel Foundries NESHAP,* which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2019–0373).

III. Analytical Procedures and Decision-Making

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal. In this proposed action, pursuant to CAA section 112(f), the EPA is conducting a risk review for the major source NESHAP (40 CFR part 63, subpart EEEEE) MACT standards. Consistent with the provision regarding alternative standards for area sources in section CAA 112(d)(5), the risk review does not cover the NESHAP for area sources. Therefore, the discussions of risk assessment methods and modeling analyses described in the following paragraphs only apply to the major source category. However, pursuant to CAA section 112(d)(6), the EPA is proposing the technology review for both major source NESHAP and the area source NESHAP (40 CFR part 63, subpart ZZZZZ). Therefore, the discussions in the paragraphs below regarding how EPA conducted the technology reviews apply to both major sources and area sources.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information.'' 54 FR 38046, September 14, 1989. Similarly, with regard to the

ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[2] The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the EPA's response to comments on our policy under the Benzene NESHAP where the EPA explained that the policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will protect the public health. See 54 FR 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The Benzene NESHAP explained that an MIR of approximately 1-in-10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors. *Id.* at 38045. In other words, risks that include an MIR above 100-in-1 million may be determined to be acceptable, and risks with an MIR below that level may be determined to be unacceptable, depending on all of the available health information. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category. *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.''[3]

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency (1) conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards

[2] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential HAP exposure concentration to the noncancer dose-response value; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

[3] Recommendations of the SAB Risk and Technology Review Methods Panel are provided in their report, which is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed (or last updated) the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls to consider. See sections II.C and II.D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

C. How do we estimate post-MACT risk posed by the source category?

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB–HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.B of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The eight sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the 2019 Risk and Technology Review Proposed Rule.* The methods used to assess risk (as described in the eight primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009; [4] and described in the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

The EPA's initial estimates of actual emissions and the emission release characteristics for each facility in the major source Iron and Steel Foundries source category were based on the 2014 NEI. For this source category, emissions are released from both point and fugitive emissions sources. An example of a point release is furnace emissions that are captured by a control device such as a baghouse and released through a stack. Examples of fugitive releases include uncaptured emissions from mold making or pouring, cooling, and shakeout operations that exit the building through a roof vent or other openings. After compiling the initial emissions estimates from the 2014 NEI, the EPA posted the draft actual emissions estimates and stack parameters on the EPA's website to allow stakeholders an opportunity to review the data and provide corrections, if appropriate. In some cases, state and local inventory compilers and/or facility representatives were contacted to confirm or correct emissions that appeared to be outliers that were otherwise inconsistent with our understanding of the industry, or that were associated with high risk values in our initial risk screening analyses. Where appropriate, emission values and release characteristics were corrected, based on revised stack parameter information provided by the state, local, or facility representative. These revisions were documented and are included in Appendix 1 of the *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action. Nevertheless, some uncertainties remain in the emissions estimates used in our analysis. The annual emission estimates in the NEI are commonly developed using emission factors (rather than actual measurement data) and applying the maximum throughput or permitted operating hours, and, therefore, in some cases, may be conservative (*i.e.,* more likely to be overestimates versus underestimates of the true actual emissions). When available, actual source test data may be used to develop a facility-specific emission rate. Because source test requirements generally specify testing near maximum capacity, source test data generally represent upper-end emissions rates. These emission rates are then generally applied to the permitted operating hours, resulting in high estimates of the actual annual emissions.

However, there may also be situations where emissions data are highly uncertain, lacking, or underestimated. For example, the 2014 NEI emissions estimates relied on by the EPA for this source category are developed largely by state or local agencies and different states or local agencies may use different methods to estimate the HAP emissions. We know there are times that state or local agencies used specific emissions factors or emissions estimation procedures to account for some uncaptured fugitive emissions at facilities. These emission estimates are quite uncertain because it is difficult to measure or estimate uncaptured fugitive emissions. On the other hand, there may

[4] U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* June 2009. EPA–452/R–09–006. *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

be situations where uncaptured fugitive emissions were not estimated such that these emissions may have been underreported in the 2014 NEI emission inventory. The EPA requests comments on the adequacy of the 2014 NEI or other available information for estimating uncaptured fugitive emissions from foundry operations. Additional information on the development of the model input file for the major source category, including the development of the actual emissions and emissions release characteristics, can be found in Appendix 1 to the *Residual Risk Assessment for Iron and Steel Foundries Major Source Category in Support of the 2019 Risk and Technology Review Proposed Rul*e document, which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2019–0373).

2. How did we estimate MACT-allowable emissions?

Typically, the available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTR (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

As discussed in the prior section, the EPA understands, based on conversations with state and local inventory developers, that the emission estimates reported to the NEI are generally the maximum permitted emissions. Although actual source test data may be used, when available, to develop a facility-specific emission factor or emissions rate, the NEI emissions estimates are commonly developed using default emission factors and the maximum capacity of the plant or maximum permitted operating hours for the source. Therefore, we think the NEI emissions for the Iron and Steel Foundries source category are likely to be more closely representative of allowable emissions than actual emissions.

Additionally, for many of the sources, there are two potential emission limits in the NESHAP that the facility may comply with. For example, there are two alternative emission limits for metal melting furnaces: One based on PM and one based on metal HAP. Similarly, most of the organic HAP limits include both a percent reduction standard and a concentration standard. Given the emission limit alternatives available in the Iron and Steel Foundries NESHAP, it is difficult to assess or ''back-calculate'' the allowable emissions based on the data reported in the NEI. Because the NEI emissions for this source category generally reflect the maximum permitted emissions, and because we could not identify a reasonable alternative approach for developing allowable emission estimates, we assumed the MACT-allowable emissions were equal to the estimated actual emissions (as reported to the 2014 NEI along with the corrections described above). For more information, see *Estimating Allowable and Acute Emission Rates for Major Source Iron and Steel Foundries* document, which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2019–0373).

We acknowledge that the EPA generally estimates allowable emissions for RTRs by assuming facilities emit each HAP at the level that would be allowed by the numerical emissions limits in the NESHAP and assuming production rates remain at historic typical production levels. However, we did not use this approach for this proposed RTR because of the complexities of the Iron and Steel Foundries NESHAP (described above) and because we had insufficient data to determine appropriate scale-up factors for each of the HAP. Therefore, we used the approach described above to derive estimates of allowable emissions for this proposed rule. We solicit comments regarding our assumptions, data, and approach to derive allowable emissions estimates and whether a different method or approach should be used to calculate allowable emissions.

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the major source category addressed in this proposal were estimated using the Human Exposure Model (HEM–3).[5] The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[6] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[7] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the major source category. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989

[5] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[6] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[7] A census block is the smallest geographic area for which census statistics are tabulated.

Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter ($\mu g/m^3$)) by its unit risk estimate (URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for each of the carcinogenic HAP [8] emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime'' (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*https://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. In this proposed rulemaking, as part of our efforts to continually improve our methodologies to evaluate the risks that HAP emitted from categories of industrial sources pose to human health and the environment,[9] we are revising our treatment of meteorological data to use reasonable worst-case air dispersion conditions in our acute risk screening assessments instead of worst-case air dispersion conditions. This revised treatment of meteorological data and the supporting rationale are described in more detail in *Residual Risk Assessment for Iron and Steel Foundries Major Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* We will be applying this revision in RTR rulemakings proposed on or after June 3, 2019.

To assess the potential acute risk to the maximally exposed individual, we use the peak hourly emission rate for each emission point,[10] reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile), and the point of highest off-site exposure. Specifically, we assume that peak emissions from the

[8] The EPA's 2005 *Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[9] See, *e.g.,* U.S. EPA. *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (Draft Report, May 2017. *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*).

[10] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* Both are available in the docket for this rulemaking.

source category and reasonable worst-case air dispersion conditions co-occur and that a person is present at the point of maximum exposure.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations, if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure concentration by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [11] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[12] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are ''developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [13] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For the Iron and Steel Foundries major source category, we estimated the peak hourly emission rate for each emission point based on the estimates of annual actual emissions described above (*e.g.,* 2014 NEI annual emissions estimates) and knowledge of the foundry processes. For foundry emissions sources that operate during the majority of the foundry operating hours, *e.g.,* melting furnaces and pouring, cooling, and shakeout line operations, an emission adjustment factor of 4 was used to estimate a maximum hourly emissions rate from the annual average actual emissions estimates. For sources that have periodic emission releases, like tapping and inoculation, we applied the default factor of 10 because hourly emissions during these periodic operations are not quantifiable but can be significantly higher than the annual average emissions from these sources. These acute factors were applied based on the reported NEI source characterization code for each emission point. For more information, see Appendix 2 of the *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2019–0373). Appendix 2 is titled *Estimating Allowable and Acute Emission Rates for Major Source Iron and Steel Foundries.*

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1, and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we assess site-specific data to ensure that the acute HQ is at an off-site location. For this source category, the data refinements employed are discussed more fully in the *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this source category.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determine whether any sources in the source category emit any HAP known to be persistent and bioaccumulative in the environment, as identified in the EPA's Air Toxics Risk Assessment Library (see Volume 1, Appendix D, at *https://www.epa.gov/fera/risk-assessment-and-*

[11] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[12] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs (*https://www.epa.gov/aegl*).

[13] *ERPGS Procedures and Responsibilities.* March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf.*

modeling-air-toxics-risk-assessment-reference-library.

For the Iron and Steel Foundries major source category, we identified PB–HAP emissions of polycyclic organic matter (POM) (of which polycyclic aromatic hydrocarbons (PAH) is a subset), lead compounds, mercury compounds, cadmium compounds, and arsenic compounds so we proceeded to the next step of the evaluation. Except for lead, the human health risk screening assessment for PB–HAP consists of three progressive tiers.

In a Tier 1 screening assessment, we determine whether the magnitude of the facility-specific emissions of PB–HAP warrants further evaluation to characterize human health risk through ingestion exposure. To facilitate this step, we evaluate emissions against previously developed screening threshold emission rates for several PB–HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, chlorinated dibenzodioxins and furans, mercury compounds, and POM. Based on the EPA estimates of toxicity and bioaccumulation potential, these pollutants represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at *https://www.epa.gov/sites/production/files/2013-08/documents/volume_1_reflibrary.pdf*). In this assessment, we compare the facility-specific emission rates of these PB–HAP to the screening threshold emission rates for each PB–HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a ''screening value.''

We derive the Tier 1 screening threshold emission rates for these PB–HAP (other than lead compounds) to correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.,* for arsenic compounds, polychlorinated dibenzodioxins, and furans and POM) or, for HAP that cause noncancer health effects (*i.e.,* cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB–HAP or combination of carcinogenic PB–HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.,* the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment. The Tier 2 screening assessment separates the Tier 1 combined fisher and farmer exposure scenario into fisher, farmer, and gardener scenarios that retain upper-bound ingestion rates.

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher and farmer exposure scenarios at that facility. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km of each facility and assume the fisher only consumes fish from lakes within that 50 km zone. We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously-developed Tier 1 screening threshold emission rates for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and the USGS lakes database.

In the Tier 2 farmer scenario, we maintain an assumption that the farm is located within 0.5 km of the facility and that the farmer consumes meat, eggs, dairy, vegetables, and fruit produced near the facility. We may further refine the Tier 2 screening analysis by assessing a gardener scenario to characterize a range of exposures, with the gardener scenario being more plausible in RTR evaluations. Under the gardener scenario, we assume the gardener consumes home-produced eggs, vegetables, and fruit products at the same ingestion rate as the farmer. The Tier 2 screen continues to rely on the high-end food intake assumptions that were applied in Tier 1 for local fish (adult female angler at 99th percentile fish consumption [14]) and locally grown or raised foods (90th percentile consumption of locally grown or raised foods for the farmer and gardener scenarios [15]). If PB–HAP emission rates do not result in a Tier 2 screening value greater than 1, we consider those PB–HAP emissions to pose risks below a level of concern. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates, we may conduct a Tier 3 screening assessment.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the impacted lakes are fishable, locating residential/garden locations for urban and/or rural settings, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume-rise on chemical fate and transport (a time-series analysis). If necessary, the EPA may further refine the screening assessment through a site-specific assessment.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standard (NAAQS) for lead.[16] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For further information on the multipathway assessment approach, see the *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

5. How do we assess risks considering emissions control options?

In addition to assessing baseline inhalation risks and screening for potential multipathway risks, we also estimate risks considering the potential emission reductions that would be achieved by the control options under consideration. In these cases, the

[14] Burger, J. 2002. Daily consumption of wild fish and game: Exposures of high-end recreationists. *International Journal of Environmental Health Research* 12:343–354.

[15] U.S. EPA. *Exposure Factors Handbook 2011 Edition (Final).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F, 2011.

[16] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an ''ample margin of safety to protect public health''). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.,* the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative, since that primary lead NAAQS reflects an adequate margin of safety.

expected emission reductions are applied to the specific HAP and emission points in the RTR emissions dataset to develop corresponding estimates of risk and incremental risk reductions.

6. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the Iron and Steel Foundries major source category emitted any of the environmental HAP. For the Iron and Steel Foundries major source category, we identified emissions of arsenic, cadmium, HCl, HF, lead, mercury (methyl mercury and mercuric chloride), and POM. Because one or more of the environmental HAP evaluated are emitted by at least one facility in the source category, we proceeded to the second step of the evaluation.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB–HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons of pollutant per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB–HAP was compared to the Tier 1 screening threshold emission rate for that PB–HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility ''passes'' the screening assessment, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, we evaluate the average soil concentration for all soil parcels within a 7.5-km radius for each facility and PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility ''passes'' the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, we evaluate the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the environmental screening assessment, we examine the suitability of the lakes around the facilities to support life and remove those that are not suitable (*e.g.,* lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.,* facility emission rate exceeds the screening threshold emission rate), we may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, we compared the average modeled air concentrations (from HEM–3) of lead around each facility in the source category to the level of the secondary NAAQS for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk because it is set to provide substantial protection against adverse welfare effects which

can include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse environmental effect (as defined in CAA section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and km^2; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

7. How do we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data.

For this source category, we conducted the facility-wide assessment using a dataset that the EPA compiled from the 2014 NEI. We used the NEI data for the facility and did not adjust any category or ''non-category'' data. Therefore, there could be differences in the dataset from that used for the source category assessments described in this preamble. We analyzed risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, we made a reasonable attempt to identify the source category risks, and these risks were compared to the facility-wide risks to determine the portion of facility-wide risks that could be attributed to the source category addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

8. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report.*

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual

emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (the EPA's *2005 Guidelines for Carcinogen Risk Assessment,* page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk.[17] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[18] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[19] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

Although we make every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under CAA section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of a person. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur. We then include the additional

[17] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[18] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[19] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

assumption that a person is located at this point at the same time. Together, these assumptions represent a reasonable worst-case exposure scenario. In most cases, as it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[20]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume-rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks. For all tiers of the multipathway and environmental screening assessments, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not exceed screening threshold emission rates (*i.e.,* screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: Arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

IV. Analytical Results and Proposed Decisions

A. What are the results of the risk assessment and analyses?

1. Chronic Inhalation Risk Assessment Results

The EPA completed an inhalation risk assessment for the major source Iron and Steel Foundries source category. Table 2 of this preamble provides a summary of the results of the inhalation risk assessment for the major source category. More detailed information on the risk assessment can be found in the risk document titled *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in*

[20] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

Support of the Risk and Technology Review 2019 Proposed Rule, available in the docket for this rule.

TABLE 2—IRON AND STEEL FOUNDRIES INHALATION RISK ASSESSMENT RESULTS FOR MAJOR SOURCES

Number of facilities [1]	Maximum individual cancer risk (in-1 million) [2] based on . . .	Population at increased risk of cancer		Annual cancer incidence (cases per year) based on . . .	Maximum chronic noncancer TOSHI based on . . .	Maximum Screening Acute Noncancer HQ [4] based on . . .
	Actual/allowable emissions [3]	≥1-in-1 million	≥10-in-1 million	Actual/allowable emissions	Actual/allowable emissions	Actual emissions
45	50 (naphthalene, benzene).	144,000	6,900	0.02	0.5 (spleen; aniline)	1 (arsenic).

[1] Number of major source facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Actual and allowable emissions are the same for this source category.
[4] Arsenic REL. The maximum estimated acute exposure concentration was divided by available short-term dose-response values to develop an array of HQ values. HQ values shown use the lowest available acute dose-response value, which in most cases is the REL. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

The assessment of inhalation risk from exposure to actual emissions estimates that the increased risk of cancer for the individual most exposed to emissions from the source category (the MIR) is 50-in-1 million, primarily driven by naphthalene from steel foundries mold and core making processes and benzene from steel foundries pouring, cooling, and shakeout processes. The second highest risk facility in the source category has an estimated maximum risk of slightly less than 50-in-1 million, driven by PAHs and napthalene from iron foundries pouring, cooling, and shakeout processes. The estimated maximum risk attributable to emissions of metal HAP (*e.g.,* chromium and nickel) is 30-in-1 million. In total, eight facilities are predicted to pose cancer risk greater than or equal to 10-in-1 million. The total estimated cancer incidence due to emissions from this source category is 0.02 excess cancer cases per year, or one excess case about every 50 years. About 144,000 people are estimated to have cancer risks at or above 1-in-1 million from HAP emitted from the sources in this source category, with 6,900 of those people estimated to have cancer risks greater than or equal to 10-in-1 million. The estimated maximum chronic noncancer TOSHI due to the sources in the source category is 0.5 (spleen) driven by emissions of aniline compounds from iron foundries metal melting processes. No individual would have exposures resulting in a TOSHI at or above 1. See the risk background document referenced above for details of these analyses.

2. Screening Level Acute Risk Assessment Results

Table 2 of this preamble provides the results of the acute inhalation analysis. Based on actual baseline emissions, the highest refined screening acute HQ is estimated to be 1 (based on the acute REL for arsenic compounds from two facilities). The methodology for conducting the acute assessment included refining the analysis to ensure that the highest acute exposure was outside facility boundaries. No facilities are estimated to have an acute HQ based on an REL, AEGL, or an EPRG greater than 1. By definition, the acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures.

3. Multipathway Risk Screening and Site-Specific Assessments Results

The PB–HAP emitted by facilities in this source category include POM (of which PAH is a subset), lead compounds, mercury compounds, cadmium compounds and arsenic compounds. To identify potential multipathway health risks from PB–HAP other than lead, we first performed a tiered screening assessment based on emissions of PB–HAP emitted from each facility in the source category.

Of the 45 facilities in the source category, 23 facilities reported emissions of carcinogenic PB–HAP (arsenic and POM), and 21 facilities reported emissions of non-carcinogenic PB–HAP (cadmium and mercury). Three facilities' emission rates of POM exceeded the Tier 1 screening threshold emission rate by up to a factor of 780. Twelve facilities' emission rates of arsenic exceeded the Tier 1 screening threshold emission rate by up to a factor of 24. For the non-carcinogens, mercury was emitted at rates that exceeded the Tier 1 screening threshold emission rate at nine facilities, with the maximum exceedance by a factor of 110. Two facilities exceeded the Tier 1 screening threshold emission rate for cadmium, with the maximum exceedance by a factor of 5.

For the PB–HAP and facilities that exceeded the Tier 1 multipathway screening threshold emission rate, we used facility site-specific information to refine some of the assumptions associated with the local area around the facilities. While maintaining the exposure assumptions, we refined the scenario to examine a subsistence fisher and a gardener separately to develop a Tier 2 screening threshold emission rate. As described in section III.C.4 of this preamble, the ratio of a facility's actual emission rate to the screening threshold emission rate is referred to as a ''screening value.'' The result of this assessment was the development of site-specific Tier 2 emission screening values for each of the PB–HAP. Based on this Tier 2 screening assessment, POM emissions exceeded the cancer screening threshold emission rate values at two facilities, with maximum Tier 2 screening value of 14 for the fisher scenario and a screening value of 19 for the gardener scenario. One facility had a Tier 2 cancer screening value for arsenic of 4. For mercury, seven facilities' emissions exceeded the Tier 2 screening threshold emission rate, with the maximum screening value of 14. No facility exceeded the Tier 2 screening threshold emission rate for cadmium. A Tier 3 multipathway screening analysis was not conducted for this source category. Instead, as noted below, a site-specific refined analysis was performed.

An exceedance of a screening threshold emissions rate (*i.e.,* a screening value greater than 1) in any of the tiers cannot be equated with a cancer risk or a noncancer HQ (or HI). Rather, because of the conservative, or health-protective, assumptions incorporated into the screening analyses, a screening value represents a

high-end estimate of what the cancer risk or HQ may be. We choose inputs from the upper end of the range of possible values for the influential parameters used in the screening tiers; and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure.

When tiered screening values for any facility indicate a potential health risk of concern to the public, we may conduct a more refined multipathway assessment. A refined or site-specific assessment replaces many of the assumptions made in the screening assessment with site-specific information. For this source category, we conducted a site-specific multipathway assessment for one of the facilities based upon their mercury emissions. To select the candidate facility for the site-specific assessment, we examined the facilities with the highest Tier 2 mercury screening values and assessed other site-specific information. Considering this information, the Cadillac Casting Inc. facility in Cadillac, Michigan, was selected. We expect that the exposures we assessed for this facility would be among the highest and therefore be representative of the highest potential multipathway risk for the source category.

The site-specific multipathway analysis for mercury estimated a maximum noncancer HQ of 0.05 from fish ingestion under a scenario where an adult female angler is consuming fish at the 99th percentile ingestion rate for a subsistence fisherman. The protocol for developing the refined site-specific multipathway assessment, input data, assumptions, and detailed results are presented in the risk document titled *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* available in the docket for this action.

In evaluating the potential for multipathway risk from emissions of lead, we compared modeled annual lead concentrations to the primary NAAQS for lead (0.15 $\mu g/m^3$). The highest annual lead concentration of 0.04 $\mu g/m^3$ is well below the NAAQS for lead, indicating low potential for multipathway risk of concern due to lead emissions.

4. Environmental Risk Screening Results

As described in section III.C of this document, we conducted an environmental risk screening assessment for the Iron and Steel Foundries major source category for the following pollutants: Arsenic, cadmium, HCl, HF, lead, mercury (methyl mercury and mercuric chloride), and POM.

In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), arsenic and dioxins/furans emissions had no Tier 1 exceedances for any ecological benchmark. Cadmium emissions at one facility had Tier 1 exceedances for the surface soil no-observed-adverse-effect-level (NOAEL) (mammalian insectivores) benchmark by a maximum factor of 2. Divalent mercury emissions at eight facilities had Tier 1 exceedances for the surface soil threshold level (invertebrate and plant communities) and the sediment threshold level by a maximum factor of 50. Methyl mercury at 10 facilities had Tier 1 exceedances for the surface soil NOAEL (avian ground insectivores and mammalian insectivores), fish NOAEL (avian piscivores), and fish geometric-maximum-allowable-toxicant-level (GMATL) (avian piscivores) by a maximum factor of 80. The POM emissions at two facilities had Tier 1 exceedances for the sediment no-effect level, sediment threshold level, water-column community threshold level, and surface soil NOAEL (mammalian insectivores) benchmarks by a maximum factor of 50.

A Tier 2 screening assessment was performed for cadmium, divalent mercury, methyl mercury, and POM. Cadmium, divalent mercury, and methyl mercury had no Tier 2 exceedances of any ecological benchmark. POM emissions at one facility had Tier 2 exceedances of a sediment community no-effect level benchmark by a maximum factor of 5. This exceedance was identified for Brinker Lake in Waterloo, Iowa. Upon further evaluation, we found that over half of Brinker Lake is highly disturbed by a sand and gravel dredge mining operation. Therefore, any impact to natural lake sediments and sediment communities from the POM emissions would be minimal in this highly disturbed lake. We looked at the lake with the next highest exceedance from POM emissions, which is a lake just to the west of Brinker Lake named George Wythe Lake; this lake also had an exceedance of the screening value by a factor of 5 for POM for a sediment community no-effect level benchmark. No other POM benchmarks were exceeded for POM emissions in Tier 2. Specifically, none of the other POM sediment community benchmarks were exceeded, including the threshold level and the probable-effect level. In addition, no other POM no-effect level evaluated (mammalian piscivores and mammalian insectivores) was exceeded. Therefore, we do not expect an adverse environmental effect as a result of the POM emissions.

For lead, we did not estimate any exceedances of the secondary lead NAAQS.

For HCl and HF, the average modeled concentration around each facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl and HF (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities.

5. Facility-Wide Risk Results

Based on facility-wide emissions, the estimated inhalation cancer MIR is 60-in-1 million, mainly driven by the Iron and Steel Foundries major source category, specifically by naphthalene and benzene from steel foundries mold and core making processes and by benzene from steel foundries pouring, cooling, and shakeout processes. The total estimated cancer incidence from the facility-wide analysis is 0.02 excess cancer cases per year, or one excess case every 50 years. Approximately 164,000 people were estimated to have cancer risks at or above 1-in-1 million, and 7,200 of these people were estimated to have cancer risks at or above 10-in-1 million, from exposure to HAP emitted from sources that are part of the Iron and Steel Foundries major source category and sources that are not part of the source category. The maximum facility-wide TOSHI (neurological) is estimated to be 0.9, mainly driven by emissions of lead and manganese compound emissions from non-category fugitive sources. Emissions from non-category sources are described in the document titled *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* available in the docket for this action.

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Iron and Steel Foundries source category across different

demographic groups within the populations living near facilities.[21]

The results of the demographic analysis are summarized in Table 3 below. These results, for various demographic groups, are based on the estimated risk from actual emissions for the population living within 50 km of the facilities.

TABLE 3—IRON AND STEEL FOUNDRIES DEMOGRAPHIC RISK ANALYSIS RESULTS

Item	Nationwide	Population with cancer risk at or above 1-in-1 million due to iron and steel foundries	Population with chronic HI at or above 1 due to iron and steel foundries
Total Population	317,746,049	144,053	0
White and Minority by Percent			
White	62	66	0
Minority	38	34	0
Minority by Percent			
African American	12	16	0
Native American	0.8	0.2	0
Hispanic or Latino includes white and nonwhite)	18	15	0
Other and Multiracial	7	4	0
Income by Percent			
Below Poverty Level	14	20	0
Above Poverty Level	86	80	0
Education by Percent			
Over 25 and without High School Diploma	14	19	0
Over 25 and with a High School Diploma	86	81	0
Linguistically Isolated by Percent			
Linguistically Isolated	6	4	0

The results of the Iron and Steel Foundries major source category demographic analysis indicate that emissions from the source category expose approximately 144,000 people to a cancer risk at or above 1-in-1 million and zero people to a chronic noncancer HI greater than or equal to 1. The African American population exposed to a cancer risk at or above 1-in-1 million due to iron and steel foundries emissions is 4 percent above the national average. Likewise, populations living ''Below Poverty Level'' and ''Over 25 and without High School Diploma'' are exposed to cancer risk above 1-in-1 million, 6 and 4 percent above the national average, respectively. The percentages of the at-risk population in other demographic groups are similar to or lower than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Iron and Steel Foundries,* available in the docket for this action.

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

1. Risk Acceptability

As noted in section II.A of this preamble, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand'' (54 FR 38045, September 14, 1989). For the Iron and Steel Foundries major source category, the risk analysis estimates that the maximum cancer risk to the individual most exposed is 50-in-1 million due to actual emissions or allowable emissions. This risk is less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The estimated incidence of cancer due to inhalation exposures for the source category is 0.02 excess cancer cases per year, or one excess case every 50 years. We estimate that approximately 144,000 people face an increased cancer risk greater than or equal to 1-in-1 million due to inhalation exposure to HAP emissions from this source category. The Agency estimates that the maximum chronic noncancer TOSHI from inhalation exposure, 0.5 (spleen), is less than 1. The screening assessment of worst-case acute inhalation impacts estimates a maximum acute HQ of 1 (due to arsenic) based on the REL. With regard to multipathway human health risks, we estimate the maximum cancer risk for the highest exposed individual is 20-in-1 million (due to POM) and the maximum noncancer chronic HI is less than 1 for all the PB–HAP.

[21] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living two times the poverty level, and linguistically isolated people.

Considering all of the health risk information and factors discussed above, the EPA proposes that the risks are acceptable. The estimated cancer risks are below the presumptive limit of acceptability, and the noncancer risk results indicate there is minimal likelihood of adverse noncancer health effects due to HAP emissions from this source category.

2. Ample Margin of Safety Analysis

Under the ample margin of safety analysis, we evaluated the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to further reduce the risks (or potential risks) due to emissions of HAP from the source category. In this analysis, we considered the results of the technology review, risk assessment, and other aspects of our MACT rule review to determine whether there are any controls or other measures that would reduce risk further and would be required to provide an ample margin of safety to protect public health.

Our risk analysis estimates that the maximum individual cancer risk is 50-in-1 million from the Iron and Steel Foundries major source category and that 144,000 people may be exposed to cancer risk exceeding 1-in-1 million. Therefore, we evaluated the sources and HAP that contribute most to these risks and assessed control options that would result in reducing these cancer risks. Based on our analysis, these cancer risks are driven largely by naphthalene, benzene, and PAH emissions from PCS lines and by naphthalene emissions from mold and core making operations. However, HAP metals also pose cancer risks, as described below.

With regard to organic HAP, three potential emission reduction measures were identified: Low-emitting binder formulations, carbon adsorption, and thermal oxidizers. In addition, one potential emission reduction measure for metal HAP was identified: Capture systems combined with a particulate control device (*e.g.,* scrubber or baghouse). Our evaluation of these emission reduction options are discussed below.

a. Low-Emitting Binder Formulations for Organic HAP Emissions Reduction

Low-emitting or ''green'' binder formulations may include inorganic binder formulations or organic binder formulations with reduced levels of HAP and/or total organics. Reduced organic HAP content in the chemical binders leads to reductions in organic HAP emissions from the mold and core making operations. Organic HAP emissions from PCS lines are impacted by both the HAP content of the binders and the total organic content of the binders available for pyrolysis when exposed to molten metal. Therefore, a binder system with low HAP content but with a high overall organic content may still have substantial emissions during the PCS process. Thus, there are some difficulties determining whether an organic binder system is ''low emitting,'' and testing generally would be needed to ensure an alternative organic binder system would reduce emissions for the facility when considering mold and core making and PCS emissions combined. Inorganic binder systems, on the other hand, are generally effective at reducing HAP emissions from both mold and core making operations and PCS lines and may be considered ''low-emitting'' with limited or no additional testing. However, inorganic binder systems may not be practical or feasible in some applications.

Different binder systems exist because of their different properties and capabilities. The size, shape, and tolerance of the castings, the production volume, and the environmental conditions (temperature and humidity) must all be considered when selecting a binder system. Some binder formulations may have poor performance when the humidity is high; some may be negatively impacted by high or low ambient temperatures; some may not have the strength needed for large castings, while others may be too durable, making them difficult to separate from the metal castings (increasing shakeout times). Based on the myriad of conditions impacting binder selection, there is no single binder system that will work in all applications, and we cannot determine if a low-emitting binder alternative is available for all applications. As such, we conclude that it would be inappropriate to propose a national emissions standard requiring the use of low-emitting binder systems. We recognize that some facilities may be able to meet tighter organic HAP emission limits, if established, using low-emitting binder systems; however, there would likely be cases where low-emitting binder systems could not meet production performance requirements and, therefore, other control options might be needed. Therefore, we are not proposing any requirements based on use of binders to reduce emissions. However, we solicit comments and data on the potential use of low emitting binders to reduce organic HAP emissions and whether any such requirement should be considered for the Iron and Steel Foundries NESHAP.

b. Carbon Adsorption and Thermal Oxidizers for Organic HAP Emissions Reduction

Carbon adsorption and thermal oxidizers are both add-on control measures for organic HAP that we identified and considered for control of PCS lines during the development of the MACT standard for major source iron and steel foundries (67 FR 78292). These control systems are also applicable to mold and core making operations, and we expect that the design and performance of these controls when applied to mold and core making operations would be similar to that for PCS lines. The control efficiency for a carbon adsorption system is typically 90 to 95 percent, while thermal oxidizers typically achieve 98 percent or higher destruction efficiencies. However, at low concentrations, the control efficiency of the system generally declines, and the EPA has a long history of establishing an alternative organic concentration limit of 20 parts per million by volume (ppmv) to address cases of low inlet concentrations. Based on the low organic HAP concentrations observed in measured emissions from well-captured PCS lines, the EPA established a volatile organic HAP limit of 20 ppmv in the original NESHAP for automated conveyor and pallet cooling lines and automated shakeout lines for new iron and steel foundries that use a sand mold system [40 CFR 63.7690(a)(10)] and did not provide a control efficiency alternative. Note that this control system is for sources at new iron and steel foundries where close capture hooding systems can be integrated into the foundry design. If capture systems are not present and need to be added to control emissions from existing mold and core making or PCS lines, we expect the hooding system will be less enclosed and require more ventilation air to capture the emissions. Consequently, the inlet organic HAP concentrations are expected to be less than 100 ppmv going into the control device, which is considered a relatively low inlet concentration for these types of control devices.

We reviewed the 2014 NEI data and developed aggregate organic HAP emission estimates for each foundry from their mold and core making and PCS lines. We estimated that total volatile organic compound (VOC) emissions were approximately 1.5 times the organic HAP emissions. We then

developed four differently sized model control systems to span the range of emissions observed in the NEI data. In this screening analysis, we developed a single control system for the aggregate emissions from mold and core making and PCS lines. In practice, these emission sources may be a large distance apart, and it may not be practical to employ a single control system for the aggregate emissions. However, for a screening assessment, we conclude this assumption represents the most cost-effective control scenario. If the cost for the aggregate control system is determined to be not cost effective under this scenario, we can conclude with confidence that separate control systems for mold and core making and PCS lines would also not be cost effective.

The capital investment and total annualized costs for four differently sized carbon adsorption and thermal oxidizer control systems (both recuperative and regenerative) were developed using the recently updated chapters of the *EPA Air Pollution Control Cost Manual.*[22] [23] [24] These model plant control systems were assigned to each major source iron and steel foundry based on their reported 2014 NEI emissions. The emission reductions for each facility were estimated assuming the carbon adsorption system would achieve 90-percent control efficiency and that the thermal oxidizer would achieve greater than 99-percent control efficiency. Based on the inlet concentrations expected, particularly for a retrofit control system where close capture hooding may not be feasible, the assumed emission reductions serve as an upper-range estimate. It is likely that the exhaust concentration of organic HAP would be less than 100 ppmv, so that meeting the 20-ppmv emissions limit in the current NESHAP would only require 80- percent, or less, emissions reduction. Nonetheless, we assumed an upper-range emission reduction for this analysis because this assumption would yield lower cost-effectiveness values. If the control system is not cost effective using these upper-range emission reduction estimates, we can conclude that the control systems for mold and core making and PCS lines would not be cost effective when applied to the actual facilities, which are expected to have low inlet organic HAP concentrations and likely lower required control efficiencies.

Our analysis indicated that the cost effectiveness, measured in dollars per ton, was significantly lower for the carbon adsorption control system compared to both the recuperative and regenerative thermal oxidizer control systems. The nationwide total capital investment for carbon adsorption control systems was estimated to be $27 million spread across 25 facilities which reported organic HAP emissions from these sources.[25] The nationwide total capital investment for recuperative thermal oxidizer control systems was similar, estimated to be $30 million for the 25 facilities. However, the total annualized costs (including capital recovery) for the thermal oxidizer system are about 3 times that of the carbon adsorption system ($17 million versus $5.8 million) due to higher variable operating and maintenance costs. Specifically, the low organic concentrations in the exhaust stream to be controlled require high consumption rates of auxiliary fuel to maintain appropriate combustion temperatures for the recuperative thermal oxidizer system. In contrast, a regenerative thermal oxidizer system has better thermal efficiencies and can reduce the total annualized costs to $12 million, but requires a total capital investment of $70 million. Consequently, since emissions reductions were assumed to be similar for any of these control systems, the average cost effectiveness of carbon adsorption control systems ($12,700 per ton of organic HAP removed) was estimated to be significantly lower than for either recuperative or regenerative thermal oxidizer control systems ($26,000 to $37,000 per ton). For more detail regarding the cost estimates, see *Control Cost Estimates for Organic HAP Emissions from Iron and Steel Foundries* (Docket ID No. EPA–HQ–OAR–2019–0373).

With regard to risk reductions, we estimate that application of carbon adsorption requirements to the source category would reduce the MIR from 50-in-1 million to 30-in-1 million, the number of people with risks ≥ 10-in-1 million would be reduced from 6,900 to 400, and the number of people with risks ≥ 1-in-1 million would be reduced from 144,000 to 42,000. Under this control scenario the primary remaining risk drivers would be HAP metals since the organic HAP would be reduced significantly by the carbon adsorption systems.

Based on our analysis, we propose to conclude that these control systems are not cost effective for this source category for the following reasons. First, our estimated control costs, which represent a best-case (*i.e.,* most cost effective) scenario, are relatively high while the reductions in risks that would be achieved by those controls are moderate. In addition, a number of facilities are small businesses, and we estimate that at least one small business would likely incur costs exceeding 2 percent of their annual revenue, which would likely result in negative impacts for this business. Nevertheless, we solicit comments and data regarding our analyses described above and we solicit comments regarding our proposed determination that these controls are not cost effective.

c. Capture and Particulate Control Devices for Metal HAP Emissions Reduction

While the highest cancer risk was due to organic HAP, our risk analysis also indicated that metal HAP emissions sources at four facilities result in cancer risk to the individual most exposed greater than 10-in-1 million and that 42,000 (of the 144,000 people for the entire source category) may have cancer risks exceeding 1-in-1 million due to metal HAP emissions. Therefore, we also evaluated these metal HAP emission sources and assessed control options that would result in reducing these cancer risks. The foundry emission sources that contributed to these elevated cancer risks from metal HAP include scrap charging, alloy addition, and molten metal transfers. The emissions from these sources that are driving most of the estimated risks for HAP metals are ''fugitive'' emissions which are typically emitted through open roof vents and are currently subject to the building opacity limit in the NESHAP. Reducing these emissions for these metal HAP sources would require installing and operating capture systems (*e.g.,* hooding, duct work, fans, etc.) that direct the emissions to a particulate control device (*e.g.,* scrubber or baghouse). In some applications, an existing particulate control device may have adequate capacity for handling the additional gas stream load, but in general, we expect that a new particulate control device would be

[22] *Carbon Adsorbers.* Section 3.1, Chapter 1 as revised for the 7th Edition of *EPA Air Pollution Control Cost Manual.* October 2018. Available at: *https://www.epa.gov/sites/production/files/2018-10/documents/final_carbonadsorberschapter_7thedition.pdf.*

[23] *Incinerators and Oxidizers.* Section 3.2, Chapter 2 as revised for the 7th Edition of *EPA Air Pollution Control Cost Manual.* November 2017. Available at: *https://www.epa.gov/sites/production/files/2017-12/documents/oxidizersincinerators_chapter2_7theditionfinal.pdf.*

[24] All costs provided in this section are in 2017 dollars.

[25] The other 20 major source facilities in our dataset did not report any emissions of organic HAP from these processes. Therefore, we assumed those 20 facilities could comply with this control option without additional costs.

required due to the relatively large volumes of air that may need to be collected. As most iron and steel foundries use baghouse control systems for their PM control, we estimated the costs based on installing new hooding, duct work, fans, and a relatively small baghouse.

Initially, we evaluated a requirement for all facilities to capture and control these fugitive metal HAP emission sources. The average metal HAP emissions for foundries from these fugitive emission sources are estimated to be 0.18 tpy based on the NEI data. We estimated the capital investment and total annualized costs for two differently sized baghouse capture and control systems using the methods provided in the 6th Edition of the *EPA Air Pollution Control Cost Manual* [26] and we assumed approximately half of the foundries could control their sources using the smaller baghouse capture and control system and the other half of the foundries would need the larger capture and control system. The nationwide total capital investment for all major source foundries to install metal HAP capture and control systems was estimated to be $23 million; the total annualized costs (including capital recovery) for the metal HAP control systems were estimated to be $6 million.[27] The nationwide metal HAP emissions reduction, assuming an aggregate capture and control efficiency of 90 percent, was estimated to be 4.64 tpy for an average cost effectiveness of $1.3 million per ton of metal HAP removed.

Based on our review of the NEI data, we observed that many foundries had very limited estimated metal HAP emissions from these fugitive sources. The EPA has concluded this is mainly because some foundries, particularly grey iron, do not use metal alloying. Many of these foundries may also use cupola furnaces, which are continuous melting furnaces. It is easier to control emissions during scrap charging for these furnaces compared to other types of furnaces used at foundries. Therefore, we also considered a regulatory option that would require only foundries that perform alloying with metal HAP or that otherwise produce casting with high metal HAP content to control the metal HAP emission sources. Under this scenario, we estimated that the average metal HAP emissions from these fugitive emission sources are 0.29 tpy. The nationwide total capital investment for a targeted rule requiring metal HAP capture and control systems for foundries with higher metal HAP alloys was estimated to be $13 million; the total annualized costs for (including capital recovery) the metal HAP control systems were estimated to be $3.3 million. The nationwide metal HAP emissions reduction, assuming an aggregate capture and control efficiency of 90 percent, was estimated to be 4.16 tpy for an average cost effectiveness of $790,000 per ton of metal HAP removed. For more detail regarding these cost estimates for the metal HAP control systems, see *Control Cost Estimates for Metal HAP Emissions from Iron and Steel Foundries,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2019–0373).

With regard to risk reductions, we estimate that application of either of these two improved capture and control of HAP metals described above would reduce the MIR due to HAP metals from 30-in-1 million to about 3-in-1 million. However, the overall MIR for the source category would still be 50-in-1 million due to organic HAP, as described above. With regard to population exposures, we estimate that the number of people with risks greater than or equal to 10-in-1 million would only be reduced slightly (*e.g.,* 6,900 to 6,500), and number of people with risks greater than or equal to 1-in-1 million would be reduced from 144,000 to about 100,000 if we were to require metal HAP emissions reductions.

Based on consideration of the costs and cost effectiveness of both the organic HAP and metal HAP emission control systems, consideration of potential impacts to small businesses, the moderate risk reductions that would be achieved, and the uncertainties in the emissions estimates (as described in sections III.C.1 and 2 of this preamble), we propose that the Iron and Steel Foundries major source NESHAP provides an ample margin of safety to protect health and we are not proposing any changes to the NESHAP based on the risk review. Nevertheless, we solicit comments and data regarding our analyses described above. Additionally, we solicit comments regarding whether it would be appropriate to require the controls for organic HAP and/or metal HAP described above, and, if so, why, and we also solicit comments regarding our proposed determination that the current NESHAP provides an ample margin of safety to protect public health.

3. Adverse Environmental Effect

As described in sections III.A and IV.A.4 of this preamble, we conducted an environmental risk screening assessment for the Iron and Steel Foundries major source category for the following pollutants: Arsenic, cadmium, dioxins/furans, HCl, HF, lead, mercury (methyl mercury and mercuric chloride), and POM. As explained in section IV.A of this preamble, based on our analyses, we do not expect an adverse environmental effect as a result of HAP emissions from this source category and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

C. What are the results and proposed decisions based on our technology review?

As described in section III.B of this preamble, our technology review focused on the identification and evaluation of potential developments in practices, processes, and control technologies that have occurred since the major source and area source NESHAP were promulgated in 2004 and 2008, respectively. In conducting the technology review, we reviewed various informational sources regarding the emissions from iron and steel foundries. We conducted separate but similar reviews for the Iron and Steel Foundries major source category and the two area source categories. The reviews included a search of the RBLC database, reviews of air permits for iron and steel foundries, and a review of relevant literature, including international best practices. We reviewed these data sources for information on practices, processes, and control technologies that were not considered during the development of the Iron and Steel Foundries NESHAP. We also looked for information on improvements in practices, processes, and control technologies that have occurred since development of the Iron and Steel Foundries NESHAP.

After reviewing information from the aforementioned sources, we did not identify any developments in practices, processes or control technologies to further reduce emissions from major source iron and steel foundries under 40 CFR part 63, subpart EEEEE. Furthermore, as part of our technology review for major sources, we considered the same controls and measures described above in section IV.B.2 of this preamble (*i.e.,* in the ample margin of safety analysis), including low-emitting

[26] *Baghouses and Filters.* Section 6, Chapter 1 (chapter dated December 1998). *EPA Air Pollution Control Cost Manual.* 6th Edition. EPA/452/B–02–001. Available at: *https://www3.epa.gov/ttncatc1/dir1/c_allchs.pdf.*

[27] Costs are reported in 2017 dollars.

binder formulations, carbon adsorption, and thermal oxidizers for control of organic HAP and improved capture systems with new baghouses for the metal HAP emissions. The costs, cost effectiveness, and other considerations for these four control scenarios for major sources are described in detail in section IV.B.2 of this preamble. As discussed in section IV.B.2 of this preamble, we also considered revisions in the cost algorithms for carbon adsorption systems and thermal oxidizers in our assessment of control options to reduce organic HAP emissions. We did not identify any improvements in performance of these control systems for major sources, and our updated cost analysis continues to demonstrate that these control systems are not cost effective for existing sources in this major source category, largely due to the dilute nature of the organic HAP emission streams. Further details regarding our technology review for major source iron and steel foundries are available in the memorandum titled: *Major Source Technology Review for the Iron and Steel Foundries NESHAP,* which is available in the docket for this proposed action.

With regard to area sources, we did not identify any developments in practices, processes or control technologies to those evaluated during the development of 40 CFR part 63, subpart ZZZZZ. Specifically, we did not identify any improvements in performance of metal HAP control systems used for area source iron and steel foundries or any significant change in the control costs for these systems. Consequently, we concluded that the analyses of control options conducted in 2008 to support the development of metal HAP emission limits in 40 CFR part 63, subpart ZZZZZ, are still comprehensive and valid today, and that the rationale and conclusions supporting the final area source metal HAP emission limits are still appropriate. We did not specifically evaluate or calculate the costs, cost effectiveness, feasibility, or economic impacts of the four control scenarios detailed in section IV.B.2 of this preamble for area sources. However, since we conclude these controls and measures are either not feasible and/or not cost effective for major sources, we conclude they would also not be feasible and/or not cost effective for area sources since area sources typically have lower emissions than the major sources and a larger percent of area sources are likely to be small businesses. Further details regarding our technology review for area source iron and steel foundries are available in the memorandum titled: *Area Source Technology Review for the Iron and Steel Foundries NESHAP,* which is available in the docket for this proposed action.

Based on the technology review described above, we determined that there are no developments in practices, processes, or control technologies that necessitate revisions to the NESHAP for major source Iron and Steel Foundries (40 CFR part 63, subpart EEEEE) or the NESHAP for area source Iron and Steel Foundries (40 CFR part 63, subpart ZZZZZ). Therefore, we are not proposing any changes to these NESHAP based our technology review. We solicit comments and data regarding our technology review analyses described above and our proposed determination that no revisions to the NESHAP are warranted based on our technology review.

D. What other actions are we proposing?

In addition to the proposed determinations described above, we are proposing revisions to the SSM provisions of the NESHAP in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also are proposing various other changes to the recordkeeping and reporting requirements of the NESHAP to require the use of electronic reporting of performance test reports and semiannual reports. We also are proposing to correct section reference errors and make other minor editorial revisions. Our analyses and proposed changes related to these issues are discussed below.

1. SSM

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, section 112 emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption in both Iron and Steel Foundries NESHAP which appears at 40 CFR 63.7746 and Table 1 to Subpart EEEEE of Part 63 (Applicability of General Provisions to Subpart EEEEE) and in Table 3 to Subpart ZZZZZ of Part 63 (Applicability of General Provisions to New and Existing Affected Sources Classified as Large Foundries). Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 1 to Subpart EEEEE as is explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate emission standards for those periods. During periods where the process is in startup or shutdown, the emission controls used should still provide HAP emissions control. For example, emissions from a melting furnace can be directed to a baghouse while the melting furnace is undergoing startup or shutdown. Similarly, a triethylamine scrubber or carbon adsorption system can be operational while the emission source being controlled is undergoing startup or shutdown. The one potential exception to this is the afterburner used to control organic HAP emissions from a cupola. The cupola afterburner control system is primarily designed to burn the carbon monoxide emitted as a result of the combustion of coke under oxygen limited conditions during normal process operations. Most cupola afterburner systems rely on the heat input from carbon monoxide in the cupola's off-gas to maintain incineration temperatures. During startup of the cupola, complete combustion of natural gas or other fuels are used to preheat the cupola furnace. While the combustion of the startup fuels do not generate adequate carbon monoxide to maintain incineration temperatures in the afterburner section of the cupola, the complete combustion of the startup fuels will not generate organic HAP emissions. Therefore, we are proposing that foundry owners or operators can

comply with the complete combustion limits (20-ppmv organic HAP limit) during cupola startup even though the cupola afterburner is not operating at the same temperature as it does during normal operations. We understand that there will be a transition period when the cupola startup operation shifts from a complete (oxygen rich) combustion mode to a partial (oxygen limited) combustion mode when the cupola afterburner temperature may not be sufficient to ensure full combustion of the organic HAP that may be produced during this transition. However, this transition period is expected to be short relative to the 3-hour averaging period of the organic HAP emissions limit. Therefore, we are proposing that it is not necessary to provide alternative standards for periods of startup or shutdown. We request comment on the need for alternative standards during startup and shutdown. Commenters should provide data demonstrating that an alternative standard is necessary and provide suggestions regarding recommended alternative emission limitations and monitoring parameters that ensure compliance with the alternative emission limitations.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2) (definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (D.C. Cir. 2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards. Similarly, although standards for area sources are not required to be set based on ''best performers,'' the EPA is not required to consider malfunctions in determining what is ''generally available.''

As the Court recognized in *U.S. Sugar Corp.,* accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *Id.* at 608 (''the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.''). As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' ''). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunction that result in releases from pressure relief devices or emergency flaring events because the EPA had information to determine that such work practices reflected the level of control that applies to the best performers. 80 FR 75178, 75211–14 (December 1, 2015). The EPA considers whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether sufficient information is available to identify the relevant best performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information.

The EPA anticipates that it is unlikely that a malfunction in the foundry operations will result in a violation of the standard because the air pollution control equipment used to control the emissions from the process would still be operating. If the malfunction occurs in the pollution control equipment, the iron and steel foundry operator should discontinue process operations until such time that the air pollution control systems are operable in order to comply with the requirements to minimize emissions and operate according to good air pollution practices. In general, process operations should be able to be shutdown quickly enough to avoid a

violation of an emissions limitation. However, a malfunction in the control equipment could result in a violation of the standard depending on how quickly emissions decline upon process shut down. For example, once molten metal is poured into molds, the molds can emit organic HAP for several hours while they are cooling. Thus, even though process operations may be shut down immediately (*e.g.,* no more molten metal is poured into molds once the organic HAP control system malfunctions), the emissions may continue and a deviation may occur as a result. In this case, foundry owners or operators must report the deviation, the quantity of HAP emitted over the emissions limit, the cause of the deviation, and the corrective action taken to limit the emissions during the event.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, section 112, is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

a. General Duty

We are proposing to revise the General Provisions tables (Table 1 to Subpart EEEEE of Part 63 and Table 3 to Subpart ZZZZZ of Part 63) of 40 CFR part 63 to provide a separate entry for 40 CFR 63.6(e) and changing the ''yes'' in column 3 to a ''no.'' Additionally, we are proposing to revise the current 40 CFR 63.10890(i) by re-designating it to 40 CFR 63.10890(j) and removing the reference to 40 CFR 63.6(e). Section 63.10890(i) currently contains a summary of the General Provision sections that apply to affected sources classified as small foundries (similar to the Table 3 to Subpart ZZZZZ of Part 63 for affected sources classified as large foundries). Section 63.6(e) describes the general duty to minimize emissions and requirements for an SSM plan. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. For 40 CFR part 63, subpart EEEEE, we are proposing to revise general duty regulatory text at 40 CFR 63.7710(a) to eliminate the reference to 40 CFR 63.6(e)(1)(i) but maintain the general duty to ''. . . operate the foundry in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.'' We are also proposing to delete the phrase ''. . ., except during periods of startup, shutdown, or malfunction'' from 40 CFR 63.7720(a) and to delete and reserve 40 CFR 63.7746(b), which states that deviations during periods of SSM are not violations if the source was operating in accordance to 40 CFR 63.6(e)(1). For 40 CFR part 63, subpart ZZZZZ, we are proposing to add general duty regulatory text at 40 CFR 63.10890(i) for affected sources classified as small foundries and at 40 CFR 63.10896(c) for affected sources classified as large foundries that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing in 40 CFR part 63, subparts EEEEE and ZZZZZ, does not include that language from 40 CFR 63.6(e)(1).

Similarly, 40 CFR 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being revised or added in 40 CFR part 63, subparts EEEEE and ZZZZZ.

b. SSM Plan

In our proposed revisions of Table 1 to Subpart EEEEE of Part 63 and Table 3 to Subpart ZZZZZ of Part 63 to provide a separate entry for 40 CFR 63.6(e) and changing the ''yes'' in column 3 to a ''no,'' we are also proposing that 40 CFR 63.6(e)(3) does not apply. Generally, the paragraphs under 40 CFR 63.6(e)(3) require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary. We are also proposing to delete and reserve 40 CFR 63.7720(c) that details the requirement to prepare the SSM plan and to revise the definition of ''off blast'' to remove reference to the SSM plan.

c. Compliance With Standards

We are proposing to revise the General Provisions tables (Table 1 to Subpart EEEEE of Part 63 and Table 3 to Subpart ZZZZZ of Part 63) to provide a separate entry for 40 CFR 63.6(f)(1) and changing the ''yes'' in column 3 to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

We are proposing to revise the General Provisions tables (Table 1 to Subpart EEEEE of Part 63 and Table 3 to Subpart ZZZZZ of Part 63) entry for 40 CFR 63.6(h) to provide separate entries for 40 CFR 63.6(h)(1) and 40 CFR 63.6(h)(2)–(9). We are proposing to change the entry for 40 CFR 63.6(h)(1) to include a ''no'' in column 3. The current language of 40 CFR 63.6(h)(1) exempts sources from opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112

standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times. In a related amendment, the EPA is proposing to revise the definition of ''deviation'' in both 40 CFR part 63, subparts EEEEE and ZZZZZ, to remove subsection (3) that describes deviations during periods of SSM. Since the EPA is proposing to revise standards in this rule to apply at all times, the distinction described in subsection (3) is no longer relevant.

d. Performance Testing

We are proposing to revise the General Provisions tables (Table 1 to Subpart EEEEE of Part 63 and Table 3 to Subpart ZZZZZ of Part 63) to add a separate entry for 40 CFR 63.7(e)(1) and change the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to revise 40 CFR 63.7732(a) and 40 CFR 63.10898(c) to add a performance testing requirement to test under representative conditions. We are also proposing to revise 40 CFR 63.7732(a) and 40 CFR 63.10898(c) to remove the reference to 40 CFR 63.7(e)(1). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. The proposed performance testing provisions do not allow performance testing during startup or shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Section 63.7(e) requires that the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test'' available to the Administrator upon request but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We are proposing to revise the General Provisions tables (Table 1 to Subpart EEEEE of Part 63 and Table 3 to Subpart ZZZZZ of Part 63) by adding a separate entry for 40 CFR 63.8(c)(1)(i) and (iii) and including a ''no'' in column 3. The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

We are proposing to revise the General Provisions tables (Table 1 to Subpart EEEEE of Part 63 and Table 3 to Subpart ZZZZZ of Part 63) by adding a separate entry for 40 CFR 63.8(d)(3) and including a ''no'' in column 3. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is proposing to add provisions to subpart EEEEE at 40 CFR 63.7752(b)(2) and to subpart ZZZZZ at 40 CFR 63.10899(b)(14) that is identical to 40 CFR 63.8(d)(3) except that the final sentence is replaced with the following sentence: ''The program of corrective action should be included in the plan as required under § 63.8(d)(2)(vi).''

The monitoring requirements at 40 CFR 63.10897(g) require owners or operators to restore normal operations as quickly as possible when monitoring demonstrates a deviation of an emission limit (including an operating limit). The EPA is also proposing to revise 40 CFR 63.10897(g) to remove reference to minimizing periods of SSM. We consider this to be redundant to the requirement to take ''any necessary corrective action to restore normal operations and prevent the likely recurrence of the exceedance'' and is irrelevant since the EPA is proposing to revise standards in this rule to apply at all times, including periods of SSM.

f. Recordkeeping

We are proposing to revise the General Provisions tables (Table 1 to Subpart EEEEE of Part 63 and Table 3 to Subpart ZZZZZ of Part 63) by adding a separate entry for 40 CFR 63.10(b)(2)(i), (ii), (iv) and (v) and including a ''no'' in column 3. Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods. Consequently, we are also proposing additional revisions to 40 CFR part 63, subparts EEEEE and ZZZZZ, to remove SSM-related records. First, we are proposing to replace the SSM recordkeeping requirement at 40 CFR 63.7752(a)(2), which refers to records specified in 40 CFR 63.6(e)(3), with requirements to keep records of maintenance performed on air pollution control and monitoring equipment as required by 40 CFR 63.10(b)(2)(iii). Second, we are proposing to revise the recordkeeping requirement at 40 CFR 63.7752(b)(4) to remove the records needed to indicate whether deviation of a continuous emission monitoring system occurred during periods of SSM. Third, we are proposing to revise the recordkeeping requirement at 40 CFR 63.10899(b) to revise the general reference to records required by 40 CFR 63.10 to specify that only records required by 40 CFR 63.10(b)(2)(iii), (vi) through (xiv), and (b)(3) are necessary.

Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.7752(d) and to 40 CFR 63.10899(b)(15). The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that this requirement apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add requirements to 40 CFR 63.7752(d) and to 40 CFR 63.10899(b)(15) that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information

to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

Section 63.10(b)(2)(iv), when applicable, requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by the proposed requirements in 40 CFR 63.7752(d) and in 40 CFR 63.10899(b)(15).

Section 63.10(b)(2)(v), when applicable, requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table for major source foundries (Table 1 to Subpart EEEEE of Part 63) by moving the reference to 40 CFR 63.10(c)(15) to include it with an entry for 40 CFR 63.10(c)(7) and (8) that includes a ''no'' in column 3. The EPA is proposing that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units. The General Provisions table for area source foundries (Table 3 to Subpart ZZZZZ of Part 63) already indicates that 40 CFR 63.10(c)(15) does not apply, so the EPA is not proposing to revise the designation in column 3 for this entry. However, based on the additional records specified in 40 CFR 63.10899(b)(15), the recordkeeping requirements in 40 CFR 63.10(c)(7) and (8) are redundant and no longer necessary. Therefore, we are proposing to include a single entry for 40 CFR 63.10(c) in Table 3 to Subpart ZZZZZ that includes a ''no'' in column 3.

g. Reporting

We are proposing to revise the General Provisions tables (Table 1 to Subpart EEEEE of Part 63 and Table 3 to Subpart ZZZZZ of Part 63) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no'' and to delete and reserve 40 CFR 63.7751(b)(4) and (c), which cross-references the 40 CFR 63.10(d)(5) reporting requirements. Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.7751(b)(7) and (8) and 40 CFR 63.10899(c). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semiannual report already required under this rule. We are proposing that the report must contain the date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate the cross-reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements. For example, both 40 CFR part 63, subparts EEEEE and ZZZZZ require foundry owners or operators to prepare and operate according to a site-specific operating and maintenance plan for each control device and continuous monitoring system associated with that control device and to maintain records documenting conformance with these requirements and the added reporting requirements to 40 CFR 63.7751(b)(7) and (8), as well as 40 CFR 63.10899(c) to include reporting of specific deviations.

The proposed amendments also eliminate the cross-reference to 40 CFR 63.10(d)(5)(ii), which describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

We are also proposing to revise the entry for 40 CFR 63.10(e)(3) in Table 3 to Subpart ZZZZZ of Part 63 by changing the ''yes'' in column 3 to ''no.'' Given the additions to the reporting requirements as described above, we are also proposing to include all relevant deviation reporting requirements directly in 40 CFR 63.10899(c), rather than relying on cross-reference to 40 CFR 63.10(e)(3). These edits are not expected to alter the reporting burden; however, the direct inclusion of the 40 CFR 63.10(e)(3) reporting requirements into 40 CFR 63.10899(c) will provide clarity of the reporting requirements to area source foundry owners and operators. We note that 40 CFR part 63, subpart EEEEE, directly includes these reporting elements and indicates that 40 CFR 63.10(e)(3) does not apply, so no revision to this entry is required for the major source foundry NESHAP.

2. Electronic Reporting

Through this proposal, the EPA is proposing that owners and operators of iron and steel foundries submit electronic copies of required initial notifications, performance test reports, performance evaluation reports, and semiannual reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in Docket ID Item No. EPA–HQ–OAR–2018–2019–0373. The proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as

listed on the ERT website [28] at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. Similarly, performance evaluation results of continuous monitoring systems measuring relative accuracy test audit pollutants that are supported by the ERT at the time of the test must be submitted in the format generated through the use of the ERT and other performance evaluation results be submitted in PDF using the attachment module of the ERT.

For semiannual reports, the proposed rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed templates for these reports is included in the docket for this rulemaking.[29] As part of these revisions, we are also proposing that the semiannual mercury switch removal report, currently described in 40 CFR 63.10899(b)(2)(ii), must be included as part of the semiannual compliance report. Currently, the semiannual mercury switch removal report may be submitted as a standalone report or as part of the semiannual compliance report. Therefore, to aide in the electronic reporting of mercury switch removal when a site-specific plan for mercury is used, we are proposing to move the reporting in 40 CFR 63.10899(b)(2)(ii) to the semiannual compliance report requirements included under 40 CFR 63.10899(c). The EPA specifically requests comment on the content, layout, and overall design of the template.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. The situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI which precludes an owner or operator from accessing the system and submitting required reports is addressed in 40 CFR 63.7751(h) and 40 CFR 63.10899(f). The situation where an extension may be warranted due to a force majeure event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents an owner or operator from complying with the requirement to submit a report electronically as required by this rule is addressed in 40 CFR 63.7751(i) and 40 CFR 63.10899(g). Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [30] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy [31] developed in response to the White House's Digital Government Strategy.[32] For more information on the benefits of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in Docket ID Item No. EPA–HQ–OAR–2018–2019–0373.

The EPA is also proposing to amend the implementation and enforcement delegations addressed in 40 CFR 63.7761(c) and 40 CFR 63.10905(c) to stipulate that the authority to approve any alternative to any electronic reporting cannot be delegated.

3. Technical and Editorial Changes

The EPA is proposing one additional editorial correction for 40 CFR part 63, subpart EEEEE, as follows.

- Revise 40 CFR 63.7732(e)(1) to correct the reference to ''paragraphs (b)(1)(i) through (v)'' to be ''paragraphs (e)(1)(i) through (v).''

The EPA is also proposing additional changes that address technical and editorial corrections for 40 CFR part 63, subpart ZZZZZ as follows.

- Revise 40 CFR 63.10885(a)(1) to add the sentence: ''Any post-consumer engine blocks, post-consumer oil filters, or oily turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, chlorinated plastics, or free organic liquids can be included in this certification.'' This provision was added to the major source NESHAP at 40 CFR 63.7700(b) in the 2008 amendments (73 FR 7218) shortly after the area source NESHAP was promulgated. The requirements in 40 CFR 63.10885(a)(1) were developed based on the provisions in 40 CFR 63.7700(b) and this provision for major source iron and steel foundries should also apply to area source iron and steel foundries.
- Revise 40 CFR 63.10890(c) to correct the reference to ''§ 63.9(h)(1)(i)'' to be ''§ 63.9(h)(2)(i).''
- Revise 40 CFR 63.10890(f) to correct the reference to ''§ 63.10(e)'' to be ''§ 63.13.''
- Revise 40 CFR 63.10897(d)(3) and (g) to replace all instances of ''correction action'' with ''corrective action'' to correct typographical errors.
- Revise 40 CFR 63.10899(c) to correct the reference to ''§ 63.10(e)'' to be ''§ 63.13.''
- Revise the entry for 40 CFR 63.9 in Table 3 to Subpart ZZZZZ to add an explanation in column 4 to read ''Except for opacity performance tests.'' This explanation was included in the major source NESHAP in Table 1 to Subpart EEEEE but was inadvertently not included in the area source NESHAP. This proposed amendment relieves area source foundries of providing notifications of semiannual opacity

[28] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[29] See *Iron_Steel_Foundry_Semiannual_Template_EEEEE_Draft* and *Iron_Steel_Foundry_Area_Sources_Semiannual_Template_ZZZZZ_Draft* available at Docket ID No. EPA–HQ–OAR–2018–0415.

[30] EPA's *Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[31] *E-Reporting Policy Statement for EPA Regulations,* September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[32] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

observations of fugitive emissions from buildings or structures housing foundry operations.

E. What compliance dates are we proposing?

We are proposing two changes that would impact ongoing compliance requirements for 40 CFR part 63, subparts EEEEE and ZZZZZ. As discussed elsewhere in this preamble, we are proposing to add a requirement that initial notifications, performance test results, performance evaluation reports, and the semiannual reports using the new template be submitted electronically. We are also proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan.

Our experience with similar industries that are required to convert reporting mechanisms, install necessary hardware, install necessary software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, reliably employ electronic reporting, and convert logistics of reporting processes to different time-reporting parameters, shows that a time period of a minimum of 90 days, and more typically, 180 days, is generally necessary to successfully complete these changes. Therefore, we are proposing 6 months to transition the periodic reports to electronic reporting through CEDRI. For performance tests, most stack testing contractors already have electronic reporting capabilities and have used EPA's electronic reporting system. Therefore, we are proposing that performance test reports and performance evaluation reports be submitted electronically for tests conducted after the effective date of the final rule. These reports are due within 60 days of the completion of the performance test so facilities will have up to 60 days (and generally longer since the performance test and performance evaluations are required annually or once every 5 years). We are proposing that the elimination of SSM exemptions will become effective on the effective date of the rule. We understand that the regulated facility generally requires some time period to read and understand the amended rule requirements; evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; adjust parameter monitoring and recording systems to accommodate revisions; and update their operations to reflect the revised requirements. However, most foundry processes are batch processes, so the control systems are designed to accommodate differing operations, including startup and shutdown. We do not expect that the proposed SSM revisions will require any new control systems and very few, if any, operational changes. Additionally, much of the revisions are eliminating additional records and reports related to SSM. These changes can be implemented quickly by the foundry owner or operator at no cost (and likely some cost savings) and if these records are still collected after the final rule is promulgated, the facility will still be in compliance with the proposed requirements. Finally, this proposal serves to provide notification to the iron and steel foundry industry of the EPA's intent to require compliance with the applicable standards at all times, including periods of SSM, and the evaluations and adjustments needed to comply with the standards at all times can be conducted based on this proposal. Therefore, the EPA is proposing to require compliance with the SSM revisions for 40 CFR part 63, subparts EEEEE and ZZZZZ, upon the effective date of the final rules. We solicit comment on this proposed compliance period, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in changes to the proposed compliance date.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

There are approximately 45 major source iron and steel foundries and approximately 390 area source iron and steel foundries affected by this proposal. In this proposal, we have included editorial corrections, electronic reporting requirements, and changes in policies regarding SSM. Because we are proposing no new requirements or controls in this RTR, no iron and steel foundries are adversely impacted by these proposed revisions. In fact, the impacts to iron and steel foundries from this proposal are expected to be minimal.

B. What are the air quality impacts?

Because we are not proposing revisions to the emission limitations, we do not anticipate any quantifiable air quality impacts as a result of the proposed amendments. However, we anticipate that the proposed requirements, including the removal of the SSM exemption and addition of periodic emissions testing, may reduce some unquantified emissions by ensuring proper operation of control devices during SSM periods.

C. What are the cost impacts?

We expect that the proposed amendments will have minimal cost impacts for iron and steel foundries. The proposed editorial corrections will have no cost impacts. The proposed revisions to use electronic reporting effectively replace existing requirements to mail in copies of the required reports and notifications. We expect that the electronic system will save some time and expense compared to printing and mailing the required reports and notifications; however, it will take some time for foundry owners and operators to review the new electronic notification and reporting form, review their recordkeeping processes, and potentially revise their processes to more efficiently complete their semiannual reports. There may also be initial costs associated with electronic reporting of performance tests. We are also proposing revisions to SSM provisions. Again, these revisions are expected to have minimal impact on affected iron and steel foundries. For major source iron and steel foundries, we are eliminating the need to develop a SSM plan or submit an immediate SSM report when the SSM plan is not followed and there is an exceedance of an applicable emission limitation. While this may reduce some burden, iron and steel foundry owners and operators will still need to assess their operations and make plans to achieve the emission limitations at all times, including periods of startup, shutdown, or malfunction.

We estimate the initial one-time costs associated with the proposed electronic reporting and SSM revisions would be $96,000 for the 45 major source iron and steel foundries subject to 40 CFR part 63, subpart EEEEE, or approximately $2,130 per major source foundry. For area source foundries subject to 40 CFR part 63, subpart ZZZZZ, we estimate the total initial one-time costs would be $375,000 for the 390 area sources. The average one-time cost for an area source foundry classified as a small area source foundry is estimated to be $732 per

foundry; the average one-time cost for an area source foundry classified as a large area source foundry is estimated to be $1,920 per foundry. Once electronic reporting is adopted, we expect costs savings to be realized for the ongoing report submissions. We estimate that a reduction in the time to prepare and submit semiannual reports of 1 to 2 hours per report would off-set the initial one-time costs within the first 3 years after implementation of the electronic reporting. Consequently, we consider the cost impacts associated with the proposed electronic reporting provisions to be minimal. Also, we expect there would only be a small number of immediate SSM reports each year, so that the cost savings associated with eliminating the immediate SSM reports each year would be under $500 nationwide. Consequently, we estimate the total one-time cost impacts of the proposed electronic reporting and SSM revisions will be approximately $470,000 across all foundries (area and major sources) and that these costs will largely be offset within the first 3 years of implementation.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs associated with the proposed requirements and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a proposed rule. Because the costs associated with the proposed revisions are minimal, no significant economic impacts from the proposed amendments are anticipated.

E. What are the benefits?

Although the EPA does not anticipate any significant reductions in HAP emissions as a result of the proposed amendments, we believe that the action, if finalized as proposed, would result in improvements to the rule. Specifically, the proposed amendments revise the standards such that they apply at all times. Additionally, the proposed amendments requiring electronic submittal of initial notifications, performance test results, and semiannual reports will increase the usefulness of the data, are in keeping with current trends of data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community. See section IV.D.3 of this preamble for more information.

VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/iron-and-steel-foundries-national-emissions-standards-hazardous-air.* The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2019–0373 (through the method described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/iron-and-steel-foundries-national-emissions-standards-hazardous-air.*

VIII. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA, as described for each source category covered by this proposal in sections C.1 and C.2 below.

1. Iron and Steel Foundries Major Sources

The information collection request (ICR) document that the EPA prepared has been assigned EPA ICR number 2096.07. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

We are proposing amendments that require electronic reporting, remove the malfunction exemption, and impose other revisions that affect reporting and recordkeeping for iron and steel foundries major source facilities. This information would be collected to assure compliance with 40 CFR part 63, subpart EEEEE.

Respondents/affected entities: Owners or operators of iron and steel foundries major source facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart EEEEE).

Estimated number of respondents: 45 (total).

Frequency of response: Initial, semiannual, and annual.

Total estimated burden: The annual recordkeeping and reporting burden for facilities to comply with all of the requirements in the NESHAP is estimated to be 15,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting burden for facilities to comply with all of the requirements in the NESHAP is estimated to be $1,400,000 (per year), which includes $206,000 annualized capital or operation and maintenance costs.

2. Iron and Steel Foundries Area Sources

The ICR document that the EPA prepared has been assigned EPA ICR number 2267.05. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

We are proposing amendments that require electronic reporting, remove the malfunction exemption, and impose other revisions that affect reporting and recordkeeping for iron and steel foundries area source facilities. This information would be collected to assure compliance with 40 CFR part 63, subpart ZZZZZ.

Respondents/affected entities: Owners or operators of iron and steel foundries area source facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart ZZZZZ).

Estimated number of respondents: 390 (total), 75 of these are classified as large iron and steel foundries and 315 are classified as small iron and steel foundries.

Frequency of response: Initial, semiannual, and annual.

Total estimated burden: The annual recordkeeping and reporting burden for facilities to comply with all of the requirements in the NESHAP is estimated to be 14,400 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting burden for facilities to comply with all of the requirements in the NESHAP is estimated to be $1,150,000 (per year); there are no annualized capital or operation and maintenance costs.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than November 8, 2019. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Based on the Small Business Administration size category for this source category, no small entities are subject to this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. No tribal governments own facilities subject to the NESHAP. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III and IV of this preamble and further documented in the following risk report titled *Residual Risk Assessment for the Iron and Steel Foundries Major Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which can be found in the docket for this action.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

EPA Method 9095B, ''Paint Filter Liquids Test'' was previously approved for incorporation by reference into § 63.10885 and no changes are proposed.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section IV.A.3 of this preamble and the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near the Iron and Steel Foundries Source Category,* which is located in the public docket for this action.

We examined the potential for any environmental justice issues that might be associated with the source category, by performing a demographic analysis of the population close to the facilities. In this analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the 40 CFR part 63, subpart EEEEE, source category across different social, demographic, and economic groups within the populations living near facilities identified as having the highest risks. The methodology and the results of the demographic analyses are included in the technical report, *Risk and*

Technology Review—Analysis of Demographic Factors for Populations Living Near the Iron and Steel Foundries Source Category, available in the docket for this action.

The results of the 40 CFR part 63, subpart EEEEE, source category demographic analysis indicate that emissions from the Iron and Steel Foundries major source category expose approximately 144,000 people to a cancer risk at or above 1-in-1 million and none exposed to a chronic noncancer TOSHI greater than 1. The percentages of the at-risk population in each demographic group (except for ''African American,'' ''Below Poverty Level,'' and ''Over 25 and without High School Diploma'') are similar to or lower than their respective nationwide percentages. The African American population exposed to a cancer risk at or above 1-in-1 million due to iron and steel foundries major source emissions is 4 percent above the national average. Likewise, populations living ''Below Poverty Level'' and ''Over 25 and without High School Diploma'' are exposed to cancer risk above 1-in-1 million, 6 and 4 percent above the national average, respectively.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: September 13, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart EEEEE—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

■ 2. Section 63.7710 is amended by revising paragraph (a) to read as follows:

§ 63.7710 What are my operation and maintenance requirements?

(a) You must always operate and maintain your iron and steel foundry, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

* * * * *

■ 3. Section 63.7720 is amended by revising paragraph (a) and removing and reserving paragraph (c) to read as follows:

§ 63.7720 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, work practice standards, and operation and maintenance requirements in this subpart at all times.

* * * * *

(c) [Reserved]

■ 4. Section 63.7732 is amended by revising paragraph (a) and revising paragraph (e)(1) introductory text to read as follows:

§ 63.7732 What test methods and other procedures must I use to demonstrate initial compliance with the emissions limitations?

(a) You must conduct each performance test that applies to your iron and steel foundry based on your selected compliance alternative, if applicable, according to the requirements in paragraphs (b) through (i) of this section. Each performance test must be conducted under conditions representative of normal operations. Normal operating conditions exclude periods of startup and shutdown. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(e) * * *

(1) Determine the VOHAP concentration for each test run according to the test methods in 40 CFR part 60, appendix A, that are specified in paragraphs (e)(1)(i) through (v) of this section.

* * * * *

■ 5. Section 63.7746 is amended by removing and reserving paragraph (b) to read as follows:

§ 63.7746 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) [Reserved]

■ 6. Section 63.7751 is amended by:

■ a. Removing and reserving paragraph (b)(4);

■ b. Revising paragraphs (b)(6) through (8);

■ c. Removing and reserving paragraph (c); and

■ d. Adding paragraphs (e) through (i).

The revisions and additions read as follows:

§ 63.7751 What reports must I submit and when?

* * * * *

(b) * * *

(4) [Reserved]

* * * * *

(6) If there were no periods during which a continuous monitoring system (including a CPMS or CEMS) was inoperable or out-of-control as specified by § 63.8(c)(7), a statement that there were no periods during which the CPMS was inoperable or out-of-control during the reporting period.

(7) For each affected source or equipment for which there was a deviation from an emissions limitation (including an operating limit, work practice standard, or operation and maintenance requirement) that occurs at an iron and steel foundry during the reporting period, the compliance report must contain the information specified in paragraphs (b)(7)(i) through (iii) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) A list of the affected source or equipment and the total operating time of each emissions source during the reporting period.

(ii) For each deviation from an emissions limitation (including an operating limit, work practice standard, or operation and maintenance requirement) that occurs at an iron and steel foundry during the reporting period, report:

(A) The date, start time, duration (in hours), and cause of each deviation (characterized as either startup, shutdown, control equipment problem, process problem, other known cause, or unknown cause, as applicable) and the corrective action taken; and

(B) An estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(iii) A summary of the total duration (in hours) of the deviations that occurred during the reporting period by cause (characterized as startup, shutdown, control equipment problems, process problems, other known causes, and unknown causes) and the cumulative duration of deviations during the reporting period across all causes both in hours and as a percent of

the total source operating time during the reporting period.

(8) For each continuous monitoring system (including a CPMS or CEMS) used to comply with the emissions limitation or work practice standard in this subpart that was inoperable or out-of-control during any portion of the reporting period, you must include the information specified in paragraphs (b)(8)(i) through (vi) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) A brief description of the continuous monitoring system, including manufacturer and model number.

(ii) The date of the latest continuous monitoring system certification or audit.

(iii) A brief description and the total operating time of the affected source or equipment that is monitored by the continuous monitoring system during the reporting period.

(iv) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(v) For each period for which the continuous monitoring system was inoperable or out-of-control during the reporting period, report:

(A) The date, start time, and duration (in hours) of the deviation;

(B) The type of deviation (inoperable or out-of-control); and

(C) The cause of deviation (characterized as monitoring system malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and unknown causes, as applicable) and the corrective action taken.

(vi) A summary of the total duration (in hours) of the deviations that occurred during the reporting period by cause (characterized as monitoring system malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and unknown causes) and the cumulative duration of deviations during the reporting period across all causes both in hours and as a percent of the total source operating time during the reporting period.

(c) [Reserved]

* * * * *

(e) Compliance report submission requirements. Prior to [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit semiannual compliance reports to the Administrator as specified in § 63.13. Beginning on [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit all subsequent semiannual compliance reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). You must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(f) Performance test results submission requirements. Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (f)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via the CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (e)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (f)(1) of this section.

(g) Performance evaluation results submission requirements. Within 60 days after the date of completing each continuous monitoring system (CMS) performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedures specified in paragraphs (g)(1) through (3) of this section.

(1) *Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation to the EPA via CEDRI, which can be accessed through the EPA's CDX. The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Performance evaluations of CMS measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* The results of the performance evaluation must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential business information (CBI).* If you claim some of the

information submitted under paragraph (f)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (g)(1) of this section.

(h) Claims of EPA system outage. If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (h)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(i) Claims of force majeure. If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (i)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 7. Section 63.7752 is amended by:

■ a. Revising paragraph (a)(2);

■ b. Revising paragraphs (b)(2) and (4); and

■ c. Adding paragraphs (d) and (e).

The revisions and additions read as follows:

§ 63.7752 What records must I keep?

(a) * * *

(2) Records of required maintenance performed on the air pollution control and monitoring equipment as required by § 63.10(b)(2)(iii).

* * * * *

(b) * * *

(2) Records of the site-specific performance evaluation test plan required under § 63.8(d)(2) for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you shall keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan as required under § 63.8(d)(2)(vi).

* * * * *

(4) Records of the date and time that each deviation started and stopped.

* * * * *

(d) You must keep the following records for each failure to meet an emissions limitation (including operating limit), work practice standard, or operation and maintenance requirement in this subpart.

(1) Date, start time and duration of each failure.

(2) List of the affected sources or equipment for each failure, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Actions taken to minimize emissions in accordance with § 63.7710(a), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(e) Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 8. Section 63.7761 is amended by revising paragraph (c) introductory text and adding paragraph (c)(5) to read as follows:

§ 63.7761 Who implements and enforces this subpart?

* * * * *

(c) The authorities that cannot be delegated to state, local, or tribal

agencies are specified in paragraphs (c)(1) through (5) of this section.

* * * * *

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 9. Section 63.7765 is amended by revising the definitions of ''Deviation'' and ''Off blast'' to read as follows:

§ 63.7765 What definitions apply to this subpart?

* * * * *

Deviation means any instance in which an affected source or an owner or operator of such an affected source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emissions limitation (including operating limits), work practice standard, or operation and maintenance requirement; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any iron and steel foundry required to obtain such a permit.

A deviation is not always a violation. The determination of whether a deviation constitutes a violation of the standard is up to the discretion of the entity responsible for enforcement of the standards.

* * * * *

Off blast means those periods of cupola operation when the cupola is not actively being used to produce molten metal. Off blast conditions include cupola startup when air is introduced to the cupola to preheat the sand bed and other cupola startup procedures. Off blast conditions also include idling conditions when the blast air is turned off or down to the point that the cupola does not produce additional molten metal.

* * * * *

■ 10. Table 1 to subpart EEEEE is revised to read as follows:

TABLE 1 TO SUBPART EEEEE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEEE

[As stated in § 63.7760, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart EEEEE?	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and abbreviations	Yes.	
63.4	Prohibited activities	Yes.	
63.5	Construction/reconstruction	Yes.	
63.6(a) through (d)	Compliance applicability and dates	Yes.	
63.6(e)	Operating and maintenance requirements.	No	Subpart EEEEE specifies operating and maintenance requirements.
63.6(f)(1)	Applicability of non-opacity emission standards.	No	Subpart EEEEE specifies applicability of non-opacity emission standards.
63.6(f)(2) through (3)	Methods and finding of compliance with non-opacity emission standards.	Yes.	
63.6(g)	Use of an alternative nonopacity emission standard.	Yes.	
63.6(h)(1)	Applicability of opacity and visible emissions standards.	No	Subpart EEEEE specifies applicability of opacity and visible emission standards.
63.6(h)(2) through (9)	Methods and other requirements for opacity and visible emissions standards.	Yes.	
63.6(i) through (j)	Compliance extension and Presidential compliance exemption.	Yes.	
63.7(a)(1) through (2)	Applicability and performance test dates.	No	Subpart EEEEE specifies applicability and performance test dates.
63.7(a)(3) through (4)	Administrators rights to require a performance test and force majeure provisions.	Yes.	
63.7(b) through (d)	Notification of performance test, quality assurance program, and testing facilities.	Yes.	
63.7(e)(1)	Performance test conditions	No	Subpart EEEEE specifies performance test conditions.
63.7(e)(2) through (4), (f) through (h)	Other performance testing requirements.	Yes.	
63.8(a)(1) through (3), (b), (c)(1)(ii), (c)(2) through (3), (c)(6) through (8), (d)(1) through (2).	Monitoring requirements	Yes.	
63.8(a)(4)	Additional monitoring requirements for control devices in § 63.11.	No	Subpart EEEEE does not require flares.
63.8(c)(1)(i), (c)(1)(iii)	Operation and maintenance of continuous monitoring systems.	No	40 CFR 63.8 requires good air pollution control practices and sets out the requirements of a quality control program for monitoring equipment.
63.8(c)(4)	Continuous monitoring system (CMS) requirements.	No	Subpart EEEEE specifies requirements for operation of CMS and CEMS.
63.8(c)(5)	Continuous opacity monitoring system (COMS) Minimum Procedures.	No	Subpart EEEEE does not require COMS.

TABLE 1 TO SUBPART EEEEE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEEE—Continued

[As stated in § 63.7760, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart EEEEE?	Explanation
63.8(d)(3)	Quality control program	No	Subpart EEEEE specifies records that must be kept associated with site-specific performance evaluation test plan.
63.8(e), (f)(1) through (6), (g)(1) through (4).	Performance evaluations and alternative monitoring.	Yes	Subpart EEEEE specifies requirements for alternative monitoring systems.
63.8(g)(5)	Data reduction	No	Subpart EEEEE specifies data reduction requirements.
63.9	Notification requirements	Yes	Except: For opacity performance tests, Subpart EEEEE allows the notification of compliance status to be submitted with the semiannual compliance report or the semiannual part 70 monitoring report.
63.10(a),(b)(1), (b)(2)(iii) and (vi) through (xiv), (b)(3), (c)(1) through (6), (c)(9) through (14), (d)(1) through (4), (e)(1) through (2), (f).	Recordkeeping and reporting requirements.	Yes	Additional records for CMS in § 63.10(c)(1) through (6), (9) through (15) apply only to CEMS.
63.10(b)(2)(i), (ii), (iv) and (v)	Recordkeeping for startup, shutdown, and malfunction events.	No.	
63.10(c)(7), (8) and (15)	Records of excess emissions and parameter monitoring exceedances for CMS.	No	Subpart EEEEE specifies records requirements.
63.10(d)(5)	Periodic startup, shutdown, and malfunction reports.	No.	
63.10(e)(3)	Excess emissions reports	No	Subpart EEEEE specifies reporting requirements.
63.10(e)(4)	Reporting COMS data	No	Subpart EEEEE data does not require COMS.
63.11	Control device requirements	No	Subpart EEEEE does not require flares.
63.12	State authority and delegations	Yes.	
63.13–63.15	Addresses of State air pollution control agencies and EPA regional offices. Incorporation by reference. Availability of information and confidentiality.	Yes.	

Subpart ZZZZZ—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

■ 11. Section 63.10885 is amended by revising paragraph (a)(1) to read as follows:

§ 63.10885 What are my management practices for metallic scrap and mercury switches?

(a) * * *

(1) *Restricted metallic scrap.* You must prepare and operate at all times according to written material specifications for the purchase and use of only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, chlorinated plastics, or free liquids. For the purpose of this subpart, ''free liquids'' is defined as material that fails the paint filter test by EPA Method 9095B, ''Paint Filter Liquids Test'' (incorporated by reference—see § 63.14). The requirements for no free liquids do not apply if the owner or operator can demonstrate that the free liquid is water that resulted from scrap exposure to rain. Any post-consumer engine blocks, post-consumer oil filters, or oily turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, chlorinated plastics, or free organic liquids can be included in this certification.

* * * * *

■ 12. Section 63.10890 is amended by:

■ a. Revising paragraph (c) introductory text;

■ b. Revising paragraphs (d), (e)(3), (f) and (i); and

■ c. Adding paragraph (j).

The revisions and additions read as follows:

§ 63.10890 What are my management practices and compliance requirements?

* * * * *

(c) You must submit a notification of compliance status according to § 63.9(h)(2)(i). You must send the notification of compliance status before the close of business on the 30th day after the applicable compliance date specified in § 63.10881. The notification must include the following compliance certifications, as applicable:

* * * * *

(d) As required by § 63.10(b)(1), you must maintain files of all information (including all reports and notifications) for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche. Any records required to be maintained

by this part that are submitted electronically via the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

(e) * * *

(3) If you are subject to the requirements for a site-specific plan for mercury switch removal under § 63.10885(b)(1), you must maintain records of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the estimated number of vehicles processed, and an estimate of the percent of mercury switches recovered.

* * * * *

(f) You must submit semiannual compliance reports to the Administrator according to the requirements in § 63.10899(c), (f), and (g), except that § 63.10899(c)(5) and (7) do not apply.

* * * * *

(i) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

(j) You must comply with the following requirements of the General Provisions (40 CFR part 63, subpart A): §§ 63.1 through 63.5; § 63.6(a), (b), and (c); § 63.9; § 63.10(a), (b)(1), (b)(2)(xiv), (b)(3), (d)(1), (d)(4), and (f); and §§ 63.13 through 63.16. Requirements of the General Provisions not cited in the preceding sentence do not apply to the owner or operator of a new or existing affected source that is classified as a small foundry.

■ 13. Section 63.10896 is amended by adding paragraph (c) to read as follows:

§ 63.10896 What are my operation and maintenance requirements?

* * * * *

(c) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

■ 14. Section 63.10897 is amended by adding paragraph (d)(3) introductory text and revising paragraph (g) to read as follows:

§ 63.10897 What are my monitoring requirements?

* * * * *

(d) * * *

(3) In the event that a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete corrective action as soon as practicable, but no later than 10 calendar days from the date of the alarm. You must record the date and time of each valid alarm, the time you initiated corrective action, the corrective action taken, and the date on which corrective action was completed. Corrective actions may include, but are not limited to:

* * * * *

(g) In the event of an exceedance of an established emissions limitation (including an operating limit), you must restore operation of the emissions source (including the control device and associated capture system) to its normal or usual manner or operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the exceedance. You must record the date and time corrective action was initiated, the corrective action taken, and the date corrective action was completed.

* * * * *

■ 15. Section 63.10898 is amended by revising paragraph (c) to read as follows:

§ 63.10898 What are my performance test requirements?

* * * * *

(c) You must conduct each performance test under conditions representative of normal operations according to the requirements in Table 1 to this subpart and paragraphs (d) through (g) of this section. Normal operating conditions exclude periods of startup and shutdown. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 16. Section 63.10899 is amended by:
■ a. Revising paragraph (a);
■ b. Revising paragraph (b) introductory text and paragraph (b)(2);
■ c. Adding paragraphs (b)(14) and (15);
■ d. Revising paragraph (c); and
■ e. Adding paragraphs (e) through (g).

The revisions and additions read as follows:

§ 63.10899 What are my recordkeeping and reporting requirements?

(a) As required by § 63.10(b)(1), you must maintain files of all information (including all reports and notifications) for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks or flash drives, on magnetic tape disks, or on microfiche. Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

* * * * *

(b) In addition to the records required by 40 CFR 63.10(b)(2)(iii), (vi) through (xiv), and (b)(3), you must keep records of the information specified in paragraphs (b)(1) through (15) of this section.

* * * * *

(2) If you are subject to the requirements for a site-specific plan for mercury under § 63.10885(b)(1), you must maintain records of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the estimated number of vehicles processed, and an estimate of the percent of mercury switches recovered.

* * * * *

(14) You must keep records of the site-specific performance evaluation test plan required under § 63.8(d)(2) for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you shall keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the

Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan as required under § 63.8(d)(2)(vi).

(15) You must keep the following records for each failure to meet an emissions limitation (including operating limit), work practice standard, or operation and maintenance requirement in this subpart.

(i) Date, start time, and duration of each failure;

(ii) List of the affected sources or equipment for each failure, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(iii) Actions taken to minimize emissions in accordance with § 63.10896(c), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(c) Prior to [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], you must submit semiannual compliance reports to the Administrator according to the requirements in § 63.13. Beginning on [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], you must submit all subsequent semiannual compliance reports to the EPA via the CEDRI, which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). You must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph. The reports must include the information specified in paragraphs (c)(1) through (3) of this section and, as applicable, paragraphs (c)(4) through (9) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there were no deviations from any emissions limitations (including operating limits, pollution prevention management practices, or operation and maintenance requirements), a statement that there were no deviations from the emissions limitations, pollution prevention management practices, or operation and maintenance requirements during the reporting period.

(5) If there were no periods during which a continuous monitoring system (including a CPMS or CEMS) was inoperable or out-of-control as specified by § 63.8(c)(7), a statement that there were no periods during which the CPMS was inoperable or out-of-control during the reporting period.

(6) For each affected source or equipment for which there was a deviation from an emissions limitation (including an operating limit, pollution prevention management practice, or operation and maintenance requirement) that occurs at an iron and steel foundry during the reporting period, the compliance report must contain the information specified in paragraphs (c)(6)(i) through (iii) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) A list of the affected source or equipment and the total operating time of each emissions source during the reporting period.

(ii) For each deviation from an emissions limitation (including an operating limit, pollution prevention management practice, or operation and maintenance requirement) that occurs at an iron and steel foundry during the reporting period, report:

(A) The date, start time, duration (in hours), and cause of each deviation (characterized as either startup, shutdown, control equipment problem, process problem, other known cause, or unknown cause, as applicable) and the corrective action taken; and

(B) An estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(iii) A summary of the total duration (in hours) of the deviations that occurred during the reporting period by cause (characterized as startup, shutdown, control equipment problems, process problems, other known causes, and unknown causes) and the cumulative duration of deviations during the reporting period across all causes both in hours and as a percent of the total source operating time during the reporting period.

(7) For each continuous monitoring system (including a CPMS or CEMS) used to comply with the emissions limitation or work practice standard in this subpart that was inoperable or out-of-control during any portion of the reporting period, you must include the information specified in paragraphs (c)(7)(i) through (vi) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) A brief description of the continuous monitoring system, including manufacturer and model number.

(ii) The date of the latest continuous monitoring system certification or audit.

(iii) A brief description and the total operating time of the affected source or equipment that is monitored by the continuous monitoring system during the reporting period.

(iv) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(v) For each period for which the continuous monitoring system was inoperable or out-of-control during the reporting period, report:

(A) The date, start time, and duration (in hours) of the deviation;

(B) The type of deviation (inoperable or out-of-control); and

(C) The cause of deviation (characterized as monitoring system malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and unknown causes, as applicable) and the corrective action taken.

(vi) A summary of the total duration (in hours) of the deviations that occurred during the reporting period by cause (characterized as monitoring system malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and unknown causes) and the cumulative duration of deviations during the reporting period across all causes both in hours and as a percent of the total source operating time during the reporting period.

(8) Identification of which option in § 63.10885(b) applies to you. If you comply with the mercury requirements in § 63.10885(b) by using one scrap provider, contract, or shipment subject to one compliance provision and others subject to another compliance provision different, provide an identification of which option in § 63.10885(b) applies to each scrap provider, contract, or shipment.

(9) If you are subject to the requirements for a site-specific plan for mercury under § 63.10885(b)(1), include:

(i) The number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the estimated number of vehicles processed, an estimate of the percent of mercury switches recovered;

(ii) A certification that the recovered mercury switches were recycled at RCRA-permitted facilities; and

(iii) A certification that you have conducted periodic inspections or taken other means of corroboration as required under § 63.10885(b)(1)(ii)(C).

* * * * *

(e) Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (e)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via the CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (e)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (e)(1) of this section.

(f) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (f)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(g) Claims of force majeure. If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (g)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

■ 17. Section 63.10905 is amended by revising paragraph (c) introductory text and adding paragraph (c)(7) to read as follows:

§ 63.10905 Who implements and enforces this subpart?

* * * * *

(c) The authorities that cannot be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (7) of this section.

* * * * *

(7) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 18. Section 63.10906 is amended by revising the definition of ''Deviation'' to read as follows:

§ 63.10906 What definitions apply to this subpart?

* * * * *

Deviation means any instance in which an affected source or an owner or operator of such an affected source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emissions limitation (including operating limits), management practice, or operation and maintenance requirement; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any iron and steel foundry required to obtain such a permit.

* * * * *

■ 19. Table 3 to subpart ZZZZZ is revised to read as follows:

TABLE 3 TO SUBPART ZZZZZ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO NEW AND EXISTING AFFECTED SOURCES CLASSIFIED AS LARGE FOUNDRIES

As required in § 63.10900(a), you must meet each requirement in the following table that applies to you:

Citation	Subject	Applies to large foundry?	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and abbreviations	Yes.	
63.4	Prohibited activities	Yes.	
63.5	Construction/reconstruction	Yes.	
63.6(a) through (d)	Compliance applicability and dates	Yes.	
63.6(e)	Operating and maintenance requirements.	No	Subpart ZZZZZ specifies operating and maintenance requirements.
63.6(f)(1)	Applicability of non-opacity emission standards.	No	Subpart ZZZZZ specifies applicability of non-opacity emission standards.
63.6(f)(2) through (3)	Methods and finding of compliance with non-opacity emission standards.	Yes.	
63.6(g)	Use of an alternative nonopacity emission standard.	Yes.	
63.6(h)(1)	Applicability of opacity and visible emissions standards.	No	Subpart ZZZZZ specifies applicability of opacity and visible emission standards
63.6(h)(2) through (9)	Methods and other requirements for opacity and visible emissions standards.	Yes.	
63.6(i) through (j)	Compliance extension and Presidential compliance exemption.	Yes.	
63.7(a)(1) through (2)	Applicability and performance test dates.	No	Subpart ZZZZZ specifies applicability and performance test dates.
63.7(a)(3) through (4)	Administrators rights to require a performance test and force majeure provisions.	Yes.	
63.7(b) through (d)	Notification of performance test, quality assurance program, and testing facilities.	Yes.	
63.7(e)(1)	Performance test conditions	No	Subpart ZZZZZ specifies performance test conditions.
63.7(e)(2) through (4), (f) through (h)	Other performance testing requirements.	Yes.	
63.8(a)(1) through (3), (b), (c)(1)(ii), (c)(2) through (3), (c)(6) through (8), (d)(1) through (2), (e), (f)(1) through (6), (g)(1) through (4).	Monitoring requirements	Yes.	
63.8(a)(4)	Additional monitoring requirements for control devices in § 63.11.	No.	
63.8(c)(1)(i), (c)(1)(iii)	Operation and maintenance of continuous monitoring systems.	No	40 CFR 63.8 requires good air pollution control practices and sets out the requirements of a quality control program for monitoring equipment.
63.8(c)(4)	Continuous monitoring system (CMS) requirements.	No.	
63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No.	
63.8(d)(3)	Quality control program	No	Subpart ZZZZZ specifies records that must be kept associated with site-specific performance evaluation test plan.
(e), (f)(1) through (6), (g)(1) through (4)	Performance evaluations and alternative monitoring.	Yes.	
63.8(g)(5)	Data reduction	No.	
63.9	Notification requirements	Yes	Except for opacity performance tests.
63.10(a), (b)(1),(b)(2)(xii) through (xiv), (b)(3), (d)(1) through (4), (e)(1) through (2), (f).	Recordkeeping and reporting requirements.	Yes.	

TABLE 3 TO SUBPART ZZZZZ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO NEW AND EXISTING AFFECTED SOURCES CLASSIFIED AS LARGE FOUNDRIES—Continued

As required in § 63.10900(a), you must meet each requirement in the following table that applies to you:

Citation	Subject	Applies to large foundry?	Explanation
63.10(b)(2)(i) through (xi)	Malfunction and CMS records	No.	
63.10(c)	Additional records for CMS	No	Subpart ZZZZZ specifies records requirements.
63.10(d)(5)	Periodic startup, shutdown, and malfunction reports.	No.	
63.10(e)(3)	Excess emissions reports	No	Subpart ZZZZZ specifies reporting requirements.
63.10(e)(4)	Reporting COMS data	No.	
63.11	Control device requirements	No.	
63.12	State authority and delegations	Yes.	
63.13 through 63.16	Addresses of State air pollution control agencies and EPA regional offices. Incorporation by reference. Availability of information and confidentiality. Performance track provisions.	Yes.	

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removing the Kirtland's Warbler From the Federal List of Endangered and Threatened Wildlife; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR 17

[Docket No. FWS–R3–ES–2018–0005; FXES11130900000]

RIN 1018–BC01

Endangered and Threatened Wildlife and Plants; Removing the Kirtland's Warbler From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (ESA), we, the U.S. Fish and Wildlife Service (Service), are removing the Kirtland's warbler (*Setophaga kirtlandii*) from the Federal List of Endangered and Threatened Wildlife (List) due to recovery. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to the species have been eliminated or reduced to the point that the species has recovered and no longer meets the definition of endangered or threatened under the ESA. This rule also announces availability of a post-delisting monitoring plan for Kirtland's warbler.

DATES: This rule is effective November 8, 2019.

ADDRESSES: This final rule and the post-delisting monitoring plan are available on the internet at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0005 or *https://ecos.fws.gov.* 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.* Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Michigan Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823; telephone 517–351–2555.

FOR FURTHER INFORMATION CONTACT: Scott Hicks, Field Supervisor, Michigan Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823; telephone 517–351–2555. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a species may be removed from the List (''delisted'') if it is determined that it has recovered and is no longer endangered or threatened. Delisting can be completed only by issuing a rule.

This rule removes the Kirtland's warbler (*Setophaga kirtlandii*) from the List.

Basis for action. Under the ESA, we determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider the same factors in delisting a species. We have determined that the primary threats to the Kirtland's warbler have been reduced or managed to the point that the species is recovered.

Peer review and public comment. We sought comments on the proposed delisting rule and draft post-delisting monitoring plan from independent specialists to ensure that this rule is based on scientifically sound data, assumptions, and analyses. We also considered all comments and information we received during the proposed delisting rule's comment period.

Previous Federal Actions

On April 12, 2018, we published a proposed rule to remove Kirtland's warbler from the List (83 FR 15758). Please refer to that proposed rule for a detailed description of previous Federal actions concerning this species.

Species Information

Taxonomy

The Kirtland's warbler is a songbird classified in the Order Passeriformes, Family Parulidae. This species was originally described in 1852, and named *Sylvicola kirtlandii* (Baird 1872, p. 207). The American Ornithologists' Union Committee on Classification and Nomenclature-North and Middle America recently changed the classification of the Parulidae, which resulted in three genera (*Parula, Dendroica,* and *Wilsonia*) being deleted and transferred to the genus *Setophaga* (Chesser *et al.* 2011, p. 606). This revision was adopted by the Service on February 12, 2014 (78 FR 68370; November 14, 2013).

Distribution

The Kirtland's warbler is a neotropical migrant that breeds in jack pine (*Pinus banksiana*) forests in northern Michigan, Wisconsin, and Ontario. This species has one of the most geographically restricted breeding distributions of any mainland bird in the continental United States. Breeding habitat within the jack pine forest is both highly specific and disturbance-dependent, and likely was always limited in extent (Mayfield 1960, pp. 9–10; Mayfield 1975, p. 39). Similarly, the known wintering range is primarily restricted to The Bahamas (Cooper *et al.* 2019, p. 83).

Kirtland's warblers are not evenly distributed across their breeding range. Female Kirtland's warblers are often observed with singing males; therefore, nesting is generally assumed to occur at most sites where singing males are present (Probst *et al.* 2003, p. 369; MDNR, USFWS, USFS, unpubl. data). More than 98 percent of all singing males have been counted in the northern Lower Peninsula of Michigan since population monitoring began in 1951 (Michigan Department of Natural Resources (MDNR), Service (USFWS), U.S. Forest Service (USFS), unpubl. data). The core of the Kirtland's warbler's breeding range is concentrated in five counties in northern lower Michigan (Ogemaw, Crawford, Oscoda, Alcona, and Iosco), where nearly 85 percent of the singing males were recorded between 2000 and 2015, with over 30 percent counted in Ogemaw County alone and over 21 percent in just one township during that same time period (MDNR, USFWS, USFS, unpubl. data).

Kirtland's warblers have been observed in Ontario periodically since 1900 (Samuel 1900, pp. 391–392) and in Wisconsin since the 1940s (Hoffman 1989, p. 29). Systematic searches for the presence of Kirtland's warblers in States and provinces adjacent to Michigan, however, did not begin until 1977 (Aird 1989, p. 32; Hoffman 1989, p. 1) and have not been conducted consistently across the years. Shortly after these searches began, male Kirtland's warblers were found during the breeding season in Ontario in 1977 and Quebec in 1978 (Aird 1989, pp. 32–35), Wisconsin in 1978 (Tilghman 1979, p. 19), and the Upper Peninsula of Michigan in 1982 (Probst 1985, p. 11). Nesting was confirmed in the Upper Peninsula in 1996 (Weinrich 1996, p. 2; Weise and Weinrich 1997, p. 2), and in Wisconsin and Ontario in 2007 (Richard 2008, pp. 8–10; Trick *et al.* 2008, pp. 97–98). Singing males have been observed in the

Upper Peninsula annually since 1993, with the majority of observations in the central and eastern Upper Peninsula (MDNR, USFWS, USFS, unpubl. data). In Wisconsin, nesting has been confirmed in Adams County every year since 2007 and has expanded into Marinette and Bayfield Counties (USFWS 2017, pp. 2–4). Scattered observations of mostly solitary birds have also occurred in recent years at several other sites in Douglas, Vilas, Washburn, and Jackson Counties in Wisconsin. Similarly, in Ontario, nesting was confirmed in Renfrew County from 2007 to 2016 (Richard 2013, p. 152; Tuininga 2017, pers. comm.), and reports of Kirtland's warblers present during the breeding season have occurred in recent years in both northern and southern Ontario (Tuininga 2017, pers. comm.).

The current distribution of breeding Kirtland's warblers encompasses the known historical breeding range of the species based on records of singing males observed in Michigan's northern Lower Peninsula, Wisconsin, and Ontario (Walkinshaw 1983, p. 23). In Michigan's northern Lower Peninsula, the Kirtland's warbler's breeding habitat is spread over an approximately 15,540-square-kilometer (km) (6,000-square-mile) non-contiguous area. In 2015, the number of singing males confirmed in Wisconsin (19), Ontario (20), and the Upper Peninsula (37) represented approximately 3 percent of the total singing male population (Environment Canada, MDNR, USFS, USFWS, Wisconsin Department of Natural Resources (WDNR), unpubl. data), demonstrating the species' reliance on their core breeding range in Michigan's northern Lower Peninsula. The number of Kirtland's warblers that could ultimately exist outside of the core breeding range is unknown; however, these peripheral individuals do contribute to a wider distribution.

On the wintering grounds, Kirtland's warblers are more difficult to detect and are infrequently observed. Kirtland's warblers are unevenly distributed across the landscape; they tend to hide in low-lying, dense vegetation, and males do not generally sing during the winter (Currie *et al.* 2003, pp. 1–2; Currie *et al.* 2005a, p. 97). Kirtland's warblers winter largely within The Bahamas (Mayfield 1996, pp. 36–38; Lee *et al.* 1997, p. 21; Stone 1986, p. 2). The Bahamas is an archipelago of approximately 700 low-lying islands stretching more than 1,046 km (650 miles) from near the eastern coast of Florida to the southeastern tip of Cuba. The central islands, particularly Eleuthera and Cat Islands, support the largest known population of wintering Kirtland's warblers (Sykes and Clench 1998, pp. 249–250; Cooper *et al.* 2019, p. 85). Wintering Kirtland's warbler have also been observed in The Bahamas on The Abacos, Andros, Cat Island, Crooked Island, Eleuthera, The Exumas, Grand Bahama Island, Long Island, and San Salvador (Blanchard 1965, pp. 41–42; Cooper, unpubl. data; Cooper *et al.* 2019, p. 85; Ewert and Wunderle, unpubl. data; Haney *et al.* 1998, p. 202; Hundley 1967, pp. 425–426; Jones *et al.* 2013, pp. 638–641; Mayfield 1972, pp. 347–348; Mayfield 1996, pp. 37–38; Sykes and Clench 1998, p. 250).

Although the central islands of The Bahamas support the greatest number of overwintering Kirtland's warblers, less frequent sightings have been reported elsewhere in the Caribbean, including sightings from northern Dominican Republic, coastal Mexico (Haney *et al.* 1998, p. 205), Bermuda (Amos 2005, p. 3), Cuba (Isada 2006, p. 462; Sorenson and Wunderle 2017), Florida (Cooper *et al.* 2019, p. 85), and Jamaica (Weidensaul 2019). These sightings may represent vagrants and do not necessarily represent an extension of the overwintering range.

Recent data from winter playback surveys, citizen scientists, and light-level geolocators also indicate that the majority of overwintering Kirtland's warblers are found in the central Bahamas, with fewer birds overwintering in the western and eastern Bahamas and Cuba (Cooper *et al.* 2017, pp. 209–211; Cooper *et al.* 2019, pp. 84–85).

Although the central islands of The Bahamas support the greatest number of overwintering Kirtland's warblers, less frequent sightings have been reported elsewhere in the Caribbean. Of 107 accessible reports, only 3 originated from outside of The Bahamas: Two sightings from northern Dominican Republic, and one sighting from coastal Mexico (Haney *et al.* 1998, p. 205). In addition, recent winter reports of solitary individuals have originated from Bermuda (Amos 2005, p. 3), Cuba (Isada 2006, p. 462; Sorenson and Wunderle 2017), Florida (Cooper *et al.* 2019, p. 85), and Jamaica (Weidensaul 2019), possibly representing vagrants and not necessarily representative of an extension of the overwintering range.

Although the known wintering range appears restricted primarily to The Bahamas, many of the islands in the Caribbean basin are uninhabited by people, may be overgrown and difficult to access, or have had limited avian survey efforts, which may constrain our ability to comprehensively describe the species' wintering distribution. Kirtland's warblers readily shift sites on the wintering grounds based on habitat availability and food resources, and they colonize new areas following disturbance (Wunderle *et al.* 2007, p. 123; Wunderle *et al.* 2010, p. 134; Wunderle *et al.* 2014, p. 44). Suitable habitat may exist on other islands, both within The Bahamas and elsewhere in the Caribbean basin, potentially providing habitat and buffering against the effects of catastrophic events such as hurricanes. However, the full extent and availability of suitable habitat on the wintering grounds has not been measured outside of the more-studied island of Eleuthera (Wunderle 2018, pers. comm.).

Breeding Habitat

The Kirtland's warbler's breeding habitat consists of jack pine-dominated forests with sandy soil and dense ground cover (Walkinshaw 1983, p. 36), most commonly found in northern lower Michigan, with scattered locations in the Upper Peninsula of Michigan, Wisconsin, and Ontario. Jack pine-dominated forests of the northern Great Lakes region historically experienced large, frequent, and catastrophic stand-replacing fires (Cleland *et al.* 2004, p. 313). These fires occurred approximately every 60 years, burned approximately 85,420 hectares (ha) (211,077 acres (ac)) per year, and resulted in jack pine comprising 53 percent of the total land cover (Cleland *et al.* 2004, pp. 315–317). Modern wildfire suppression has since increased the average fire return interval within this same landscape to approximately 775 years, decreased the amount of area burned to approximately 6,296 ha (15,558 ac) per year, and reduced the contribution of jack pine to 37 percent of the current land cover (Cleland *et al.* 2004, p. 316). The overall effect has been a reduction in the extent of dense jack pine forest, and in turn, the Kirtland's warbler's breeding habitat.

Kirtland's warblers generally occupy jack pine stands that are 5 to 23 years old and at least 12 ha (30 ac) in size (Donner *et al.* 2008, p. 470). The most obvious difference between occupied and unoccupied stands is the percent canopy cover (Probst 1988, p. 28). Stands with less than 20 percent canopy cover are rarely used for nesting (Probst 1988, p. 28). Tree canopy cover reflects overall stand structure, combining individual structural components such as tree stocking, spacing, and height factors (Probst 1988, p. 28). Tree canopy cover, therefore, may be an important environmental cue for Kirtland's warblers when selecting nesting areas.

Occupied stands usually occur on dry, excessively drained, nutrient-poor glacial outwash sands (Kashian *et al.* 2003, pp. 151–153). Stands are structurally homogeneous with trees ranging 1.7 to 5.0 meters (m) (5.5 to 16.4 feet (ft)) in height and are generally of three types: Wildfire-regenerated, planted, and unburned-unplanted (Probst and Weinrich 1993, p. 258). Wildfire-regenerated stands occur naturally following a stand-replacing fire from serotinous seeding (seed cones remain closed on the tree with seed dissemination in response to an environmental trigger, such as fire). Planted stands are stocked with jack pine saplings after a clear cut. Unburned-unplanted stands originate from clearcuts that regenerate from non-serotinous, natural seeding, and thus do not require fire to release seeds.

Optimal habitat is characterized as large stands (more than 32 ha (80 ac)) composed of 8- to 20-year-old jack pines that regenerated after wildfires, with 27 to 60 percent canopy cover, and more than 5,000 stems per hectare (2,023 stems per acre) (Probst and Weinrich 1993, pp. 262–263). The poor quality and well-drained soils reduce the risk of nest flooding and maintain low shrubs that provide important cover for nesting and brood-rearing. Yet as jack pine saplings grow in height, percent canopy cover increases, causing self-pruning of the lower branches and changes in light regime, which diminishes cover of small herbaceous understory plants (Probst 1988, p. 29; Probst and Weinrich 1993, p. 263; Probst and Donnerwright 2003, p. 331). Kirtland's warblers select nest sites with higher jack pine densities, higher percent cover of blueberry, and lower percent cover of woody debris than would be expected if nests were placed at random (Bocetti 1994, p. 122). Due to edge effects associated with low area-to-perimeter ratios, predation rates may be higher for Kirtland's warblers nesting in small patches bordered by mature trees than in large patches (Probst 1988, p. 32; Robinson *et al.* 1995, pp. 1988–1989; Helzer and Jelinski 1999, p. 1449). Foraging requirements may also be negatively influenced as jack pines mature (Fussman 1997, pp. 7–8).

Conversely, marginal habitat is characterized as jack pine stands with at least 20 to 25 percent tree canopy cover and a minimum density of 2,000 stems per hectare (809 stems per acre, Probst and Weinrich 1993, pp. 261–265; Nelson and Buech 1996, pp. 93–95), and is often associated with unburned-unplanted areas (Donner *et al.* 2010, p. 2). The main disadvantage of marginal habitat is reduced pairing success (Probst and Haynes 1987, p. 237); however, Kirtland's warblers successfully reproduce in areas with smaller percentages of jack pine and with significant components of red pine (*Pinus resinosa*) and pin oak (*Quercus palustris*) in Wisconsin and Canada (Mayfield 1953, pp. 19–20; Orr 1975, pp. 59–60; USFWS 1985, p. 7; Fussman 1997, p. 5; Anich *et al.* 2011, p. 201; Richard 2013, p. 155; Richard 2014, p. 307). Use of these areas in Michigan is rare and occurs for only short durations (Huber *et al.* 2001, p. 10). In Wisconsin, however, breeding has occurred primarily in red pine plantations that have experienced extensive red pine mortality and substantial natural jack pine regeneration (Anich *et al.* 2011, p. 204). Preliminary investigation (Anich *et al.* 2011, p. 204) suggests that, in this case, a matrix of openings and thickets has produced conditions suitable for Kirtland's warblers, and that the red pine component may actually prolong the use of these sites due to a longer persistence of low live branches on red pines. Habitat conditions in documented Kirtland's warbler breeding areas in Ontario had ground cover similar to breeding sites in Michigan and Wisconsin, although tree species composition was more similar to Wisconsin sites than Michigan sites (Richard 2014, p. 306). The tree species composition at the Canadian sites also had high levels of red pine (up to 71 percent), similar to the plantations in Wisconsin (Anich *et al.* 2011, p. 201; Richard 2014, p. 307).

Habitat management to benefit Kirtland's warblers began as early as 1957 on State forest land and 1962 on Federal forest land (Mayfield 1963, pp. 217–219; Radtke and Byelich 1963, p. 209). Efforts increased in 1981, with the establishment of an expanded habitat management program to supplement wildfire-regenerated habitat and ensure the availability of relatively large patches of early successional jack pine forest for nesting (Kepler *et al.* 1996, p. 16). In the late 1980s, maturation of habitat generated through wildfire contributed to a higher percentage of the total suitable habitat available to the Kirtland's warbler compared to other types of habitat (Donner *et al.* 2008, p. 472). By 1992, artificially regenerated plantation habitat was nearly twice as abundant as wildfire habitat, and increased to triple that of wildfire habitat by 2002 (Donner *et al.* 2008, p. 472). From 1979 to 1994, the majority of singing males were found in wildfire-generated habitat (Donner *et al.* 2008, p. 474). By 1994, responding to a shift in available nesting habitat types, males redistributed out of habitat generated by wildfire and unburned-unplanted habitat and into plantation (planted) habitat. From 1995 to 2004, males continued redistributing into plantations from wildfire habitat, and 85 percent of males were found in plantation habitat by 2004 (Donner *et al.* 2008, p. 475). This redistribution of males into plantations also resulted in males being more evenly distributed across the core breeding range than in previous years. Since 2004, the majority of Kirtland's warblers continue to nest in plantations (USFWS, unpubl. data).

The amount of available suitable habitat has also increased significantly in the past 40 years due to these increased efforts by land management agencies. The goal for 51,638 ha (127,600 ac) of available habitat to support a recovered Kirtland's warbler population was initially set out in the 1981 Management Plan for Kirtland's Warbler Habitat (USFS and MDNR 1981, p. 18). Of this total, approximately 29,987 ha (74,100 ac) of Michigan State forest lands and about 21,650 ha (53,500 ac) of Federal forest lands were identified as lands suitable and manageable for Kirtland's warbler breeding habitat. That plan also provided prescriptions and guidelines to be used in protecting and improving identified nesting habitat. Contiguous stands or stands in close proximity were grouped into 23 areas referred to as Kirtland's Warbler Management Areas (KWMAs). KWMAs are administrative boundaries that describe parcels of land dedicated to and managed for Kirtland's warbler breeding habitat. The KWMAs were further subdivided into cutting blocks containing 200 or more acres of contiguous stands. These acreages were determined by factoring an average population density of one breeding pair per 12 ha (30 ac) into a 45- to 50-year commercial harvest rotation, with the goals of producing suitable habitat as well as marketable timber (USFWS 1985, p. 21). Data collected from the annual singing male census from 1980 to 1995 indicated that a breeding pair used closer to 15 ha (38 ac) within suitably aged habitat (Bocetti *et al.* 2001, p. 1). Based on these data, in 2002, the Kirtland's Warbler Recovery Team (Recovery Team) recommended increasing the total amount of managed habitat to 76,890 ha (190,000 ac) (Ennis 2002, p. 2). Habitat management is currently conducted on approximately 88,788 ha (219,400 ac) of jack pine forest within MDNR (36,705 ha (90,700 ac)), USFS (49,372 ha; 122,000 ac), and Service lands (2,711 ha (6,700 ac)) throughout the northern Lower

Peninsula and Upper Peninsula of Michigan (MDNR *et al.* 2015, pp. 22–23), exceeding both the original and revised acreage goals.

Wintering Habitat

On the wintering grounds, Kirtland's warblers occur in early successional scrublands, characterized by dense, low, broadleaf shrubs of varied foliage layers with small openings, resulting from natural or anthropogenic disturbances (locally known as low coppice) (Maynard 1896, pp. 594–595; Challinor 1962, p. 290; Mayfield 1972, p. 267; Radabaugh 1974, p. 380; Mayfield 1992, p. 3; Mayfield 1996, pp. 38–39; Lee *et al.* 1997, p. 23; Haney *et al.* 1998, p. 207; Sykes and Clench 1998, p. 256; Wunderle *et al.* 2007, p. 123; Wunderle *et al.* 2010, p. 133). Kirtland's warblers predominantly overwinter in broadleaf scrub habitat, rather than pine-dominated habitats (Cooper *et al.* 2019, p. 83). Suitable wintering habitat requires availability of a food source, often fruit plants such as *Erithalis fruticosa* and *Lantana involucrata* (see ''Diet and Foraging,'' below, for additional discussion) that are in fruit at the right time of year, as well as availability of water.

Historically, Kirtland's warbler winter habitat was likely created when storm surges or other natural disturbances, such as wildfire, removed vegetation and leaf litter (Wunderle and Ewert 2018, p. 1; Wunderle 2018, pers. comm.), allowing for establishment of the preferred fruit plants (which are shade-intolerant) (Fleming *et al.* 2015, p. 588). Human-caused disturbances may also produce suitable habitat for Kirtland's warblers. Although goats consume the preferred fruit plants, the plants readily regrow in open sunlight and persist, indicating goat grazing could be an effective means of setting back succession and creating or maintaining Kirtland's warbler habitat (Fleming *et al.* 2016, p. 287). Abandonment of garden plots or other cultivated lands are not likely to result in suitable Kirtland's warbler habitat, because the important fruit plants are shaded out by other, faster-growing plants (Wunderle *et al.,* unpubl. data).

Kirtland's warblers typically occupy wintering sites 3 to 28 years (the mean is approximately 14 years) after human disturbance (Wunderle *et al.* 2010, p. 127). As local food resources diminish in abundance, these sites may not be sufficient to sustain an individual for an entire winter; therefore, individuals must move widely from patch to patch, tracking changes in fruit abundance (Wunderle *et al.* 2007, p. 123; Wunderle *et al.* 2010, p. 134; Wunderle *et al.* 2014, p. 44).

Migration and Stopover Habitat

Spring departure from the wintering grounds is estimated to occur from late April to early May, and arrival on the breeding grounds occurs approximately 15 days later (Cooper *et al.* 2017, p. 212; Rockwell *et al.* 2012, p. 746; Ewert *et al.* 2012, p. 11). Male Kirtland's warblers have been observed arriving on the breeding grounds between May 1 and June 5 (Petrucha 2011, p. 17; Rockwell *et al.* 2012, p. 747), with the first females arriving a week or so after the first males (Mayfield 1960, pp. 41–42; Rockwell 2013, pp. 48–49).

Fall migration of adult males begins in late September through late October and ends with arrival on the wintering grounds in mid-October to early November (Cooper *et al.* 2017, p. 212). The earliest recorded sighting in The Bahamas was August 20 (Robertson 1971, p. 48). Data from recovered geolocators showed that most Kirtland's warblers exhibited a loop migration, with fall migration occurring farther east than spring migration (Cooper *et al.* 2017, p. 214). Nearly all males departed the breeding grounds and flew in an easterly direction, spending time in southeastern Ontario or in the eastern Great Lakes region of the United States (Cooper *et al.* 2017, pp. 211, 213). Fall migration proceeded in a general southern direction, departing the mainland United States along the Carolina coastline (Cooper *et al.* 2017, pp. 211, 213). Spring migration followed a more westerly path, with landfall occurring in Florida and Georgia (Cooper *et al.* 2017, pp. 213, 216). An additional stopover site was identified in the western Lake Erie basin (Cooper *et al.* 2017, p. 216). An analysis of 562 records of Kirtland's warblers observed during migration found that migration records were spread over most of the United States east of the Mississippi River, clustered around the Great Lakes and Atlantic Ocean coastlines (Petrucha *et al.* 2013, p. 383).

Migrating Kirtland's warblers have been observed in a variety of habitats, including shrub/scrub, residential, park, orchard, woodland, and open habitats (Petrucha *et al.* 2013, p. 390). There is some evidence that dense vegetation less than 1.5 m (4.9 ft) in height may be important to migrating Kirtland's warblers (Stevenson and Anderson 1994, p. 566). The majority of migration records (82 percent) described the habitat as shrub/scrub, similar in structure to what the species uses on the breeding and wintering grounds (Petrucha *et al.* 2013, p. 384).

Diet and Foraging

On the breeding grounds, Kirtland's warblers are primarily insectivorous and forage by gleaning (plucking insects from) pine needles, leaves, and ground cover, occasionally making short sallies, hover-gleaning at terminal needle clusters, and gathering flying insects on the wing. Kirtland's warblers forage on a wide variety of prey items, including various types of larvae, moths, flies, beetles, grasshoppers, ants, aphids, spittlebugs, and blueberries (Mayfield 1960, pp. 18–19; Fussman 1997, p. 33). Similar taxa have been identified from fecal samples from Kirtland's warblers, although homopterans (primarily spittlebugs), hymenopterans (primarily ants), and blueberries were proportionally greater in number than other taxa among samples collected from July to September (Deloria-Sheffield *et al.* 2001, p. 385). These differences in the relative importance of food items between spring foraging observations and late summer fecal samples may be temporal and may reflect a varied diet that shifts as food items become more or less available during the breeding season (Deloria-Sheffield *et al.* 2001, p. 386). Within nesting areas, arthropod numbers peak at the same time that most first broods reach the fledging stage (Fussman 1997, p. 27). Planted and wildfire-regenerated habitats were extremely similar in terms of arthropod diversity, abundance, and distribution, suggesting that current habitat management techniques are effective in simulating the effects that wildfire has on food resources for Kirtland's warblers (Fussman 1997, p. 63).

On the wintering grounds, Kirtland's warblers rely on a mixed diet of fruit and arthropods. During foraging observations, 69 percent of Kirtland's warblers consumed fruits, such as snowberry (*Chiococca alba*), wild sage (*Lantana involucrata*), and black torch (*Erithalis fruticosa*), with wild sage being the overwhelmingly predominant food choice (Wunderle *et al.* 2010, pp. 129–130). Despite variation in food availability among sites and winters, the proportion of fruit and arthropods in fecal samples of Kirtland's warblers was consistent (Wunderle *et al.* 2014, p. 25). Food abundance was a reliable predictor of site fidelity, with birds shifting location to sites with higher biomass of ripe fruit and ground arthropods during the late winter (Wunderle *et al.* 2014, p. 31).

Demographics

The average life expectancy of adult Kirtland's warblers is approximately 2.5

years (Walkinshaw 1983, pp. 142–143). The oldest Kirtland's warbler on record was an 11-year-old male, which, when recaptured in the Damon KWMA in 2005, appeared to be in good health and paired with a female (USFS, unpubl. data).

Overall, Kirtland's warbler annual survival estimates are similar to those of other wood warblers (reviewed in Faaborg *et al.* 2010, p. 12). Survival rates of the Kirtland's warbler varied by sex and age classes (Mayfield 1960, pp. 204–207; Walkinshaw 1983, pp. 123–143; Bocetti *et al.* 2002, p. 99; Rockwell *et al.* 2017, p. 723; Trick, unpubl. data). Based on mark-recapture data from 2006–2010 on breeding grounds in Michigan and from 2003–2010 on the wintering grounds in The Bahamas, the mean annual survival estimates for adults and yearlings were 0.58 and 0.55, respectively (Rockwell *et al.* 2017, pp. 719–721). Monthly survival probabilities were relatively high when birds were stationary on the wintering and breeding grounds, and were substantially lower during the migratory period, which has the highest mortality rate out of any phase of the annual cycle, accounting for 44 percent of annual mortality (Rockwell *et al.* (2017, p. 722). Survival probability was positively correlated to March rainfall in the previous year, suggesting the effects of rain on the wintering grounds carried over to affect annual survival in subsequent seasons. Late winter rainfall in The Bahamas showed a positive effect on Kirtland's warblers corrected body mass (Wunderle *et al.* 2014, p. 47). Reduced rain can result in lower available food resources for Kirtland's warblers, which could result in poorer body condition, making them less likely to survive the subsequent spring migration (Rockwell *et al.* 2017, pp. 721–722) and lowering reproductive success during the breeding season (Rockwell *et al.* 2012, p. 745).

Historically, one of the largest factors influencing Kirtland's warbler's reproductive success was brood parasitism from brown-headed cowbirds (*Molothrus ater*). Brown-headed cowbirds are obligate brood parasites. Females remove an egg from a host species' nest and lay their own egg to be raised by the adult hosts, usually resulting in the death of the remaining host nestlings (Rothstein 2004, p. 375). Prior to initiation of the brown-headed cowbird management program (discussed in more detail under *Factor E:* Brood Parasitism), Kirtland's warblers averaged less than one young fledged per nest (Walkinshaw 1983, p. 151). After brown-headed cowbird control efforts began in 1972, the estimated number of chicks fledged per nest (1972 to 1977) increased to 2.67, with 63.3 percent nest success (Walkinshaw 1983, pp. 150–152). More recently, mean annual reproductive success of 3.3 fledglings per year per male has been observed (Rockwell *et al.* 2012, p. 748).

Genetics

From the information available, it appears that Kirtland's warblers display winter and breeding-ground panmixia (mixing of individuals across locations within the population). In 2007, eight birds examined from six different wintering sites on Eleuthera Island were found on breeding territories in the Damon KWMA in Ogemaw County, Michigan (Ewert, unpubl. data). Additionally, four other birds banded from one wintering site on Eleuthera Island were found on breeding territories across four counties in northern lower Michigan. Kirtland's warblers are also known to regularly move between KWMAs in northern lower Michigan during the breeding season (Probst *et al.* 2003, p. 371). Regardless of where they overwintered in The Bahamas (*i.e.,* either Cat or Eleuthera Islands), Kirtland's warblers intermixed heavily on the breeding grounds and migrated to various sites throughout the breeding range, showing a weak connectivity between the breeding and wintering grounds (Cooper *et al.* 2018, pp. 5–6). These data suggest that the warbler's population exhibits panmictic (a group of interbreeding individuals where all individuals in the population are potential reproductive partners) rather than metapopulation (groups of interbreeding individuals that are geographically distinct) demographic characteristics (Esler 2000, p. 368).

Analysis of microsatellite DNA markers from Kirtland's warblers in Oscoda County, Michigan, over three time periods (1903–1912, 1929–1955, and 2008–2009) showed no evidence of a genetic bottleneck in the oldest (1903–1912) sample, indicating that any population declines prior to that point may have been gradual (Wilson *et al.* 2012, pp. 7–9). Although population declines have been observed since then, there was only weak genetic evidence of a bottleneck in the two more recent samples (no bottleneck detected in two of three possible models for each sample). The study showed a slight loss of allelic richness between the oldest and more recent samples, but no significant difference in heterozygosity between samples and no evidence of inbreeding. Effective population size estimates varied depending on the methods used, but none was low enough to indicate that inbreeding or rapid loss of genetic diversity were likely in the future (Wilson *et al.* 2012, pp. 7–9). Based on the available data, genetic diversity does not appear to be a limiting factor for the Kirtland's warbler or indicate the need for genetic management at this time.

Abundance and Population Trends

Prior to 1951, the size of the Kirtland's warbler population was extrapolated from anecdotal observations and knowledge about breeding and wintering habitat conditions. The Kirtland's warbler population may have peaked in the late 1800s, a time when conditions across the species' distribution were universally beneficial (Mayfield 1960, p. 32). Wildfires associated with intensive logging, agricultural burning, and railroads in the Great Lakes region burned hundreds of thousands of acres, and vast portions were dominated by jack pine forests (Pyne 1982, pp. 199–200, 214). Suitable winter habitat consisting of low coppice (early-successional and dense, broadleaf vegetation) was also becoming more abundant, due to a decrease in widespread commercial agriculture in The Bahamas after the abolition of slavery in 1834, resulting in former croplands converting to scrub (low coppice) (Sykes and Clench 1998, p. 245). During this time, Kirtland's warblers were found in greater abundance throughout The Bahamas than were found in previous decades, and reports of migratory strays came from farther north and west of the known migratory range, evidence of a larger population that would produce more migratory strays (Mayfield 1993, p. 352).

Between the early 1900s and the 1920s, agriculture in the northern Great Lakes forests was being discouraged in favor of industrial tree farming, and systematic fire suppression was integrated into State and Federal policy (Brown 1999, p. 9). The estimated amount of jack pine on the landscape suitably aged for Kirtland's warblers had decreased to approximately 40,470 ha (100,000 ac) of suitable habitat in any one year (Mayfield 1960, p. 26). This reduction in habitat presumably resulted in fewer Kirtland's warblers from the preceding time period, and Kirtland's warblers were not observed in all stands of suitable conditions (Wood 1904, p. 10). Serious efforts to control forest fires in Michigan began in 1927 and resulted in a further reduction of total acres burned as the number and size of wildfires decreased (Mayfield 1960, p. 26; Radtke and Byelich 1963, p.

210). By this time, brown-headed cowbirds had expanded from the shortgrass plains and become common within the Kirtland's warbler's nesting range due to clearing of land for settlement and farming in northern Michigan (Wood and Frothingham 1905, p. 49; Mayfield 1960, p. 146), further contributing to the decline of Kirtland's warblers.

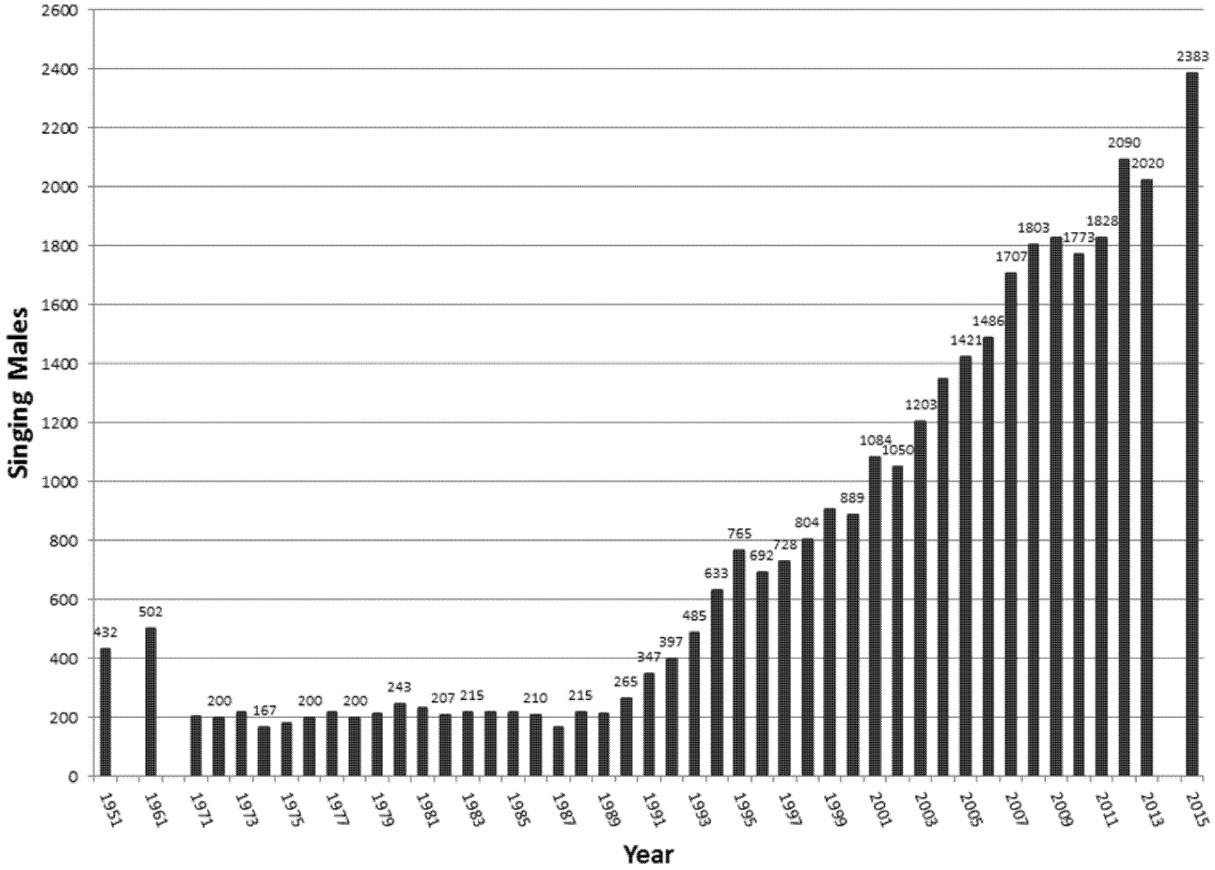

Figure: Kirtland's warbler census results for each year in which a full census was completed (1951, 1961, 1971–2013, and 2015) (MDNR data). Note: A rangewide census was not conducted in the years 1952–1960, 1962–1970, 2014, or 2016–2018.

Comprehensive surveys (censuses) of the entire Kirtland's warbler population began in 1951. Because of the warbler's specific habitat requirements and the frequent, loud, and persistent singing of territorial males during the breeding season, it was possible to establish a singing male census (Ryel 1976, pp. 1–2). The census consists of an extensive annual survey of all known and potential breeding habitat to count singing males.

Censuses were conducted in 1951, 1961, each year from 1971 to 2013, and 2015 (see figure, above). The 1951 census documented a population of 432 singing males confined to 28 townships in eight counties in northern lower Michigan (Mayfield 1953, p. 18). By 1971, the Kirtland's warbler population declined to approximately 201 singing males and was restricted to just 16 townships in six counties in northern lower Michigan (Probst 1986, pp. 89–90). Over the next 18 years, the Kirtland's warbler population level remained relatively stable at approximately 200 singing males but experienced record lows of 167 singing males in 1974 and again in 1987. In response to conservation efforts, including artificial regeneration of jack pine habitat (see *Breeding Habitat,* above) and brown-headed cowbird trapping program, the population of Kirtland's warbler began to increase dramatically starting in the 1990s (see figure, above) and occupy a wider distribution across the landscape. The population reached a record high of 2,383 singing males in 2015, the year of the last full census (MDNR, USFS, USFWS, unpubl. data).

The census protocol counts singing males, not breeding pairs. Since the census began, Kirtland's warbler conservation partners have often made the assumption that there is a breeding female for each singing male, so the number of singing males has often been used to approximate the number of breeding pairs. Likewise, some reports estimate a total breeding population by doubling the number of singing males. Extrapolating from singing males to breeding pairs or total breeding population should be done with caution. Mating success of males may vary depending on the quality of habitat, method of regeneration, or other factors (Bocetti 1994, pp. 80–85; Rockwell *et al.* 2013, p. 748; Bocetti 2018, pers. comm.). The annual census provides a robust, relative index of the Kirtland's warbler population change over time, but results should not be interpreted as an absolute count (Probst *et al.* 2005, pp. 50–59).

Population Viability

Full annual cycle (breeding and wintering) dynamics were incorporated into a population viability model to assess the long-term population viability of the Kirtland's warbler under five management scenarios: (1) Current suitable habitat and current brown-

headed cowbird removal; (2) reduced suitable habitat and current brown-headed cowbird removal; (3) current suitable habitat and reduced brown-headed cowbird removal, (4) current suitable habitat and no brown-headed cowbird removal; and (5) reduced suitable habitat and reduced brown-headed cowbird removal (Brown *et al.* 2017a, p. 443). The model that best simulated recently observed Kirtland's warbler population dynamics included a relationship between precipitation in the species' wintering grounds and productivity (Brown *et al.* 2017a, pp. 442, 444), which reflects our understanding of carry-over effects (Rockwell *et al.* 2012, pp. 748–750; Wunderle *et al.* 2014, pp. 46–48).

Under the current management conditions scenario, which includes habitat management at existing levels and brown-headed cowbird control occurring throughout the northern Lower Peninsula of Michigan, the model predicts that the Kirtland's warbler population will be stable over a 50-year simulation period. When simulating a reduced brown-headed cowbird removal effort by restricting cowbird trapping activities to the central breeding areas in northern lower Michigan (*i.e.,* eastern Crawford County, southeastern Otsego County, Oscoda County, western Alcona County, Ogemaw County, and Roscommon County) and assuming a 41 percent or 57 percent reduction in Kirtland's warbler productivity, the results showed a stable or slightly declining population, respectively, over the 50-year simulation period (Brown *et al.* 2017a, p. 447). Other scenarios, including reduced habitat suitability and reduced Kirtland's warbler productivity due to experimental jack pine management on 25 percent of available breeding habitat, had similar results with projected population declines over the 50-year simulation period, but mean population numbers remained above the population goal of 1,000 pairs (Brown *et al.* 2017a, p. 446), the numerical criterion identified in the Kirtland's warbler recovery plan (USFWS 1985).

Future reductions to Kirtland's warbler productivity rates under two reduced cowbird removal scenarios were assumed to be similar to historical rates (Brown *et al.* 2017a, p. 447). This assumption would overestimate the negative effects on Kirtland's warbler productivity if future parasitism rates are lower than the rates modeled (see *Factor E:* Brood Parasitism, below, for additional information on contemporary parasitism rates). Supplementary analysis (Brown *et al.* 2017b, unpubl. report), using the model structure and assumptions of Brown *et al.* (2017a), simulated the impacts of a 5, 10, 20, and 30 percent reduction in productivity to take into consideration a wider range of possible future parasitism rates. Even small reductions in annual productivity had measurable impacts on population abundance, but there were not substantial differences in mean population growth rate up to a 20 percent reduction in productivity (Brown *et al.* 2017b, p. 3). Even with annual reductions in productivity of up to 5 percent for 50 years, the population trend (growth rate) projected for the final 30 years of the model simulations was 0.998 (range from the 5 simulations 0.993 to 1.007) or nearly the same as that projected in the simulations with no reduction in productivity at 0.999 (range of 0.995 to 1.008) (Brown *et al.* 2017b, p. 3). It is reasonable to infer that the Kirtland's warbler population can support relatively small reductions in productivity over a long period of time (*e.g.,* the 50-year timeframe of the simulations), providing a margin of assurance as management approaches are adaptively managed over time, and the species may be able to withstand as much as a 20 percent reduction in annual productivity, provided it does not extend over several years.

The results of the model simulations are more helpful in evaluating the effect of various management decisions relative to one another, rather than providing predictions of true population abundance. In other words, the model output provides projections of relative trends, rather than identifying specific population abundance thresholds. Although there are limitations to all population models based on necessary assumptions, input data limitations, and unknown long-term responses such as adaptation and plasticity, data simulated by Brown *et al.* (2017a and 2017b, entire) provide useful information in assessing relative population trends for the Kirtland's warbler under a variety of future scenarios and provide the best available analysis of population viability.

In summary, Kirtland's warbler population numbers have been greatly affected by brown-headed cowbird parasitism rates and the extent and quality of available habitat on the breeding grounds. The best available population model predicts that limited non-traditional habitat management and continued low brood parasitism rates will result in sustained population numbers above the recovery goal. Monitoring population numbers and brood parasitism rates will be important in ensuring the Kirtland's warbler population remains stable post-delisting (see Post-delisting Monitoring, below).

Recovery and Recovery Plan Implementation

State and Federal efforts to conserve the Kirtland's warbler began in 1957 and were focused on providing breeding habitat for the species. The Kirtland's warbler was federally listed as an endangered species in 1967, under the Endangered Species Preservation Act of 1966 (Pub. L. 89–669). By 1972, a Kirtland's Warbler Advisory Committee formed to coordinate management efforts and research actions across Federal and State agencies, and conservation efforts expanded to include management of brown-headed cowbird brood parasitism (Shake and Mattsson 1975, p. 2).

Efforts to protect and conserve the Kirtland's warbler were further enhanced when the Endangered Species Act of 1973 became law and provided for acquisition of land to increase available habitat, funding to carry out additional management programs, and provisions for State and Federal cooperation. In 1975, the Recovery Team was appointed by the Secretary of the Interior to guide recovery efforts. A Kirtland's Warbler Recovery Plan was completed in 1976 (USFWS 1976), and updated in 1985 (USFWS 1985), outlining steps designed to protect and increase the species' population.

Recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, but they are not regulatory documents. A decision to revise the status of or remove a species from the List is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

The Kirtland's warbler recovery plan (USFWS 1985) identifies one ''primary objective'' (hereafter referred to as ''recovery criterion'') that identifies when the species should be considered for removal from the List, and ''secondary objectives'' (hereafter referred to as ''recovery actions'') that are designed to accomplish the recovery criterion. The recovery criterion states that the Kirtland's warbler may be considered recovered and considered for removal from the List when a self-sustaining population has been re-established throughout its known range at a minimum level of 1,000 pairs. The

1,000-pair goal was informed by estimates of the amount of the specific breeding habitat required by each breeding pair of Kirtland's warblers, the amount of potential habitat available on public lands in Michigan's northern Lower Peninsula, and the ability of State and Federal land managers to provide suitable nesting habitat on an annual basis. The recovery criterion was intended to address the point at which the ultimate limiting factors to the species had been ameliorated so that the population is no longer in danger of extinction or likely to become so within the foreseeable future.

The recovery plan does not clearly articulate how meeting the recovery criterion will result in a population that is at reduced risk of extinction. The primary threats to the Kirtland's warbler are pervasive and recurring threats, but threat-based criteria specifying measurable targets for control or reduction of those threats were not incorporated into the recovery plan. Instead, the recovery plan focused on specific actions necessary to accomplish the recovery criterion. These included managing breeding habitat, protecting the Kirtland's warbler on its wintering grounds and along the migration route, reducing key factors such as brown-headed cowbird parasitism from adversely affecting reproduction and survival of Kirtland's warblers, and monitoring the Kirtland's warbler to evaluate responses to management practices and environmental changes.

At the time the recovery plan was prepared, we estimated that land managers would need to annually maintain approximately 15,380 ha (38,000 ac) of nesting habitat in order to support and sustain a breeding population of 1,000 pairs (USFWS 1985, pp. 18–20). We projected that this would be accomplished by protecting existing habitat, improving occupied and developing habitat, and establishing approximately 1,010 ha (2,550 ac) of new habitat each year, across 51,640 ha (127,600 ac) of State and Federal pine lands in the northern Lower Peninsula of Michigan (USFWS 1985, pp. 18–20). We also prioritized development and improvement of guidelines that would maximize the effectiveness and cost efficiency of habitat management efforts (USFWS 1985, p. 24). The MDNR, USFS, and Service developed the Strategy for Kirtland's Warbler Habitat Management (Huber *et al.* 2001, entire) to update Kirtland's warbler breeding habitat management guidelines and prescriptions based on a review of past management practices, analysis of current habitat conditions, and new findings that would continue to conserve and enhance the status of the Kirtland's warbler (Huber *et al.* 2001, p. 2).

By the time the recovery plan was updated in 1985, the brown-headed cowbird control program had been in effect for more than 10 years. The brown-headed cowbird control program had virtually eliminated brood parasitism and more than doubled the warbler's productivity rates in terms of fledging success (Shake and Mattsson 1975, pp. 2–4). The Kirtland's warbler's reproductive capability had been successfully restored, and the brown-headed cowbird control program was credited with preventing further decline of the species. Because management of brown-headed cowbird brood parasitism was considered essential to the survival of the Kirtland's warbler, it was recommended that the brown-headed cowbird control program be maintained for ''as long as necessary'' (USFWS 1985, p. 27).

Although the recovery plan identifies breeding habitat as the primary limiting factor, with brood parasitism as a secondary limiting factor, it also suggests that events or factors outside the breeding season might be adversely affecting survival (USFWS 1985, pp. 12–13). At the time the recovery plan was updated, little was known about the Kirtland's warbler's migratory and wintering behavior, the species' migratory and wintering habitat requirements, or ecological changes that may have occurred within the species' migration route or on its wintering range. This lack of knowledge emphasized a need for more information on the Kirtland's warbler post-fledging, during migration, and on its wintering grounds (Kelly and DeCapita 1982, p. 365). Accordingly, recovery efforts were identified to: (1) Define the migration route and locate wintering areas; (2) investigate the ecology of the Kirtland's warbler and factors that might be affecting mortality during migration and on its winter range; and (3) provide adequate habitat and protect the Kirtland's warbler during migration and on its wintering areas (USFWS 1985, pp. 24–26).

In correspondence with the Service's Midwest Regional Director, and based on more than 20 years of research on the Kirtland's warbler's ecology and response to recovery efforts, the Recovery Team helped clarify recovery progress and issues that needed attention prior to reclassification to threatened status or delisting (Ennis 2002, pp. 1–4; Ennis 2005, pp. 1–3). From that synthesis, several important concepts emerged that continued to inform recovery, including: (1) Breeding habitat requirements, amount, configuration, and distribution; (2) brood parasitism management; (3) migratory connectivity and protection of Kirtland's warblers and their habitat during migration and on the wintering grounds; and (4) establishment of credible mechanisms to ensure the continuation of necessary management (Thorson 2005, pp. 1–2).

Our understanding of the Kirtland's warbler's breeding habitat selection and use, and the links between maintaining adequate amounts of breeding habitat and a healthy Kirtland's warbler population, has continued to improve. As the population has rebounded, Kirtland's warblers have become reliant on artificial regeneration of breeding habitat, but have also recolonized naturally regenerated areas within the historical range of the species and nested in habitat types previously considered non-traditional or less suitable. As explained in more detail below, recovery efforts have expanded to establish and enhance management efforts on the periphery of the species' current breeding range in Michigan's Upper Peninsula, Wisconsin, and Canada and reflect the best scientific understanding of the amount and configuration of breeding habitat (see *Factor A* discussion, below). These adjustments improve the species' ability to adapt to changing environmental conditions and to withstand stochastic disturbance and catastrophic events, and better ensure long-term conservation for the species.

Along with habitat management, brown-headed cowbird control has proven to be a very effective tool in stabilizing and increasing the Kirtland's warbler population. To ensure survival of the Kirtland's warbler, we anticipate that continued brown-headed cowbird brood parasitism management may be needed, at varying levels depending on parasitism rates, to sustain adequate Kirtland's warbler productivity. As explained in more detail below, brown-headed cowbird control techniques and the scale of trapping efforts have adapted over time and will likely continue to do so, in order to maximize program effectiveness and feasibility (see *Factor E:* Brood Parasitism discussion, below).

We now recognize that the Kirtland's warbler persists only through continual management activities designed to mitigate recurrent threats to the species. The Kirtland's warbler is considered a conservation-reliant species, which means that it requires continuing management to address ongoing threats (Goble *et al.* 2012, p. 869). Conservation of the Kirtland's warbler will continue

to require a coordinated, multi-agency approach for planning and implementing conservation efforts into the future. Four elements that should be in place prior to delisting a conservation-reliant species include a conservation partnership capable of continued management, a conservation plan, appropriate binding agreements (such as memoranda of agreement (MOAs)) in place, and sufficient funding to continue conservation actions into the future (Bocetti *et al.* 2012, p. 875).

The Kirtland's warbler has a strong conservation partnership consisting of multiple stakeholders that have invested considerable time and resources to achieving and maintaining this species' recovery. Since 2016, the Recovery Team is no longer active, but instead new collaborative efforts formed to help ensure the long-term conservation of the Kirtland's warbler regardless of its status under the ESA. These efforts formed to facilitate conservation planning through coordination, implementation, monitoring, and research efforts among many partners and across the species' range. A coalition of conservation partners lead by Huron Pines, a nonprofit conservation organization based in northern Michigan, launched the Kirtland's Warbler Initiative in 2013. The Kirtland's Warbler Initiative brings together State, Federal, and local stakeholders to identify and implement strategies to secure funds for long-term Kirtland's warbler conservation actions given the continuous, recurring costs anticipated with conserving the species into the future. The goal of this partnership is to ensure the Kirtland's warbler thrives and ultimately is delisted, as a result of strong public-private funding and land management partnerships. Through the Kirtland's Warbler Initiative, a stakeholder group called the Kirtland's Warbler Alliance was developed to raise awareness in support of the Kirtland's warbler and the conservation programs necessary for the health of the species and jack pine forests.

The second effort informing Kirtland's warbler conservation efforts is the Kirtland's Warbler Conservation Team (KWCT). The KWCT was established to preserve institutional knowledge, share information, and facilitate communication and collaboration among agencies and partners to maintain and improve Kirtland's warbler conservation. The current KWCT is comprised of representatives from the Service, USFS, MDNR, WDNR, U.S. Department of Agriculture's Wildlife Services (USDA–WS), Canadian Wildlife Service, Huron Pines, Kirtland's Warbler Alliance, The Nature Conservancy, and California University of Pennsylvania.

Since 2015, conservation efforts for the Kirtland's warbler have been guided by the Kirtland's Warbler Breeding Range Conservation Plan (Conservation Plan) (MDNR *et al.* 2015, entire). The Conservation Plan outlines the strategy for future cooperative Kirtland's warbler conservation and provides technical guidance to land managers and others on how to create and maintain Kirtland's warbler breeding habitat within an ecosystem management framework. The scope of the Conservation Plan currently focuses only on the breeding range of the Kirtland's warbler within the United States, although the agencies involved (MDNR, USFS, and USFWS; hereafter ''agencies'' or ''management agencies'') intend to cooperate with other partners to expand the scope of the plan in the future to address the entire species' range (*i.e.,* the entire jack pine ecosystem, as well as the migratory route and wintering range of the species). The Conservation Plan will be revised every 10 years to incorporate any new information and the best available science (MDNR *et al.* 2015, p. 1).

In April 2016, the management agencies renewed a memorandum of understanding (MOU) through December 31, 2020, committing to continue collaborative habitat management, brown-headed cowbird control, monitoring, research, and education in order to maintain the Kirtland's warbler population at or above 1,000 breeding pairs, regardless of the species' legal protection under the ESA (USFWS, MDNR, and USFS 2016, entire). In addition, Kirtland's warbler conservation actions are included in the USFS's Land and Resource Management Plans (Forest Plans), which guide management priorities for the Huron-Manistee, Hiawatha, and Ottawa National Forests.

Funding mechanisms that support long-term land management and brown-headed cowbird control objectives are in place to assure a high level of certainty that the agencies can meet their commitments to the conservation of the Kirtland's warbler. MDNR and USFS have replanted approximately 26,420 ha (90,000 ac) of Kirtland's warbler habitat over the past 30 years. Over the last 10 years, only a small proportion of the funding used to create Kirtland's warbler habitat is directly tied to the ESA through the use of grant funding (*i.e.,* funding provided to MDNR through the Service's section 6 grants to States' program). Although there is the potential that delisting could reduce the priority for Kirtland's warbler work within MDNR and USFS, as noted in the Conservation Plan (MDNR 2015, p. 17), much of the forest management cost (*e.g.,* silvicultural examinations, sale preparation, and reforestation) is not specific to maintaining Kirtland's warbler breeding habitat and would likely be incurred in the absence of the Kirtland's warbler. MDNR and USFS have successfully navigated budget shortfalls and changes in funding sources over the past 30 years and were able to provide sufficient breeding habitat to enable the population to recover, and they have agreed to continue to do so through the MOU. Additionally, the Service and MDNR developed an MOA to set up a process for managing funds to help address long-term conservation needs, specifically brown-headed cowbird control (USFWS and MDNR 2015). If the annual income generated is greater than the amount needed to manage brown-headed cowbird parasitism rates, the remaining portion of the annual income may be used to support other high priority management actions to directly benefit the Kirtland's warbler, including wildlife and habitat management, land acquisition and consolidation, and education. The MOA requires that for a minimum of 5 years after the species is delisted, MDNR consult with the Service on planning the annual brown-headed cowbird control program and other high-priority actions. In addition, MDNR recently reaffirmed their commitment to the MOA and confirmed their intent to implement and administer the brown-headed cowbird control program, even if the Kirtland's warbler is delisted (MDNR 2017).

In summary, the general guidance of the recovery plan has been effective, and the Kirtland's warbler has responded well to active management over the past 50 years. The primary threats identified at listing and during the development of the recovery plan have been managed, and commitments are in place to continue managing the threats. The status of the Kirtland's warbler has improved, primarily due to breeding habitat and brood parasitism management provided by MDNR, USFS, and the Service. The population has been above the 1,000 pair goal since 2001, above 1,500 pairs since 2007, and above 2,000 pairs since 2012. The recovery criterion has been met. Since 2015, efforts for the Kirtland's warbler have been guided by a Conservation Plan that will continue to be implemented by the management agencies when the species is delisted.

Since the revision of the recovery plan (USFWS 1985), decades of research have been invaluable to refining recovery implementation and have helped clarify our understanding of the dynamic condition of the Kirtland's warbler, jack pine ecosystem, and factors influencing them. The success of recovery efforts in mitigating threats to the Kirtland's warbler are evaluated below.

Summary of Changes From the Proposed Rule

Based upon our review of the comments received on the April 12, 2018, proposed rule (83 FR 15758), peer review comments, and new information that became available since the publication of the proposed rule, we reevaluated the information in the proposed rule and made changes as appropriate. We made the following changes in this final rule: (1) We added detail on the wintering distribution; (2) we clarified that wintering habitat is broadleaf scrub rather than pine habitat; (3) we added a paragraph on reproductive success; (4) we added a discussion on anthropogenic disturbance regimes on the wintering grounds; (5) we added information on connectivity between winter and breeding grounds; (6) we clarified that census results (number of singing males) are a relative index rather than an absolute count; (7) we added a section on the effects of insects and disease to jack pine; (8) we added a discussion of the effects of recreation; (9) we added a discussion of pesticides; (10) we included new data on brown-headed cowbird parasitism rates and the suspended trapping program during 2018; (11) we updated the analysis on effects of climate change on breeding grounds; (12) we added a discussion of recent drought on the wintering grounds; (13) we included new data on risk of heavy rainfall events and extended period of hurricane force winds due to decreasing translational speeds; and (14) we added a discussion of the effects of hurricanes. In addition, we made efforts to improve clarity, improve organization, and correct typographical or other minor errors. Many of our edits were based on comments from peer reviewers and public comments; additional detail can be found under Summary of Comments and Recommendations, below.

Summary of Factors Affecting the Kirtland's Warbler

Section 4 of the ESA and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. 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)). 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) of the ESA: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; or (3) the original scientific data used at the time the species was classified were in error.

For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following delisting or downlisting (*i.e.,* reclassification from endangered to threatened) and the removal or reduction of the ESA's protections. A recovered species is one that no longer meets the ESA's definition of endangered or threatened. A species is ''endangered'' for purposes of the ESA if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the ''significant portion of its range'' phrase refers to the range in which the species currently exists. For the purposes of this analysis, we will evaluate whether the Kirtland's warbler should be considered endangered or threatened throughout all of its range. Then we will consider whether there are any significant portions of the Kirtland's warbler's range where the species is in danger of extinction or likely to become so within the foreseeable future.

The ESA does not define the term ''foreseeable future.'' For the purpose of this rule, we define the ''foreseeable future'' to be the extent to which, given the amount and substance of available data, we can anticipate events or effects, or reliably extrapolate threat trends, such that we reasonably believe that reliable predictions can be made concerning the future as it relates to the status of the Kirtland's warbler. We used the anticipated habitat and brown-headed cowbird management analyzed over a 50-year timeframe in Brown *et al.* (2017a, b) to define the foreseeable future for the Kirtland's warbler. This analysis considered multiple future management scenarios for Kirtland's warbler, including reduced suitable habitat (from experimental habitat management) and reduced brown-headed cowbird removal. Given the length of time for habitat to become suitable and the warbler's average life span, a 50-year period takes into account multiple rotations of habitat and generations of birds. This is a sufficient amount of time to fully evaluate if the current and potential future experimental approaches to management warrant further refinement. Beyond 50 years, the future conditions become more uncertain, such that we cannot make reliable predictions as to how any differing management scenarios may affect the status of the species.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the ESA. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.,* it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the ESA. The following analysis examines all five factors currently affecting or that are likely to affect the Kirtland's warbler in the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Breeding Habitat

Historically, wildfires were the most important factor in the establishment of natural jack pine forests and Kirtland's warbler breeding habitat. However, modern wildfire suppression greatly altered the natural disturbance regime that generated Kirtland's warbler breeding habitat for thousands of years (USFWS 1985, p. 12; Cleland *et al.* 2004, pp. 316–318). Prior to the 20th century, the historic fire recurrence in jack pine forests averaged 59 years, but it is now estimated to occur in cycles as long as 775 years (Cleland *et al.* 2004, pp. 315–316).

In the absence of wildfire, land managers must take an active role in mimicking natural processes that regularly occurred within the jack pine ecosystem, namely stand-replacing disturbance events. This is primarily done through large-scale timber harvesting and human-assisted reforestation. Although planted stands tend to be more structurally simplified than wildfire-regenerated stands (Spaulding and Rothstein 2009, p. 2610), land managers have succeeded in selecting KWMAs that have landscape features of the natural breeding habitat and have developed silvicultural techniques that produce conditions within planted stands suitable for Kirtland's warbler nesting. In fact, over 85 percent of the habitat used by breeding Kirtland's warblers in 2015 in the northern Lower Peninsula of Michigan (approximately 12,343 ha (30,500 ac)) had been artificially created through clearcut harvest and replanting. The planted stands supported over 92 percent of the warbler's population within the Lower Peninsula during the 2015 breeding season (MDNR, USFS, USFWS, unpubl. data). The effectiveness of these strategies is also evident by the reproductive output observed in planted stands, which function as population sources (Bocetti 1994, p. 95). Thus, in a landscape where natural fire disturbance patterns have been reduced, threats to natural breeding habitat are being mitigated through large-scale habitat management. Therefore, the status of the Kirtland's warbler depends largely on the continued production of managed breeding habitat.

Federal and State laws establish the foundation for managing the USFS, USFWS, and MDNR lands that provide the majority of the breeding habitat for Kirtland's warbler. These laws require land management agencies to develop plans that describe objectives and goals for forest management.

The National Forest Management Act (16 U.S.C. 1600–1640; NFMA) requires that Forest Plans shall ''provide for multiple use and sustained yield of the products and services . . . and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness'' (16 U.S.C. 1604(e)). All projects and activities authorized by the Forest Service must be consistent with the established Forest Plans (16 U.S.C. 1604(i)). The Hiawatha, Huron-Manistee, and Ottawa National Forest Plans include specific goals and objectives for maintaining Kirtland's warbler breeding habitat (USFS 2006a, p. 35; USFS 2006b, p. 82; USFS 2006c, p. 27). The NFMA's implementing regulations will apply to any future Forest Plan revisions and currently require National Forests to develop plans that include standards or guidelines to maintain or restore the ecological integrity of terrestrial ecosystems in the plan area (36 CFR 219.8(a)). Further, additional species-specific standards or guidelines may be required to maintain a viable population of each species of conservation concern within the plan area (36 CFR 219.9(b)(1)). The Forest Service plans to designate Kirtland's warbler as a Sensitive Species upon delisting for a period of at least five years (Hogeboom 2019, pers. comm.). Additionally, in accordance with the Forest Service Manual (FSM), any significant current or predicted downward trends in population numbers, density, or in habitat capability that would reduce a species' existing distribution would be triggers for the Regional Forester to designate the Kirtland's warbler as a Sensitive Species (FSM 2670.5) in the future. Forest Service objectives for Sensitive Species (FSM 2670.22) include developing and implementing management practices to ensure that species do not become threatened or endangered because of Forest Service actions.

The National Wildlife Refuge System Improvement Act of 1997 requires the preparation of Comprehensive Conservation Plans for refuge lands and maintenance of the biological integrity, diversity, and environmental health of the National Wildlife Refuge System. The Service's Kirtland's Warbler Wildlife Management Area defines goals, objectives, and strategies that support Kirtland's warbler and the jack pine ecosystem (USFWS 2009, pp. 31–33).

In Michigan law, Part 525, Sustainable Forestry on State Forest Lands, of the Natural Resources and Environmental Protection Act (1994 PA 451, as amended) requires the MDNR to manage the State forest lands consistent with the principles of sustainable forestry. Part 525 also requires the MDNR to maintain third-party certification of the management of the State forest that satisfies sustainable forestry standards. The MDNR forest lands are certified under the standards of the Forest Stewardship Council and the Sustainable Forestry Initiative (Kintigh 2019, pers. comm.). These standards also require the MDNR to write, implement, and maintain forest management plans. The MDNR has developed a Regional State Forest Management Plan for the northern Lower Peninsula ecoregion that includes specific plans for 15 units of land managed for Kirtland's warbler (MDNR 2013, pp. 337–354). The Federal and State forest management planning standards, which will remain in effect after delisting, are synthesized and further refined for Kirtland's warbler through the Conservation Plan (MDNR *et al.* 2015).

The Conservation Plan (MDNR *et al.* 2015) identifies continued habitat management needs and objectives to maintain sufficient suitable breeding habitat for Kirtland's warblers. Habitat management is currently conducted on approximately 88,626 ha (219,000 ac) of jack pine forest within MDNR, USFS, and Service lands throughout the northern Lower Peninsula and Upper Peninsula of Michigan (MDNR *et al.* 2015, pp. 22–23). The Conservation Plan incorporates some conservative assumptions about the area needed to support a breeding pair of Kirtland's warblers, as well as how long a stand will be used by the species. The density and duration of use estimates were developed by data gathered over the last decade. Lands within the Lower Peninsula averaged 8 to 9 ha (19 to 22 ac) per pair and had a duration of use between 9 and 10 years. Lands within the Upper Peninsula on the Hiawatha National Forest required an average of 40 ha (100 ac) per pair and had a duration of use averaging 10 years (Huber *et al.* 2013, cited in MDNR *et al.* 2015, p. 22). Using those measures of average hectares per pair and duration of use, 14,593 ha (36,060 ac) of suitable breeding habitat would need to be available at all times to maintain a minimum population of 1,300 pairs, requiring land management agencies to jointly manage 1,550 ha (3,830 ac) of habitat annually (631 ha (1,560 ac) on MDNR land and 918 ha (2,270 ac) on USFS land) through wildfire-

regenerated jack pine or managed reforestation (MDNR *et al.* 2015, pp. 22–23). Importantly, the more recent observations concerning density of Kirtland's warblers in breeding habitat and duration of stand use are often greater than the assumptions used for planning purposes and explain why the Kirtland's warbler population that is actually observed is higher than would be predicted based on the planning assumptions.

As described previously, the majority of managed breeding habitat is currently created through clear cutting and planting jack pine seedlings. However, managing jack pine for Kirtland's warbler breeding habitat typically results in lower value timber products due to the overall poor site quality in combination with the required spacing, density, and rotation age of the plantings (Greco 2017, pers. comm.). Furthermore, the demand for jack pine products has fluctuated in recent years, and long-term forecasts for future marketability of jack pine are uncertain. Commercially selling jack pine timber on sites where reforestation will occur is critical to the habitat management program. Timber receipts offset the cost of replanting jack pine at the appropriate locations, scales, arrangements, and densities needed to support a viable population of nesting Kirtland's warblers that would not otherwise be feasible through conservation dollars. The Conservation Plan directs management agencies to develop at least 75 percent of the Kirtland's warbler's breeding habitat annual acreage objectives using traditional habitat management techniques (*i.e.,* opposing wave planting with interspersed openings), and no more than 25 percent of annual acreage objectives should use non-traditional habitat management techniques (*e.g.,* reduced stocking density, incorporating a red pine component within a jack pine stand, prescribed burning) (MDNR *et al.* 2015, p. 23). Using non-traditional techniques on a maximum of 25 percent of breeding habitat acreage annually will allow the management agencies to evaluate new planting methods that improve timber marketability, reduce costs, and improve recreational opportunities while sustaining the warbler's population above the recovery criterion of 1,000 pairs. The KWCT is currently working on developing additional habitat regeneration techniques through adaptive management that increase the marketability of the timber at harvest while not substantially reducing Kirtland's warbler habitat suitability (Kennedy 2017, pers. comm.).

The land management agencies have maintained adequate breeding habitat despite times when their budgets were flat or declining, even while costs related to reforestation continued to increase. For example, over the last 30 years, MDNR replanted more than 20,000 ha (50,000 ac) of Kirtland's warbler habitat, averaging over 680 ha (1,700 ac) per year. They took this action voluntarily, and within the past 10 years, they used funding from sources in addition to those available under the ESA. Section 6 grants under the ESA have helped support MDNR's Kirtland's warbler efforts, but that funding has largely been used for population census work in recent years and reflects only a small percentage of the funding the State of Michigan spends annually to produce Kirtland's warbler breeding habitat. Other funding sources used by MDNR include State wildlife grants, competitive State wildlife grants, Michigan's Nongame Fund, and the Forest Development Fund.

Shifting agency priorities and competition for limited resources have and will continue to challenge the ability of land managers to fund reforestation of areas suitable for Kirtland's warblers. Low jack pine timber sale revenues, in conjunction with reduced budgets, increased Kirtland's warbler habitat reforestation costs, and competition with other programs, are all challenges that the land management agencies have met in the past and will need to continue addressing to meet annual habitat development objectives. Commitments by land managers and the KWCT are in place, as described earlier in this document, to ensure recovery of the Kirtland's warbler will be sustained despite these challenges.

The management agencies have agreed through the Conservation Plan (MDNR *et al.* 2015, pp. 24, 43–44) to generally limit or prohibit commercial, recreational, or infrastructure (*e.g.,* roads, pipelines, communication towers) development within or near areas managed for Kirtland's warbler to protect them and provide for the long-term integrity of breeding habitat. Additionally, a regulatory mechanism that aids in the management of breeding habitat is Executive Order (E.O.) 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds'' (66 FR 3853; January 17, 2001), which directs Federal agencies to develop a memorandum of understanding (MOU) with the Service to promote the conservation of migratory bird populations. USFS and the Service signed an MOU (FS Agreement #08–MU–1113–2400–264), pursuant to E.O. 13186, with the purpose of strengthening migratory bird conservation by identifying and implementing strategies that promote conservation and avoid or minimize adverse impacts on migratory birds through enhanced collaboration.

Once planted for Kirtland's warbler habitat, jack pine trees need to survive to provide usable habitat. Multiple natural events, such as fire, drought, disease, and insect outbreaks, may affect the survival of jack pine trees and longevity of suitable habitat. Wildfire can be harmful to Kirtland's warblers when it destroys occupied habitat. For example, on May 18, 2010, a wildfire started in southeastern Crawford County within the Eldorado KWMA. The wildfire eventually burned a total of approximately 3,071 ha (7,588 ac), including 146 ha (362 ac) of occupied habitat (where 30 singing males were counted in 2009) and 36 ha (90 ac) of young jack pine habitat that would have likely been occupied by Kirtland's warblers in 3 years (USFS 2010, pp. 1, 7, 11). The following year on June 7, 2011, lightning ignited a wildfire that destroyed approximately 49 ha (120 ac) of 11-year-old habitat in the Manistee River KWMA, where seven male Kirtland's warblers were counted during the 2011 census (MDNR, unpubl. data). Drought can cause mortality of jack pine seedlings (Rajasekaran and Blake 1999, p. 175) and reduce the density of jack pine trees (Kintigh 2011, pers. comm.). Drought can also stress older jack pines and make them more susceptible to insects and diseases (Kintigh 2011, pers. comm.). Fungal pests, including *Gremmeniella abietina* var. *abietina,* and *Sphaeropsis sapinea* (also known as *Diplodia pinea*), are known to cause mortality in jack pine trees (USFS and MDNR 1981, p. 14; Nicholls and Ostry 1990, p. 55). Jack pine budworm (*Choristoneura pinus pinus*), mountain pine beetle (*Dendroctonus ponderosae*), and jack pine sawfly (*Neodiprion swainei*) can also cause topkill and mortality in jack pine trees (McCullough 2000, p. 252; Colgan and Erbilgin 2011, p. 426; Wilson 1971, p. 1). Generally, past impacts of these natural events on jack pines have had little effect on Kirtland's warbler habitat. Severe outbreaks of insect or fungal pests can have devastating effects on large areas of forest (*e.g.,* the effect of emerald ash borer (*Agrilus planipennis* Fairmaire) on ash species (*Fraxinus* spp.)). Although there are no known imminent threats to Kirtland's warbler, emerging disease and pests warrant continued monitoring

because of the potential to harm significant amounts of managed habitat. Jack pine forests that serve as Kirtland's warbler habitat are under the oversight of forest-management agencies that closely track new forest diseases and pests and will take swift action if a newly emerging issue is detected.

We reviewed available information on the effects to Kirtland's warbler habitat from expanded development on private lands in or near breeding habitat. Although these factors and forest pests and diseases have the potential to affect Kirtland's warblers and their habitat, land management agencies have been successful in maintaining sufficient amounts of suitable habitat to support historically high numbers of Kirtland's warblers. While activities and natural processes (*e.g.,* wildfire, drought, development) that affect breeding habitat may still have some negative effects on individual Kirtland's warblers, the population of Kirtland's warblers appears resilient to these factors within the context of the current management regime. Furthermore, management efforts to date have been adaptive in terms of the acreage and spatial and temporal configuration of habitat needed to mitigate the effects associated with natural breeding habitat loss and fragmentation. The land management agencies have shown a commitment to Kirtland's warbler habitat management through their forest management plans as reflected in the 2016 MOU, agreeing to continue habitat management, and developing and implementing the Conservation Plan.

Migration Habitat

Although Kirtland's warblers spend a relatively small amount of time each year migrating, the migratory period has the highest mortality rate of any phase of the annual cycle, accounting for 44 percent of annual mortality (Rockwell *et al.* 2017, p. 722). Migratory survivorship levels are, however, above the minimum needed to sustain the population (Mayfield 1960, pp. 204–207; Berger and Radabaugh 1968, p. 170; Bocetti *et al.* 2002, p. 99; Rockwell *et al.* 2017, pp. 721–723; Trick, unpubl data). Recent research is refining our knowledge of spring and fall migration timing and routes for the Kirtland's warbler. Little is currently known about the importance of specific stopover sites and any factors affecting them, although coastal areas along the Great Lakes and Atlantic Ocean (*e.g.,* western Lake Erie basin and the Florida and Georgia coasts) that appear important to migrating Kirtland's warblers are also areas where natural habitats have been highly fragmented by human development. At stopover sites within these highly fragmented landscapes, competition for food sources among long-distance passerine migrants is expected to be high, especially in fallout areas where many migrating birds land to rest, usually due to weather events or long flights over open water (Moore and Yong 1991, pp. 86–87; Kelly *et al.* 2002, p. 212; Németh and Moore 2007, p. 373). Increased competition may prolong stopover duration or increase the number of stopovers that are needed to complete migration between breeding and wintering grounds (Goymann *et al.* 2010, p. 480).

The quantity and quality of migratory habitat needed to sustain Kirtland's warbler numbers above the recovery goal of 1,000 pairs appears to be sufficient, based on a sustained and increasing population since 2001. If loss or destruction of migratory habitat were limiting or likely to limit the population to the degree that maintaining a healthy population may be at risk, it should be apparent in the absence of the species from highly suitable breeding habitat in the core breeding range. In fact, we have seen just the opposite: Increasing densities of breeding individuals in core areas and a range expansion into what would appear to be less suitable habitat elsewhere. This steady population growth and range expansion has occurred despite increased development and fragmentation of migratory stopover habitat within coastal areas.

Wintering Habitat

Similar to the breeding grounds, the quantity and quality of wintering habitat needed to sustain Kirtland's warbler numbers above the recovery goal of 1,000 pairs appears to be sufficient, based on a sustained and increasing population since 2001. Compared to the breeding grounds, less is known about the wintering grounds in The Bahamas. Factors affecting Kirtland's warblers on the wintering grounds, as well as the magnitude of the impacts, remain somewhat uncertain. Few of the known Kirtland's warbler wintering sites currently occur on protected land. Rather, most Kirtland's warblers appear to winter more commonly in early successional habitats that have recently been or are currently being used by people (*e.g.,* abandoned after clearing, grazed by goats), where disturbance has set back plant succession (Wunderle *et al.* 2010, p. 132). Potential threats to wintering habitat include habitat loss caused by human development, altered fire regime, changes in agricultural practices, and invasive plant species. The potential threats of rising sea level, drought, and destructive weather events, such as hurricanes on the wintering grounds, are discussed below under *Factor E.*

Tourism is the primary economic activity in The Bahamas, accounting for 65 percent of the gross domestic product, and The Bahamas' Family Islands Development Encouragement Act of 2008 supports the development of resorts on each of the major Family Islands (part of The Bahamas) (Moore and Gape 2009, p. 72). Residential and commercial development could result in direct loss of Kirtland's warbler habitat, especially on New Providence and Grand Bahama, which together support 85 percent of the population of Bahamian people (Moore and Gape 2009, p. 73; Wunderle *et al.* 2010, p. 135; Ewert 2011, pers. comm.). This loss could occur on both private and commonage lands (land held communally by rural settlements), as well as generational lands (lands held jointly by various family members).

Local depletion and degradation of the water table from wells and other water extraction and introduction of salt water through human-made channels or other disturbances to natural hydrologies may also negatively impact Kirtland's warblers by affecting fruit and arthropod availability (Ewert 2011, pers. comm.).

Fire may have positive or negative impacts on winter habitat, depending on the frequency, timing, and intensity of fires and where the fires occur. Fires are relatively common and widespread on the pine islands in the northern part of the archipelago and have increased since settlement, especially during the dry winter season when Kirtland's warblers are present (The Nature Conservancy 2004, p. 3). Fire may benefit Kirtland's warblers when succession of low coppice to tall coppice is set back (Currie *et al.* 2005b, p. 79) but may negatively impact wintering Kirtland's warblers if it results in reduced density and fruit production of understory shrubs (Currie *et al.* 2005b, p. 85).

Invasive plants are another potential factor that could limit the extent of winter habitat in The Bahamas. Brazilian pepper (*Schinus terebinthifolius*), jumbie bean (*Leucaena leucocephala*), Guinea grass (*Panicum maximum*), and Casuarina or Australian pine (*Casuarina equisetifolia*) may be the most important invasive species of immediate concern (Ewert 2011, pers. comm.; Wunderle 2018, pers. comm.). These aggressive plants colonize patches early after disturbances and may form monocultures, which preclude the establishment of fruit plant species heavily used by Kirtland's

warblers. Casuarina pine establishment can increase sand loss by out-competing native plants that stabilize dunes, resulting in increased coastal erosion and habitat loss (Sealey 2011, p. 12).

Some invasive species, such as jumbie bean, are good forage for goats. By browsing on these invasive plants, goats create conditions that favor native shrubs and may increase the density of native shrubs used by Kirtland's warblers (Ewert 2011, pers. comm.). Goat farming could play a role in controlling the spread of some invasive species at a local scale, while aiding in the restoration of native vegetation patches. Still, many plants such as royal poinciana (*Delonix regia*), tropical almond (*Terminalia catappa*), and morning glory (*Ipomoea indica*) are commonly imported for landscaping and have the potential to escape into the wild (Smith 2010, pp. 9–10; Ewert 2011, pers. comm.) and could displace native shrubs that provide fruit for Kirtland's warblers.

The Bahamas National Trust administers 32 national parks that cover more than 809,371 ha (2 million ac) (Bahamas National Trust 2017, p. 3). Although not all national parks contain habitat suitable for Kirtland's warblers, several parks provide suitable wintering habitat, including the Leon Levy Native Plant Preserve on Eleuthera Island, Harrold and Wilson Ponds National Park on New Providence Island, and Exuma Cays Land and Sea Park on Hawksbill Cay (The Nature Conservancy 2011, p. 2).

The Bahamas National Trust Act of 1959 and the National Parks Ordinance of 1992 established non-government statutory roles to the Bahamas National Trust and the Turks and Caicos Islands National Trust, respectively. These acts empower these organizations to hold and manage environmentally important lands in trust for their respective countries.

Simply protecting parcels of land or important wintering habitat, however, may be insufficient to sustain adequate amounts of habitat for the Kirtland's warbler because of the species' dependence on early successional habitat (Mayfield 1972, p. 349; Haney *et al.* 1998, p. 210; Sykes and Clench 1998, pp. 256–257; Wunderle *et al.* 2010, p. 124), which changes in distribution over time. In addition, food availability at any one site varies seasonally, as well as between years, and is not synchronous across all sites (Wunderle *et al.* 2010, p. 124). In the face of changes in land use and availability, sustaining sufficient patches of early-successional habitat for Kirtland's warbler in The Bahamas will likely require a landscape-scale approach (Wunderle *et al.* 2010, p. 135).

Although threats to Kirtland's warblers on the wintering grounds exist as a result of habitat loss due to succession or development, hydrology changes, fire, and invasive species, the current extent and magnitude of these threats appears not to be significantly limiting Kirtland's warbler population numbers based on the species' continuous population growth over the last two decades.

Habitat Distribution

The Kirtland's warbler has always occupied a relatively limited geographic range on both the breeding and wintering grounds. This limited range makes the species naturally more vulnerable to catastrophic events compared to species with wide geographic distributions, as having multiple populations in a wider distribution reduces the likelihood that all individuals will be affected simultaneously by a catastrophic event (*e.g.,* large wildfire in breeding habitat, hurricane in The Bahamas). Since the species was listed, the geographic area where the Kirtland's warbler occurs has increased, reducing the risk to the species from catastrophic events. As the population continues to increase and expand in new breeding and wintering areas, the species will become less vulnerable to catastrophic events. The Conservation Plan, which land management agencies agreed to implement under the 2016 MOU, includes a goal to improve distribution of habitat across the breeding range to reduce this risk by managing lands in the Upper Peninsula of Michigan and in Wisconsin in sufficient quantity and quality to provide breeding habitat for 10 percent (100 pairs) or more of the goal of 1,000 pairs (MDNR *et al.* 2015, p. 23).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Kirtland's warbler is a non-game species, and no commercial harvest is known to occur in either the breeding or wintering grounds. Land management agencies within the Kirtland's warbler's breeding range previously had, and will continue to have, the ability to implement seasonal closures to specific areas for a variety of reasons and, when necessary, could limit access outside of designated roads and trails to further protect the species. Within the 23 KWMAs in the northern Lower Peninsula of Michigan and designated lands in Michigan's Upper Peninsula, approximately 71 km (44 miles) of routes are designated for off-road vehicle (ORV), all-terrain vehicle (ATV), or motorcycle use. In addition, approximately 151 km (94 miles) of trails are designated for hiking, biking, and horseback riding (USFWS, unpubl. data). Additionally, approximately 3,510 km (2,181 miles) of authorized ungraded and graded roads occur within the KWMAs (USFWS, unpubl. data). As described in the Conservation Plan (MDNR *et al.* 2015, p. 16), existing forest roads and trails have not typically been closed or otherwise restricted specifically because of the presence of adjacent Kirtland's warbler habitat.

On a few occasions (Enger 2007, pers. comm.; Kaiser 2014, pers. comm.), motor vehicles used on roads open to such use have collided with and killed Kirtland's warblers. In addition, the noise from roads has been shown to reduce breeding success of other passerines (Schroeder *et al.* 2012, pp. 6–7; Proppe *et al.* 2013, pp. 1080–1082) and could have similar negative effects to Kirtland's warblers. Any past direct and indirect effects of road use have not hindered progress toward recovering the Kirtland's warbler, however, and we do not anticipate a greater extent of effects related to recreation post-delisting. Because Kirtland's warblers occupy large blocks of habitat over long periods of time (Donner *et al.* 2010, p. 5), maintaining larger areas of habitat is a primary management goal (MDNR 2015, pp. 33–34). Managing for larger blocks of breeding habitat reduces the effects of roads and trails that are on the edges of the habitat blocks.

A variety of State, national, and international laws protect Kirtland's warblers independent of their status under the ESA. Laws outside of the U.S. played an important role in helping to recover the species, and State laws will in some cases provide additional protections after delisting. The Kirtland's warbler is protected by the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. 703–712). The MBTA prohibits take, capture, killing, trade, or possession of Kirtland's warblers and their parts, as well as their nests and eggs. The regulations implementing the MBTA further define ''take'' as to ''pursue, hunt, shoot, wound, kill, trap, capture, or collect'' or attempt those activities (50 CFR 10.12).

The States of Florida, Georgia, Indiana, Michigan, North Carolina, Ohio, Virginia, and Wisconsin list the Kirtland's warbler as endangered, under their respective State endangered species regulations. In Michigan, where the majority of the population breeds, part 365 of Public Act 451 of 1994 prohibits take, possession,

transportation, importation, exportation, processing, sale, offer for sale, purchase, or offer to purchase, transportation or receipt for shipment by a common or contract carrier of Kirtland's warblers or their parts.

The Kirtland's warbler was declared federally endangered in Canada in 1979. Canada's Species at Risk Act of 2003 (SARA) is the primary law protecting the Kirtland's warbler in Canada. SARA bans killing, harming, harassing, capturing, taking, possessing, collecting, buying, selling, or trading of individuals that are federally listed. SARA also extends protection to the residence (habitat) of individuals that are federally listed. In addition, the Kirtland's warbler is listed as endangered under Ontario's Endangered Species Act of 2007. Canada's Migratory Bird Convention Act of 1994 also provides protections to Kirtland's warblers. Under Canada's Migratory Bird Convention Act, it is unlawful to be in possession of migratory birds or nests, or to buy, sell, exchange, or give migratory birds or nests, or to make them the subject of commercial transactions.

In The Bahamas and the Turks and Caicos Islands, the Kirtland's warbler is recognized as a globally ''Near Threatened'' species but has no federally listed status. In The Bahamas, the Wild Birds Protection Act (chapter 249) allows the Minister of Wild Animals and Birds Protection to establish and modify reserves for the protection of any wild bird. The species is also protected in The Bahamas by the Wild Animals (Protection) Act (chapter 248) that prohibits the take or capture, export, or attempt to take, capture, or export any wild animal from The Bahamas. The Bahamas regulates scientific utilization of the Kirtland's warbler, based on recommendations previously provided by the Kirtland's Warbler Recovery Team (Bocetti 2011, pers. comm.).

Through the MBTA, SARA, laws in The Bahamas, and State laws, the species remains protected from pursuit, wounding, or killing that could potentially result from activities focused on the species in breeding, wintering, and migratory habitat *(e.g.,* wildlife photography without appropriate care to ensure breeding birds can continue to feed and care for chicks and eggs normally and without injury to their offspring).

C. Disease or Predation

There is no information of any disease impacting the Kirtland's warbler.

For most passerines, nest predation has the greatest negative impact on reproductive success and can affect entire populations (Ricklefs 1969, p. 6; Martin 1992, p. 457). Nest predation may be particularly detrimental for ground-nesting bird species in shrublands (Martin 1993, p. 902). Predation rates of Kirtland's warbler nests have ranged from 3 to 67 percent of nests examined (Mayfield 1960, p. 204; Cuthbert 1982, p. 1; Walkinshaw 1983, p. 120); however, few predation events have been directly observed, and, in general, evidence regarding the importance of certain nest or adult predators lack quantitative support (Mayfield 1960, p. 182; Walkinshaw 1972, p. 5; Walkinshaw 1983, pp. 113–114).

Overall, nest predation rates for Kirtland's warblers are similar to other passerines and are below levels that would compromise population replacement (Bocetti 1994, pp. 125–126; Cooper *et al.,* unpubl. data). The increasing numbers of domestic cats (*Felis catus*) in the breeding and wintering habitats is recognized (Lepczyk *et al.* 2003, p. 192; Horn *et al.* 2011, p. 1184), but there is not sufficient evidence to conclude at this time that predation from cats is currently having population-level impacts to the Kirtland's warbler.

D. Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine the threats identified within the other factors as ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Section 4(b)(1)(A) of the ESA 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 ESA, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such binding legal mechanisms that may ameliorate or exacerbate any of the threats we describe in threat analyses under the other four factors or otherwise enhance the species' conservation. Our consideration of the regulatory mechanisms addressing the threats to the species, is described where applicable in the relevant factor section (see discussion under *Factors A, B,* and *E*).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Pesticides

Pesticides have the potential to cause direct and indirect effects to non-target species, but we are not aware of any pesticides that are negatively affecting the Kirtland's warbler population. Kirtland's warblers could be exposed to pesticides on the breeding or wintering grounds or during migration. On the breeding grounds, forest managers are not routinely using any pesticides within occupied jack pine stands (Huber 2018, pers. comm.; Kintigh 2018, pers. comm.). For Kirtland's warbler, exposure to pesticides would be most likely through dietary exposure (treatment of insects or fruit plants) or accidental spray drift on the edges of suitable habitat.

The U.S. Environmental Protection Agency used Kirtland's warbler as a case study during the re-registration process for two organophosphate pesticides, chlorpyrifos and malathion (Moore *et al.* 2017, p. 1). A probabilistic model was developed to assess the risks of the two pesticides to the birds during the breeding season and migration. The model results predicted very low acute and chronic risk for these pesticides for Kirtland's warbler (Moore *et al.* 2017, p. 265). This conclusion is unsurprising, as Moore *et al.* (2017, p. 267) found that treatments do not occur on Kirtland's warbler breeding grounds and only rarely would warblers be exposed during migration.

Brood Parasitism

Brood parasitism can depress reproduction of avian hosts in several ways, including the direct removal or predation of eggs or young, facilitating nest predation by other nest predators, reducing hatching or fledging success, altering host population sex ratios, and increasing juvenile and adult mortality beyond the nest (Elliot 1999, p. 55; Hoover 2003, pp. 928–929; Smith *et al.* 2003, pp. 777–780; Zanette *et al.* 2005, p. 818; Hoover and Reetz 2006, pp. 170–171; Hoover and Robinson 2007, p. 4480; Zanette *et al.* 2007, p. 220).

The brown-headed cowbird is the only obligate brood parasite within the Kirtland's warbler's breeding range and the only species documented parasitizing Kirtland's warbler nests. Two facultative interspecific nest parasite species, the black-billed cuckoo (*Coccyzus erythropthalmus*) and the yellow-billed cuckoo (*Coccyzus americanus*), may occur within the Kirtland's warbler's breeding range, but parasitism of a Kirtland's warbler nest has not been documented for these species and is not believed to be a threat.

Although brown-headed cowbirds were historically restricted to prairie ecosystems, forest clearing and agricultural development of Michigan's Lower Peninsula in the late 1800s

facilitated the brown-headed cowbird's range expansion into Kirtland's warbler nesting areas (Mayfield 1960, p. 145) such that brown-headed cowbirds were common within the Kirtland's warbler's breeding range by the early 1900s (Wood and Frothingham 1905, p. 49). The first known instance of brood parasitism of a Kirtland's warbler nest occurred in Crawford County, Michigan, in 1908 (Strong 1919, p. 181). Shortly thereafter, the scarcity of Kirtland's warblers was attributed to brown-headed cowbird parasitism (Leopold 1924, p. 57), which later data confirmed as significantly affecting the survival of the Kirtland's warbler (Mayfield 1960, pp. 180–181).

The Kirtland's warbler is particularly sensitive to brown-headed cowbird brood parasitism. The warbler's limited breeding range likely exposes the entire population to brown-headed cowbird parasitism (Mayfield 1960, pp. 146–147; Trick, unpubl. data). In addition, the peak egg-laying period of the brown-headed cowbird completely overlaps with that of the Kirtland's warbler, and the majority of Kirtland's warblers produce only one brood each year (Mayfield 1960, pp. 151–152; Radabaugh 1972, p. 55; Rockwell, unpubl. data). Kirtland's warblers have limited evolutionary experience with brown-headed cowbirds compared to other hosts and have not developed effective defensive behaviors to thwart brood parasitism (Walkinshaw 1983, pp. 157–158).

Between 1903 and 1971, observed parasitism rates of Kirtland's warbler nests ranged from 48 percent to 86 percent (reviewed in Shake and Mattson 1975, p. 2). Brown-headed cowbirds also appear to exert greater pressure on Kirtland's warbler nests than other passerines within the same breeding habitat, with 93 percent of brown-headed cowbird eggs found in jack pine habitat placed in Kirtland's warbler nests compared to all other host species combined (Walkinshaw 1983, p. 154). Kirtland's warbler fledging rates averaged less than one young per nest prior to the initiation of brown-headed cowbird control (Walkinshaw 1972, p. 5).

The effect of brown-headed cowbird parasitism exacerbated negative impacts associated with habitat loss in the decline of the Kirtland's warbler population (Rothstein and Cook 2000, p. 7). Once trapping of brown-headed cowbirds within Kirtland's warbler nesting areas was demonstrated to decrease parasitism rates and increase Kirtland's warbler nesting success (Cuthbert 1966, pp. 1–2), intensive brown-headed cowbird removal was recommended on major Kirtland's warbler nesting areas as one of the necessary steps for the recovery of the Kirtland's warbler (Shake and Mattsson 1975, p. 2).

Starting in 1972, the Service, in conjunction with the USDA–WS, MDNR, and USFS, implemented an intensive brown-headed cowbird control program within Kirtland's warbler nesting areas in Michigan's Lower Peninsula. On average, the control program annually removes approximately 3,573 brown-headed cowbirds from occupied Kirtland's warbler habitat in northern lower Michigan (USDA–WS 2016, unpubl. report). Recent trap rates, however, have been below 1,500 brown-headed cowbirds per year (USDA–WS, unpubl. data).

Following the initiation of brown-headed cowbird control in northern lower Michigan in 1972, brood parasitism rates decreased to 6.2 percent, and averaged 3.4 percent between 1972 and 1981 (Kelly and DeCapita 1982, p. 363). Kirtland's warbler fledging rates simultaneously increased from less than one per nest to 2.8 per nest, and averaged 2.78 young fledged per nest between 1972 and 1981 (Kelly and DeCapita 1982, pp. 364–365). Had brown-headed cowbird parasitism not been controlled, the Kirtland's warbler population may have been reduced to only 42 pairs by 1974 (Mayfield 1975, p. 43).

Brood parasitism of Kirtland's warbler nests also occurs in Wisconsin, and brown-headed cowbird trapping is conducted in select Kirtland's warbler breeding areas. The trapping program in Wisconsin started in 2008, and is run using similar methods to the program in Michigan, with an average of 238 brown-headed cowbirds captured per year (USDA–WS, USFWS unpubl. data). In 2007, two of three Kirtland's warbler nests were parasitized (USFWS, unpubl. data). After the initiation of brown-headed cowbird control in 2008, brood parasitism rates in Wisconsin have fluctuated substantially among years, from 10 percent to 66 percent (USFWS, unpubl. data; Trick, unpubl. data). However, in the same time period (2008–2017), overall nest success has ranged from 19 to 80 percent, and the average fledge rate was estimated to be between 1.51 to 1.92 chicks per nest (USFWS 2017, pp. 2–3).

Limited studies on the effectiveness of the brown-headed cowbird control program in relation to Kirtland's warbler nest productivity in Michigan have been conducted since the early 1980s. Brown-headed cowbirds were nearly eliminated in areas directly adjacent to a trap, and brown-headed cowbird densities increased 5 km (3 miles) and greater from brown-headed cowbird removal areas (De Groot and Smith 2001, p. 877). Brown-headed cowbird densities also significantly increased at distances greater than 10 km (6 miles) from brown-headed cowbird removal areas, further demonstrating the localized effect of brown-headed cowbird control (De Groot and Smith 2001, p. 877). Although brown-headed cowbird density increased with distance beyond 5 km (3 miles) of brown-headed cowbird traps, brown-headed cowbird densities were still low in those areas compared to other parts of North America (De Groot and Smith 2001, p. 877). Anecdotal observations of brood parasitism rates within Kirtland's warbler nesting areas during periods of brown-headed cowbird control indicated very low levels of brood parasitism; parasitism rates have been reduced to less than 1 percent of all nests in areas where trapping occurred (Bocetti 1994, p. 96; Rockwell 2013, pp. 80, 93; Rockwell, unpubl. data).

A study is currently underway in Michigan to evaluate the effective range of a brown-headed cowbird trap and to determine the brood parasitism rate of Kirtland's warbler nests when traps are not operated during the warbler's breeding season. Beginning in 2015, 12 brown-headed cowbird traps (out of 55 total) were closed for two breeding seasons. In 2015, only one nest out of 157 was parasitized, approximately 4.6 km (2.9 miles) away from the nearest brown-headed cowbird trap. In 2016, similar low rates of parasitism were observed, with only 2 parasitized nests out of 128. Due to the low levels of brood parasitism observed, an additional 6 traps were closed in 2017, and none of the 100 nests observed between 0.5 and 22.1 km (0.3 and 13.7 miles) from a brown-headed cowbird trap in 2017 were parasitized (Cooper *et al.,* unpubl. data). In total, only 3 of 385 Kirtland's warbler nests were parasitized in areas with a spatially reduced trapping program from 2015 to 2017. These preliminary data corroborate similar findings that the effective range of a brown-headed cowbird trap is likely much larger than the range (*i.e.,* 1.6 km (1 mile) radius) traditionally used in planning and implementing the brown-headed cowbird control program. Following these results, all brown-headed cowbird trapping in Michigan's northern Lower Peninsula was suspended for the 2018 nesting season. Only 1 of 129 Kirtland's warbler nests was found to be

parasitized (Cooper *et al.,* unpubl. data) in 2018.

Trend estimate data from Breeding Bird Survey routes between 2005 and 2015 show decreasing brown-headed cowbird populations in Michigan and the Upper Great Lakes (Sauer *et al.* 2017, p. 169). Reduced brown-headed cowbird abundance within Kirtland's warbler nesting areas is supported by results from point count surveys conducted between 2015 and 2018 in Kirtland's warbler nesting areas in Michigan's northern Lower Peninsula where brown-headed cowbird traps were not being operated. Only 67 brown-headed cowbirds were observed during 1,134 point count surveys (Cooper *et al.,* unpubl. data).

However, in similar experiments where brown-headed cowbird trapping was reduced or brought to an end following a lengthy period of trapping, brood parasitism rates elevated or returned to pre-trapping rates. Research at Fort Hood Military Reservation in Texas showed that after 3 years of decreased brown-headed cowbird trapping levels, parasitism rates increased from 7.9 percent to 23.1 percent and resulted in black-capped vireo (*Vireo atricapilla*) nest survival decreasing to unsustainable levels (Kostecke *et al.* 2009, p. 1). Other studies have found similar results with parasitism frequency and host bird productivity returning to pre-trapping levels quickly upon discontinuing cowbird removal (Kosciuch and Sandercock 2008, p. 546).

After 45 years of brown-headed cowbird trapping in Michigan, the threat of brood parasitism on the Kirtland's warbler has been greatly reduced but not eliminated. Brown-headed cowbirds remain present, but potentially in lower numbers, in jack pine habitat away from brown-headed cowbird traps, even if that area had been trapped in previous years (DeGroot and Smith 2001, p. 877; Bailey 2007, pp. 97–98; Cooper *et al.,* unpubl. data). Female brown-headed cowbirds are highly prolific, estimated to produce up to 40 eggs in a breeding season (Scott and Ankney 1980, p. 680). Successful brown-headed cowbird reproduction outside of trapped areas may maintain a population of adult brown-headed cowbirds that could return in subsequent years with the ability to parasitize Kirtland's warbler nests. It is unclear if reduced parasitism rates are a permanent change to the landscape of northern lower Michigan. The best available information, however, indicates that cowbird removal efforts can be reduced, at least temporarily, without adversely impacting Kirtland's warbler productivity rates. Given the historical impact that the brown-headed cowbird has had on the Kirtland's warbler, and the potential for the brown-headed cowbird to negatively affect the warbler, a sustainable Kirtland's warbler population depends on monitoring the magnitude and extent of brood parasitism and subsequently adjusting the level of cowbird trapping appropriately.

The MOA (see Recovery and Recovery Plan Implementation, above) established in 2015 between the Service and MDNR addresses the commitment and long-term costs associated with future efforts to control brown-headed cowbirds. The MOA established a dedicated account from which income can be used to implement cowbird management and other conservation actions for the Kirtland's warbler. To date, the account has greater than $2.1 million invested for long-term growth. The MDNR has re-confirmed their commitment to implement and administer the brown-headed cowbird management program once the species is delisted (MDNR 2017). Given our understanding of the status of brown-headed cowbirds in northern lower Michigan, the $2.1 million investment, coupled with the MDNR's commitment, is sufficient to provide an effective brown-headed cowbird management program into the foreseeable future.

Climate Change

Our analyses under the ESA include consideration of ongoing and projected changes in climate. A recent compilation of climate change and its effects is available from reports of the Intergovernmental Panel on Climate Change (IPCC) (IPCC 2014, entire). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

The effects of climate change on Kirtland's warblers were not identified as a threat to the species in the listing rule (32 FR 4001; March 11, 1967) or in the updated recovery plan (USFWS 1985, entire). Potential effects of climate change to the Kirtland's warbler could occur as a result of changes on the breeding or wintering grounds and include a decrease and shift in suitable breeding habitat outside of the species' current range (Prasad *et al.* 2007, unpaginated), increase in pests or pathogens of jack pine, a decrease in the extent of wintering habitat, and decoupling of the timing of migration from food resource peaks that are driven by temperature and are necessary for migration and feeding offspring (van Noordwijk *et al.* 1995, p. 456; Visser *et al.* 1998, pp. 1869–1870; Thomas *et al.* 2001, p. 2598; Strode 2003, p. 1142).

Breeding Grounds: On the breeding grounds, climate change projections, based on low (B1) and high (A1FI) emission scenarios, predict shifts in mean temperature and precipitation as well as altered timing and extremes (Handler *et al.* 2014, pp. 68–84; Janowiak *et al.* 2014, pp. 66–85; GLISA 2018, unpaginated). In the core breeding area, temperatures are expected to increase across all seasons, with more dramatic increases during winter months (Handler *et al.* 2014, p. 72). Precipitation is projected to increase in winter and spring but may decrease in the summer (Handler *et al.* 2014, pp. 73–75), with more extreme precipitation events representing a larger proportion of the total annual and seasonal rainfall (Handler *et al.* 2014, p. 82).

The extent and availability of suitable Kirtland's warbler habitat within jack pine forests on the breeding grounds could change based on projected changes to temperature and precipitation. The Forest Service's Forest Ecosystem Vulnerability Assessments considered impacts to above-ground biomass for 26 tree species, and projected stable (in Wisconsin) or slight reductions (in Michigan) in the biomass of jack pine over the next 50 years, with more significant declines projected by the end of the 21st century (Handler *et al.* 2014, p. 94; Janowiak *et al.* 2014, p. 99). In addition to a possible reduction in the biomass of jack pine, the spatial distribution of the species may also shift in response to changing climate.

The projections of how jack pine will be affected by climate change vary based on the model used and emission scenario considered. Overall, models predict that jack pine occurrence will contract in the northern Lower Peninsula and shift out of peripheral breeding areas. Scenarios using both low (B1) and high (A1F1) greenhouse gas emissions predicted a reduction of the extent of jack pine in Michigan but an expansion of jack pine in western Wisconsin and Minnesota (Prasad *et al.* 2007, unpaginated). More recent models using emission scenarios with Representative Concentration Pathways (RCPs) of 4.5 and 8.5 similarly projected a decline in jack pine occurrence in Michigan and indicated declines in northern Minnesota, northern Wisconsin, and the Upper Peninsula of Michigan (Donner *et al.* 2018, pp. 270–273). However, conditions were projected to remain suitable for jack pine occupancy in northern lower Michigan (Donner *et al.* 2018, pp. 271).

Insect pests may become more problematic to jack pine under future climatic changes, with increasing damage and spread of new jack pine pests in the Kirtland's warbler's habitat areas. A warmer climate may increase the susceptibility of current jack pine forests to damage from pests and diseases (Bentz *et al.* 2010, pp. 606–610; Cudmore *et al.* 2010, pp. 1040–1042; Safranyik *et al.* 2010, p. 432) and may allow for new pests such as western bark beetle to arrive (Handler *et al.* 2014, p.130). Forest managers will continue to monitor pest and pathogen outbreaks in jack pine forests.

Competition with deciduous forest species is also expected to favor an expansion of the deciduous forest into the southern portions of the boreal forest (USFWS 2009, p. 14) and affect interspecific relationships between the Kirtland's warbler and other wildlife (Colwell and Rangel 2009, p. 19657; Wiens *et al.* 2009, p. 19729). However, warmer weather and increased levels of carbon dioxide could also lead to an increase in tree growth rates on marginal forestlands that are currently temperature-limited (NAST 2000, p. 57). Higher air temperatures will cause greater evaporation and, in turn, reduce soil moisture, resulting in conditions conducive to forest fires (NAST 2000, p. 57) that favor jack pine propagation. Too much change in the fire regime could have a negative effect on jack pine regeneration and result in a shift to barrens (Handler *et al.* 2014, p. 130). Additionally, warmer temperatures could also lead to greater moisture stress, through accelerated litter layer decomposition leading to lower water-holding capacity (Handler *et al.* 2014, p. 130). Alternatively, warmer conditions and longer growing seasons could benefit pine forests, if carbon dioxide fertilization boosts long-term water-use efficiency and productivity (Handler *et al.* 2014, pp. 102, 114–115, 130).

Recent vulnerability analyses estimate moderate potential impacts to jack pine forests as a result of the effects of climate change and low-moderate adaptive capacity of jack pine, based on its high tolerance for disturbance and existing management practices (Handler *et al.* 2014, p. 130). A climate change vulnerability assessment for wildlife species by MDNR (Hoving *et al.* 2013, p. 40), using NatureServe's Climate Change Vulnerability Index, categorized Kirtland's warbler as ''Presumed Stable,'' with the caveat that while the population may remain stable, its range may shift outside of Michigan.

In summary, there may be a reduction or a shift in available suitable jack pine habitat over the next 50 years, but these reductions may be offset to some degree by other ecosystem processes, such as an altered fire regime and adaptive habitat management (harvest of jack pines and techniques, such as the use of containerized saplings rather than bare-root stock, for planting jack pine plantations). Jack pine may also adapt to changing climatic conditions. As suitable habitat shifts, Kirtland's warblers could also adapt by utilizing more marginal habitat, or increasing in density in high-quality habitat. The KWCT will continue to analyze the extent and distribution of suitable habitat, and the effects of pests and disease on jack pine.

Wintering Grounds: On the wintering grounds, effects of climate change to the Kirtland's warbler could occur as a result of changing temperature and precipitation, rising sea levels, and storm events. For migratory species, unfavorable changes on the wintering grounds can result in subsequent negative effects on fitness later in the annual life cycle (Marra *et al.* 1998, p. 1885; Sillett *et al.* 2000, pp. 2040–2041; Rockwell *et al.* 2012, pp. 747–748; Rockwell *et al.* 2017, p. 721). For the Kirtland's warbler, wintering habitat condition affects survival and reproduction (Rockwell *et al.* 2012, pp. 747–748; Rockwell *et al.* 2017, p. 721). These effects likely result from limited resource availability on the wintering grounds that reduces body condition and fat reserves necessary for successful migration and reproduction (Wunderle *et al.* 2014, pp. 47–49). The availability of sufficient food resources is affected by the amount of habitat for arthropods and fruiting plants, temperature, and precipitation (Brown and Sherry 2006, pp. 25–27; Wunderle *et al.* 2014, p. 39).

Temperatures in the Caribbean have shown strong warming trends across all regions, particularly since the 1970s (Jones *et al.* 2016, pp. 3325, 3332), and are likely to continue to warm. A climate model with a high emission scenario (A2) predicted an increase in temperature of almost 2.5 to 3.0 degrees Celsius (4.5 to 6.3 degrees Fahrenheit) above the mean temperatures of 1970–1989 by the 2080s (Karmalkar *et al.* 2013, p. 301). Climate change models using a lower emissions scenario (RCP4.5) project an increase in surface temperature in the Caribbean ranging from 1.2 to 1.9 degrees Celsius (2.2 to 3.4 degrees Fahrenheit) for 2081–2100 when compared to 1986–2005 (Nurse *et al.* 2014, p. 1628). Other models, using high (A2) and low (B2) emission scenarios, also predicted an increase in the number of warm days and nights and a decrease in the frequencies of cool days and nights, in addition to higher mean daily temperatures, for 2071–2099 relative to 1961–1999 (Stennett-Brown *et al.* 2017, pp. 4838–4840). Increased temperatures could affect food availability by altering food supply (arthropod and fruit availability), although it is unknown to what extent the predicted increases in temperature would increase or decrease food supply for the Kirtland's warbler. Other effects of increasing temperature related to sea level and precipitation are described below.

Increasing temperatures can contribute to sea level rise from the melting of ice over land and thermal expansion of seawater. A wide range of estimates for future global mean sea level rise is found in the scientific literature (Church *et al.* 2013, entire; IPCC 2013a, entire; Simpson *et al.* 2010, pp. 55–61; Sweet *et al.* 2017, entire). By 2070, global mean sea level is projected to increase by 0.35 m (1.15 ft) to 0.42 m (1.38 ft) under RCP4.5 and RCP8.5 scenarios (IPCC 2013a, p. 1445). Another model predicts increases in sea level ranging from 0.35 m (1.15 ft) to 0.79 m (2.59 ft) by 2070 under comparable emission scenarios (Sweet *et al.* 2017, p. 23). An increase in sea level could reduce the availability of suitable habitat due to low-elevation areas being inundated, resulting in a reduction in the size of the islands on which Kirtland's warblers winter (Amadon 1953, p. 466; Dasgupta *et al.* 2009, pp. 21–23). The Bahamas archipelago is mainly composed of small islands, and more than 80 percent of the landmass is within 1.5 m (4.9 ft) of mean sea level (The Bahamas Environment, Science and Technology Commission 2001, p. 43). This makes The Bahamas particularly vulnerable to future rises in sea level (Simpson *et al.* 2010, p. 74), which could result in a reduction of the extent of winter habitat and negatively impact the Kirtland's warbler. Estimates of total landmass loss throughout The Bahamas due to a 1-meter (3.3 ft) rise in sea level vary from 5 percent (Simpson *et al.* 2010, p. 77) to 11 percent (Dasgupta *et al.* 2007, p. 12; 2009, p. 385). However, not all of the land that may be inundated is potentially suitable for Kirtland's warbler (*e.g.,* developed land, closed-canopy forest). To assess how climate change scenarios may affect Kirtland's warbler's wintering habitat, we considered a recent estimate of potential Kirtland's warbler habitat loss due to sea level rise (Wolcott *et al.* 2018, entire). Loss of open-land habitat varied across the archipelago, based on elevational differences (Wolcott *et al.* 2018, p. 10). There have historically

been few observations of Kirtland's warblers on the northern islands (Cooper *et al.* 2019, p. 84), where elevations are lower and where projections indicate the greatest loss of open land (Wolcott *et al.* 2018, p. 10). On Eleuthera, the island with the greatest known density of overwintering Kirtland's warblers, a rise in sea level of 1 meter (3.3 ft) or 2 meters (6.6 ft) would result in a loss of potential Kirtland's warbler wintering habitat of 0.8 percent and 2.6 percent, respectively (Wolcott *et al.* 2018, p. 9). Given that the projected rise in sea level in the foreseeable future is less than 1 meter (3.3 ft), we anticipate the loss of potential Kirtland's warbler winter habitat on Eleuthera due to sea level rise will be less than 0.8 percent.

Generally, climate models predict a drying trend in the Caribbean, but there is considerable temporal and spatial variation and often disagreement among models regarding specific predictions that make it difficult to determine the extent to which reduced rainfall or timing of rainfall may affect the Kirtland's warbler in the future. We reviewed available literature examining precipitation trends and projections in the Caribbean, and specifically The Bahamas, to assess the potential effects of changes in precipitation.

Precipitation patterns in the Caribbean from 1979 to 2012 did not show statistically significant century-scale trends across regions, but there were periods of up to 10 years when some regions were drier or wetter than the long-term averages (Jones *et al.* 2016, p. 10). In the northern Caribbean (which includes The Bahamas, Cuba, Jamaica, Haiti, Dominican Republic, and Puerto Rico), some years were more wet than the average, and other years were more dry across all seasons (Jones *et al.* 2016, p. 3314), with higher precipitation totals since about 2000. Within The Bahamas, precipitation trends during the dry season (November through April) showed a significant drying trend for 1979–2009 (Jones *et al.* 2016, pp. 3328, 3331).

Model projections under two emission scenarios (RCP4.5 and 8.5) found that the projected precipitation varied seasonally and spatially throughout the islands of The Bahamas, both in the mid-term (2050) and long-term (2100) (Wolcott *et al.* 2018, pp. 4–6). The northern and north-central islands are likely to have increased precipitation in March (compared to baseline conditions), whereas the central islands are likely to become drier (Wolcott *et al.* 2018, p. 7–8) under both emission scenarios, with the magnitude of projected changes greater in RCP8.5.

Accurately projecting future precipitation trends in the Caribbean is difficult due to the complex interactions between sea surface temperatures, atmospheric pressure at sea level, and predominant wind patterns. Further, some models have difficulty accurately simulating the semi-annual seasonal cycle of precipitation observed in the Caribbean (Karmalkar *et al.* 2013, pp. 300–302). Recent models using statistical downscaling techniques have improved resolution but still show limitations for predicting precipitation (Stennett-Brown *et al.* 2017, p. 4840). Thus, rainfall projections where Kirtland's warblers overwinter have limited certainty and should be interpreted with caution. Understanding the likely projected precipitation in The Bahamas and Caribbean is important because of the strong link between late winter rainfall and fitness of Kirtland's warblers. A drying trend on the wintering grounds will likely cause a corresponding reduction in available food resources (Studds and Marra 2007, pp. 120–121; Studds and Marra 2011, pp. 4–6). Rainfall in the previous month was an important factor in predicting fruit abundance (both ripe and unripe fruit) for wild sage and black torch in The Bahamas (Wunderle *et al.* 2014, p. 19), which is not surprising given the high water content (60–70 percent) of their fruit (Wunderle, unpubl. data, cited in Wunderle *et al.* 2014, p. 4). Carry-over effects of weather on the wintering grounds, particularly late-winter rainfall, have been shown to affect spring arrival dates, reproductive success, and survival rates of Kirtland's warblers (reviewed in Wunderle and Arendt 2017, pp. 5–12; Rockwell *et al.* 2012, p. 749; Rockwell *et al.* 2017, pp. 721–722).

Decreases in rainfall and resulting decreases in food availability may also result in poorer body condition prior to migration. The need to build up the necessary resources to successfully complete migration could, in turn, result in delays to spring departure in dry years (Wunderle *et al.* 2014, p. 16) and may explain observed delays in arrival times following years with less March rainfall in The Bahamas (Rockwell *et al.* 2012, p. 747). Delays in the spring migration of closely related American redstarts (*Setophaga ruticilla*) have also been directly linked to variation in March rainfall and arthropod biomass (Studds and Marra 2007, p. 120; Studds and Marra 2011, p. 4), and have also resulted in fewer offspring produced per summer (Reudink *et al.* 2009, p. 1624). These results strongly indicate that environmental conditions modify the timing of spring migration, which likely carries a reproductive cost. If The Bahamas experience a significant winter drying trend, Kirtland's warblers may be pressured to delay spring departures, while simultaneously contending with warming trends in their breeding range that pressure them to arrive earlier in the spring. Projection population modeling (Rockwell *et al.* 2017, p. 2) estimated a negative population growth in Kirtland's warbler as a result of a reduction of more than 12.4 percent from the current mean levels in March rainfall.

A recent drought in the Caribbean from 2013 to 2016, due in part to El Niño, resulted in some of the highest temperatures and potential evapotranspiration anomalies observed in the region (Herrera and Ault 2017, p. 7822). As a result, it has been characterized as the most severe drought in the region since at least 1950 (Herrera and Ault 2017, p. 7822) and may have been appreciably more severe because of anthropogenic warming (*i.e.,* 15 to 17 percent of the drought's severity and approximately 7 percent of its spatial extent could be attributed to the anthropogenic effects of climate change) (Herrera *et al.* 2018, pp. 4–5). Future droughts are predicted to be increasingly severe because of higher temperatures, which played an important role in the 2013–2016 drought, regardless of changes in precipitation (Herrera *et al.* 2018, p. 7). For the period during and following the 2013–2016 drought, the Kirtland's warbler population remained stable or increased, indicating at least some level of resilience to severe, short-term drought.

Extreme weather events, such as tropical storms and hurricanes, will continue to occur with an expected reduction in the overall frequency of weaker tropical storms and hurricanes and an increase in the frequency of the most intense hurricanes (category 4 and 5 hurricanes), based on several dynamical climate-modeling studies of Atlantic basin storm frequency and intensity (Bender *et al.* 2010, p. 456; Knutson *et al.* 2010, pp. 159–161; Murakami *et al.* 2012a, pp. 2574–2576; Murakami *et al.* 2012b, pp. 3247–3253; Knutson *et al.* 2013, pp. 6599–6613; Knutson *et al.* 2015, pp. 7213–7220). Although very intense hurricanes are relatively rare, they inflict a disproportionate impact in terms of storm damage (*e.g.,* approximately 93 percent of damage resulting from hurricanes is caused by only 10 percent of the storms (Mendelsohn *et al.* 2012,

p. 3)). An increasing trend for hurricanes to have decreased forward or translational speeds may increase the future risk of heavy rainfall events and extended period of hurricane-force winds over an island (Kossin 2018, p. 105). This could result in future increased risks to Kirtland's warblers and their winter habitat.

Hurricanes have the potential to result in direct mortality of Kirtland's warblers during migration and while on the wintering grounds (Mayfield 1992, p. 11), but most birds do not arrive in The Bahamas until mid-October to early November, after peak hurricane season (Wunderle and Ewert 2018, p. 1). There is a high risk of short-term effects following the hurricane due to altered shelter and food (Wiley and Wunderle 1993, pp. 331–336). During recent observations of hurricane effects on the island of San Salvador, post-hurricane declines of Kirtland's warblers relative to previous winters may have been due to food resource loss resulting from salt spray that killed leaves and possibly arthropods and fruit (Wunderle and Ewert 2018, p. 1). Because Kirtland's warblers readily shift sites on the wintering grounds based on food availability, Kirtland's warblers would likely be able to shift locations within and possibly between nearby islands as an immediate post-hurricane response (Wunderle *et al.* 2007, p. 124). Further, hurricanes likely produce new wintering habitat for Kirtland's warblers by opening up closed canopy habitat of tall coppice and may also help set back succession for existing suitable habitat (Wunderle *et al.* 2007, p. 126). Coastal areas at most risk to storm surges (and thus less suitable for development) may provide future habitat for Kirtland's warblers (Wunderle and Ewert 2018, p. 1).

In summary, uncertainties in modeling the projected effects of climate change in The Bahamas, both spatially and temporally, create some uncertainty in effects on the Kirtland's warbler's wintering habitat and food availability. There is more confidence that temperatures are likely to increase, and it is possible that there will be a drying trend over much of the Caribbean. However, it is not clear whether all islands will be equally affected by less precipitation. The Kirtland's warbler population has increased dramatically during the past drying trend (1979–2009) and recent drought (2013–2016) at its wintering grounds. In addition, individual warblers have been reported wintering outside of The Bahamas (see *Distribution,* above). Although the extent of behavioral plasticity and adaptive capacity at the species level to shift locations in response to the effects of climate change in the Caribbean remains unknown, as a long-distance migrant, the Kirtland's warbler is well suited, in terms of its movement patterns and dispersal ability, to reach other locations both within and outside of its current winter range where suitable winter habitat and food resources may be more available under future temperature and precipitation conditions.

Collision With Lighted and Human-Made Structures

Collision with human-made structures (*e.g.,* tall buildings, communication towers, wind turbines, power lines, and heavily lighted ships) kills or injures millions of migrating songbirds annually (Bocetti 2011, pp. 177–178; reviewed in Drewitt and Langston 2008, p. 259; Longcore *et al.* 2008, pp. 486–489). Factors that influence the likelihood of avian collisions with human-made structures include size, location, use of lighting, and weather conditions during migratory periods (reviewed in Drewitt and Langston 2008, p. 233). The presence of artificial light at night and plate-glass windows are the most important factors influencing avian collisions with existing human-made structures (Ogden 1996, p. 4).

There are five confirmed reports of Kirtland's warblers colliding with human-made structures, all of which resulted in death. Two of these deaths resulted from collisions with windows (Kleen 1976, p. 78; Kramer 2009, pers. comm.), and three resulted from collisions with a lighted structure, including a lighthouse (Merriam 1885, p. 376), an electric light mast (Jones 1906, pp. 118–119), and a lighted monument (Nolan 1954). Another report of a Kirtland's warbler that flew into a window and appeared to survive after only being stunned by the collision (Cordle 2005, p. 2) was not accepted as an official documented observation of a Kirtland's warbler (Maryland Ornithological Society 2010, unpaginated).

Some bird species may be more vulnerable to collision with human-made structures than others due to species-specific behaviors. Particularly vulnerable species include: Night-migrating birds that are prone to capture or disorientation by artificial lights because of the way exposure to a light field can disrupt avian navigation systems; species that habitually make swift flights through restricted openings in dense vegetation; and species that are primarily active on or near the ground (reviewed in Ogden 1996, p. 8; Gauthreaux and Belser 2006, p. 67). Of the avian species recorded, the largest proportion of species (41 percent) that suffer migration mortality at human-made structures belong to the wood warbler subfamily (Parulinae), of which many species exhibit the above-mentioned behaviors (Ogden 1996, p. 14).

The Kirtland's warbler belongs to the Parulidae family, migrates at night, typically occupies dense vegetation, and is often active on or near the ground. Although Kirtland's warblers exhibit behavioral traits that may contribute to vulnerability to collision with human-made structures, little is known regarding how prone this species is to collision. The majority of bird collisions go undetected because corpses land in inconspicuous places or are quickly removed by scavengers, postmortem (Klem 2009, p. 317). Additionally, while most avian collisions take place during migration, detailed information about Kirtland's warbler migration is still limited. The Kirtland's warbler population is also small, reducing the probability of collision observations by chance alone, compared to other species. These factors have inhibited the gathering of information, and in turn, a more comprehensive understanding of the hazards human-made structures pose to the Kirtland's warbler. It is reasonable to presume, however, that more Kirtland's warblers collide with human-made structures than are reported.

Solutions to reduce the hazards that cause avian collisions with human-made structures are being implemented in many places. Extinguishing internal lights of buildings at night, avoiding the use of external floodlighting, and shielding the upward radiation of low-level lighting such as street lamps are expected to reduce attraction and trapping of birds within illuminated urban areas, and in turn, reduce injury and mortality caused by collision, predation, starvation, or exhaustion (reviewed in Ogden 1996, p. 31). The Service's Urban Conservation Treaty for Migratory Birds program has worked with several cities to adopt projects that benefit migrating birds flying through urban areas between breeding and wintering grounds. For example, some cities within the Kirtland's warbler's migration corridor, such as Chicago, Indianapolis, Columbus, Detroit, and Milwaukee, have ''Lights Out'' or similar programs, which encourage the owners and managers of tall buildings to turn off or dim exterior decorative lights, as well as interior lights, during spring and fall migration periods (National Audubon Society 2019,

entire). These programs are estimated to reduce general bird mortality by up to 83 percent (Field Museum 2007, p. 1).

Additionally, migrating birds are not equally attracted to various lighting patterns, and modifying certain types of lighting systems could significantly reduce collision-related mortality. Removing steady-burning, red L–810 lights and using only flashing, red L–864 or white L–865 lights on communication towers and other similarly lit aeronautical obstructions could reduce mortality rates by as much as 50 to 70 percent (Gehring *et al.* 2009, p. 509). On December 4, 2015, the Federal Aviation Administration (FAA) revised its advisory circular that prescribes tower lighting to eliminate the use of L–810 steady-burning side lights on towers taller than 107 m (350 ft) (FAA Advisory Circular 70/7460–1L), and on September 28, 2016, it released specifications for flashing L–810 lights on towers 46–107 m (150–350 ft) tall. These lighting changes should significantly reduce the risk of migratory bird collisions with communication towers.

As noted previously concerning potential threats to migratory habitat, if mortality during migration were limiting or likely to limit the population to the degree that maintaining a healthy population may be at risk, it should be apparent in the absence of the species from highly suitable breeding habitat in the core breeding range. In fact, we have seen just the opposite with increasing densities of breeding individuals in core areas and a range expansion into what would appear to be less suitable habitat elsewhere. This steady population growth and range expansion occurred while the potential threats to the species during migration were all increasing on the landscape (*e.g.,* new communication towers and wind turbines).

Synergistic Effects of Factors A Through E

When threats occur together, one may exacerbate the effects of another, causing effects not accounted for when threats are analyzed individually. Many of the threats to the Kirtland's warbler and its habitat discussed above under Factors A through E are interrelated and could be synergistic, and thus may cumulatively impact Kirtland's warbler beyond the extent of each individual threat. For example, increases in temperature and evaporation could reduce the amount of jack pine habitat available and increase the level of brood parasitism. Historically, habitat loss and brood parasitism significantly impacted the Kirtland's warbler and cumulatively acted to reduce its range and abundance. Today, these threats have been ameliorated and adequately minimized such that the species has exceeded the recovery goal. The best available data show a positive population trend over several decades and record high population levels. Continued habitat management and brown-headed cowbird control at sufficient levels, as identified in the Conservation Plan and at levels consistent with those to which management agencies committed in the MOU and MOA, will assure continued population numbers at or above the recovery criterion with the current magnitude of other threats acting on the Kirtland's warbler.

Summary of Comments and Recommendations

In the proposed rule published on April 12, 2018 (83 FR 15758), we requested that all interested parties submit written comments on the proposal by July 11, 2018. 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 Milwaukee Journal Sentinel on April 16, 2018, and in The Detroit Free Press on April 23, 2018. We did not receive any requests for a public hearing. The draft Post-delisting Monitoring Plan (PDM) was made available on our website on June 7, 2018. During the comment period for the proposed rule, we received a total of 42 comment letters or statements directly addressing the proposed action. These included comments from seven peer reviewers and 34 comments from the public during the open comment period; all comments are posted on *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0005. Many commenters expressed their support or opposition to the proposed rule without offering substantive information.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from 10 knowledgeable individuals with scientific expertise that included familiarity with Kirtland's warbler and its habitat, biological needs, and threats, as well as familiarity with conservation biology, ornithology, climate change, and population ecology. We received responses from seven peer reviewers. Almost all of the peer reviewers supported the proposed delisting rule, although one peer reviewer suggested that a more cautious approach would be to downlist the species to provide a ''buffer'' of protection. Many peer reviewers commented that the current status of Kirtland's warbler is accurately presented in the proposed rule.

We reviewed all comments we received from the peer reviewers and the public for substantive issues and new information regarding the delisting of Kirtland's warbler. Substantive comments we received during the comment period are addressed below and, where appropriate, are incorporated directly into this final rule. Comments that we received on the PDM without reference to or comment on the proposed rule are addressed separately in the PDM.

Comment (1): Several peer reviewers and public commenters expressed concern that additional funding will be needed to support the species post-delisting. They discussed the need for sufficient funding to ensure habitat management and brown-headed cowbird control will continue at levels necessary to support the population above the recovery goals. Several peer reviewers also mentioned that funding will be necessary to support monitoring efforts to ensure any significant changes to the species' population levels are detected. A reviewer also stated that an income-producing fund has been created and appears to be successful, but they were concerned over the uncertainty as to whether it will be adequate to support conservation efforts post-delisting.

Our Response (1): We acknowledge that the long-term survival of Kirtland's warbler is dependent upon the continued implementation of conservation programs that require agency commitment and sufficient funding. The vast majority of conservation programs (with the exception of brown-headed cowbird management) were previously funded through agency appropriations and grants, and not funded through ESA recovery funding. Thus, delisting Kirtland's warbler will not eliminate a major source of funding that is tied to its listing status. In the 2016 MOU, the MDNR, USFS, and Service reaffirmed their commitment to continue managing and monitoring Kirtland's warblers if the species is delisted. To supplement agency funding, which can fluctuate, the Kirtland's Warbler Alliance has been working with partners to establish additional funding sources for future conservation efforts. Recently, the American Bird Conservancy (ABC) was awarded a grant to help establish a long-term Kirtland's warbler endowment that would offset some of the agencies' costs and support future Kirtland's warbler

conservation throughout the bird's full life cycle (Graff 2018, unpaginated).

Previous funding of brown-headed cowbird management was provided through ESA funding; therefore, a new funding source is needed to secure brown-headed cowbird management efforts post-delisting. To address this, the MDNR and Service developed a dedicated fund to be used for brown-headed cowbird management and other high priority conservation needs. At the time the proposed delisting rule was published (83 FR 15758; April 12, 2018), the dedicated fund had greater than $1 million. Since then, an additional $1.1 million was added, increasing our certainty that sufficient funding for brown-headed cowbird management will be available in the future. This account is invested for long-term growth, and income generated will be used to ensure sufficient brown-headed cowbird management to adequately reduce brood parasitism of the Kirtland's warbler.

Comment (2): Several peer reviewers discussed the issue of brown-headed cowbird control. The majority expressed support of continuing the brown-headed cowbird management program and asked for more detail regarding how the agencies will monitor the rates of parasitism to know when parasitism rates change, how the agencies will respond to increases in parasitism rates, and whether sufficient funding exists to continue to support the brown-headed cowbird program at historical levels of trapping.

Our Response (2): Brood parasitism has historically been one of the primary threats to Kirtland's warbler, and thus the brown-headed cowbird management program has been a critical component of the recovery program. Recent research has shown a reduced brown-headed cowbird population throughout the Kirtland's warbler's core range in the northern Lower Peninsula. An experiment was initiated in 2015 to evaluate the effect of a reduced trapping program on Kirtland's warbler nest success. During a 3-year period (2015–2017), 3 of 385 Kirtland's warbler nests were parasitized in areas with a spatially reduced trapping program. Following these results, all trapping in the northern Lower Peninsula was suspended for the 2018 nesting season. In 2018, only one nest of over 140 was found to be parasitized. Additional information and data have been added to this final rule to reflect the most recent information on parasitism rates, including data from the 2018 nesting season.

We fully expect brood parasitism rates to fluctuate and recognize that permanent reductions to the brown-headed cowbird management program are not prudent. Rather, an adaptive management approach is appropriate to ensure adequate brown-headed cowbird management into the future. We have included the need for continued research and monitoring in the PDM to help inform future efforts.

Based on the ongoing research, we do not expect that trapping levels will need to return to previous levels for several years, and may never return to historic levels. Through ongoing research, the KWCT hopes to establish trigger points that would dictate when trapping would be resumed and at what level. Through the MOA, and reaffirmed in a letter dated November 9, 2017, the MDNR has agreed to assume responsibility for the brown-headed cowbird management program. Funding for the brown-headed cowbird management program will be available through interest accrued from the brown-headed cowbird dedicated fund (see our response to *Comment (1)*), or other agency funds through the MDNR.

External funding has been secured for the Smithsonian Migratory Bird Center to continue monitoring brown-headed cowbird presence and brood parasitism for the 2019 and 2020 nesting seasons. The results from the cowbird monitoring research conducted during 2015–2020 will be used to develop specific monitoring protocols that will be conducted in accordance with the PDM. We also expect the KWCT to continue assessing the need for further monitoring or research.

Comment (3): Several peer reviewers discussed the importance of continued habitat management for the Kirtland's warbler population. A reviewer asserted that we made a major assumption in stating that management agencies will continue to create habitat post-delisting. Another comment discussed the uncertainty regarding timber marketability and the importance of timber receipts in offsetting the cost of Kirtland's warbler habitat management, and asked that this topic be more explicitly addressed in the rule. Further, a reviewer recommended a better plan on developing forestry techniques that increase marketability of the timber, as well as finding creative ways to fund future habitat management efforts. Many of the comments received regarding continued habitat management related to ensuring management would continue and how habitat management will be funded.

Our Response (3): The management agencies have a long-standing history of providing habitat for the Kirtland's warbler and have described their commitment to continuing management for the Kirtland's warbler in the Conservation Plan and the MOU. We recognize the uncertainty over future timber markets and the impact that timber receipts may have in offsetting the costs of habitat management. The land managers and the KWCT have also recognized this uncertainty and have started the process to develop and test alternative planting techniques that would reduce costs and improve the marketability of jack pine through increased growth rates while still providing Kirtland's warbler nesting habitat. Currently, the Conservation Plan indicates up to 25 percent of future habitat management, annually, may incorporate non-traditional regeneration techniques designed to address the marketability and regeneration of jack pine.

Specific plans are not yet available, as the habitat management planning process is dynamic. Alternative management techniques will evolve over time and be adaptable to changing circumstances. A subcommittee of the KWCT has routinely met over the last several years to develop alternative techniques. Additional information regarding timber marketability and future jack pine regeneration techniques has been added to this rule.

Habitat management will continue to be funded through appropriated funds provided to the land management agencies for timber harvest and reforestation. Additional funds may be available through the endowment being developed by the Kirtland's Warbler Alliance and ABC, which is described earlier in this rule.

Comment (4): Several peer reviewers provided comments on the Conservation Plan's allowance of up to 25 percent of habitat management to be non-traditional habitat regeneration techniques. They stated that the quality of Kirtland's warbler breeding habitat created through new techniques is not known and could result in a loss of up to 25 percent of breeding habitat and potentially a substantial decrease in the abundance of Kirtland's warbler. The reviewers recommend any non-traditional techniques be used as part of the annual habitat goals only after they have been shown to be effective. They clarified that both density of breeding pairs and fledgling production are important metrics for evaluating the quality of non-traditional breeding habitat. Another peer reviewer asked us to emphasize that the 25 percent experimental habitat regeneration is a maximum and should not be interpreted as an annual requirement. This reviewer also pointed out that the 75 percent of

breeding habitat created using traditional methods is enough to support the population above the recovery goal of 1,000 pairs and reflects the best available science regarding breeding habitat use by the species.

Our Response (4): We have clarified in this rule that the 25 percent experimental habitat amount is a maximum amount annually. Managing habitat with traditional techniques at a minimum of 75 percent of the annual objective will still provide enough breeding habitat to maintain the species well above the recovery goal. Additionally, we expect that the experimental habitat will still provide breeding habitat for Kirtland's warbler but at potentially lower densities or reduced nest success. These experimental designs will be closely monitored to evaluate their effectiveness in regenerating jack pine and providing Kirtland's warbler breeding habitat.

Comment (5): Several peer reviewers also commented on the agencies' commitment to continue conservation actions for Kirtland's warbler and whether the level of commitment provided via the current MOA and MOU are sufficient to support delisting. A peer reviewer expressed concern regarding the level of commitment to continuing habitat management and pointed out that the MOU indicates that management will occur ''only as appropriated funds are available'' and that ''additional funds will be necessary to meet these commitments.'' They also pointed out that the MOU can be terminated at any time by any agency and asked whether the agreements are legally binding. Multiple peer reviewers and several public commenters indicated that the levels of commitment in the existing MOU and MOA are sufficient to support delisting. One reviewer asked if the MOU had expired and, if so, when it might be renewed. Regarding conservation agreements on the wintering grounds, one reviewer commented that they are not necessary prior to delisting, given our understanding of threats to winter habitat.

Our Response (5): The MOU is a synthesis of the land management agencies' commitments to forest management, developed under the requirements of Federal and State law that will remain in effect after delisting, to sustain Kirtland's warbler. The MOU was first signed in 2011, was renewed in 2016, and currently expires in 2020. Prior and subsequent to the MOU, habitat management and other conservation programs were always dependent on annual appropriated funds provided to the land management agencies. Further, MDNR did not have any legal obligations under the ESA to conduct habitat management during the last 40 years while the species was listed, but MDNR adopted into their forest plans the habitat management goals set forth by the Kirtland's Warbler Recovery Team and later by the KWCT. The MOA is specific to cowbird management and the development of a dedicated funding source primarily for that activity, but possibly other activities in the future if excess funding resources become available. The MOA was signed in 2015 with no expiration date and stipulates that the Service and MDNR will review progress under the MOA every 5 years to determine whether any modifications are warranted. While not fully legally binding, the MOU and MOA are built on a foundation of Federal and State law guiding land management and further express the agencies' commitments to continue managing for the species, regardless of the species' status under the ESA.

Comment (6): Several peer reviewers asked for additional detail regarding the intensity and extent of population monitoring post-delisting. A peer reviewer expressed concern over the lack of full surveys (censuses) in recent years, noting that the last full population survey was in 2015. Several reviewers questioned the recent (2016) shift from full census to the less intensive survey effort and requested that the MDNR sampling method be better explained. Several peer reviewers indicated that MDNR should continue with the full census until the proposed survey technique undergoes peer review and publication in a reputable journal. One peer reviewer emphasized that any reduced survey effort should be capable of providing a reliable extrapolation of total breeding male abundance, so as to allow comparison with past total singing/territorial male counts from previous population censuses. Another reviewer commented that the census techniques should be improved to assure accuracy, reduce uncertainty, and improve ability to detect small population-level changes. In addition, a reviewer noted that in areas where reduced brown-headed cowbird trapping occurs (as compared to previous levels) or experimental habitat management techniques are used, more intensive population monitoring is necessary. Some reviewers also suggested that the PDM should include monitoring of survival and reproductive success in addition to the number of singing males. Furthermore, one peer reviewer mentioned the possibility of using mist-netting as an alternative to nest searching to estimate productivity.

Our Response (6): We appreciate the comments regarding the need for further details on how the Kirtland's warbler population will continue to be monitored post-delisting. Our knowledge of the Kirtland's warbler population and its response to habitat management has greatly been informed by conducting an annual census using similar protocols over several decades. We recognize that the complexity of conducting an annual census has changed as the species has expanded from its core breeding range. Further, the intensity of a monitoring effort should be continually reevaluated in accordance with adaptive management needs and the population size (*e.g.,* for a smaller population, intensive monitoring is more feasible and potentially more important). For a recovered population, unless new information or concerns suggest otherwise, a less-intensive monitoring effort (when compared to when populations were critically imperiled) helps ensure staffing and funding resources are used most effectively. Monitoring of the Kirtland's warbler has routinely been coordinated by the respective land management agencies in coordination with the Service and Recovery Team, or more recently, the KWCT. As the species' population and range has expanded, so has the time and resources needed to conduct a full census. While the KWCT recognizes how critically important it is to continue monitoring the species, it has also recognized that there may be more efficient ways to monitor the species' status than a full census.

In 2016, Michigan State University, in conjunction with MDNR, developed a survey protocol designed to detect a 20 percent change in the population. The recommended survey would randomly select 50 percent of occupied stands on which the standard census protocol would be conducted. By incorporating stand size and age with the observed number of singing males, the survey would provide an estimate of the singing male population with enough confidence to detect a 20 percent reduction in individual singing males. The survey design was tested by using previous census results from 2010, 2011, 2012, and 2013. In each case, the reported census number fell within the survey protocols' 95% confidence interval. Other land management agencies, including USFS and WDNR, plan to continue periodic full censuses.

We recognize that there may be instances where more precise population monitoring is warranted.

When experimenting with alternative habitat regeneration techniques or reduced brown-headed cowbird management levels, a higher level of monitoring would need to be conducted in order to accurately determine the warbler's response to those activities. The need for additional monitoring will be determined by the management agencies, researchers, and KWCT. This need is also addressed within the PDM.

We believe that the monitoring proposed in the PDM is sufficient to detect population-level trends, and MDNR's proposed sampling technique will provide a sufficient estimate of the singing male population. The KWCT will continue to evaluate monitoring protocols and may determine that a periodic full census may be warranted as time and resources allow.

Comment (7): A peer reviewer asked for clarification on the population level that will trigger intensified conservation efforts necessary to ensure the population remains above the numerical recovery goal of 1,000 pairs. Another emphasized that maintaining population numbers above the recovery goal provides flexibility (and a buffer) if new threats emerge.

Our Response (7): In development of the Conservation Plan, the agencies agreed that if the population drops below 1,300 singing males, they would discuss the population decline, decide whether their objectives and actions need to be changed, and implement these recommended changes. The primary objective remains to keep the Kirtland's warbler population above the numerical recovery goal of 1,000 pairs. However, any noted decline from current population levels will be discussed amongst the agencies and the KWCT, and any appropriate action will be taken.

Comment (8): Several reviewers commented that a better understanding of wintering habitat needs should be a high priority for the KWCT and recommended fully mapping the extent of wintering habitat, as well as further research on how various activities and land uses on the wintering grounds impact the species.

Our Response (8): Although threats to Kirtland's warblers on the wintering grounds exist, the current extent and magnitude of these threats are not significantly limiting Kirtland's warbler population numbers, based on the species' continuous population growth over the last two decades. If the population shows signs of decline in the future, we will coordinate with the KWCT to assess all potential stressors, including those occurring on the wintering grounds. The KWCT and its Non-breeding Range Subcommittee recognize the importance of continued research on the needs of the Kirtland's warbler on the wintering grounds, specifically delineating wintering habitat and assessing how land use may impact the species.

Comment (9): Multiple peer reviewers commented on the species' wintering distribution, and provided citations to incorporate into the rule. One reviewer added that occasional vagrant Kirtland's warbler sightings outside of the core islands should not give the impression that suitable habitat is widespread elsewhere in the Caribbean; the rule should be explicit about our ignorance regarding suitable habitat elsewhere (outside of the core), as habitat suitability has not yet been measured except for on Eleuthera Island.

Our Response (9): The text under *Distribution* in this rule has been updated to more clearly reflect this uncertainty regarding wintering distribution.

Comment (10): Several comments received were related to our analysis of the effects of climate change on the Kirtland's warbler's breeding and wintering grounds. Two reviewers stated that the analysis of climate change in the proposed rule was thorough and relied on the best available science. One reviewer stated that delisting will not prohibit the ongoing research to improve our understanding of future potential threats. Another peer reviewer commented that current climate change projections indicate that habitat suitability within the core breeding range will remain suitable for supporting jack pine in this century; another commenter stated that climate change could result in a shift in the range toward Wisconsin. One reviewer mentioned that on the wintering grounds, Kirtland's warbler could be negatively affected by climate change, but added that there is much uncertainty and currently a lack of strong evidence to suggest a major loss or degradation of wintering grounds habitat will occur in the near future. Another reviewer emphasized the importance of acquiring baseline data on wintering habitat availability and quality to provide a context for future climate change analysis. A reviewer commented that climate change projections that predict an increased drought for the central islands of The Bahamas may represent risk to the main wintering area and recommended protecting drought-tolerant sites (*e.g.,* freshwater lens near the ground surface) where the Kirtland's warbler's preferred fruit plants occur. Another reviewer provided the citation for a recently published paper regarding future risks of heavy rainfall events and extended periods of hurricane-force winds due to an increasing trend for hurricanes to have decreased forward or translational speeds (Kossin 2018, entire). Further, the reviewer asked that the rule be updated to add observations of hurricane effects on the island of San Salvador, where post-hurricane declines of Kirtland's warblers have been observed.

Our Response (10): Climate change predictions are variable and in many cases uncertain. We reviewed the best available data using multiple models and emission scenarios to evaluate the impact of climate change on the Kirtland's warbler in the foreseeable future. On the breeding grounds, temperature will very likely increase, and precipitation will increase for parts of the year but may decrease at the end of the growing season (Handler *et al.* 2014, pp. 72–75; Janowiak *et al.* 2014, pp. 66–85). On the wintering grounds, temperatures will also increase, which could result in rising sea level. The Caribbean is experiencing a general drying trend, but there is temporal and spatial variation.

We will remain engaged with the KWCT and its Non-breeding Range Subcommittee to monitor climate conditions and how they may impact the Kirtland's warbler. We will also work with the KWCT as they engage The Bahamas National Trust and other groups in an effort to identify and protect critical sites in The Bahamas for Kirtland's warbler conservation.

Additional discussion regarding the potential for climate change has been added to this rule under *Factor E:* Climate Change.

Comment (11): Almost all of the peer reviewers indicated their support of delisting the Kirtland's warbler and stated that the analysis in the proposed rule was sufficient to support delisting. Many heralded the Kirtland's warbler as a success story of the ESA. One peer reviewer, however, recommended we apply a more cautious approach and instead reclassify (*i.e.,* downlist) Kirtland's warbler as a threatened species. Several public commenters had similar comments indicating that the proposed delisting rule was premature, and we should maintain protections to ensure we more fully understand proposed and recent changes to habitat management and brown-headed cowbird control programs before changing the status of the Kirtland's warbler.

Our Response (11): During our analysis, we evaluated the status of the

Kirtland's warbler to determine if the species met the definition of an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Based on the status of the species and the known and foreseeable threats, we determined that the species has recovered and does not meet the ESA's definition of an endangered or a threatened species. Thus, the Kirtland's warbler does not warrant listing under the ESA. While we appreciate the concern and suggestion of a more cautious approach, delisting Kirtland's warbler is warranted based on the best available information.

Comment (12): One peer reviewer expressed concern over potential forest pests causing a catastrophic loss of suitable habitat; the reviewer acknowledges that the currently known insect or fungal threats to jack pine or red pine are possible to manage, and forests in this region are under the oversight of forest management agencies. The reviewer added that the Kirtland's warbler may be less vulnerable to catastrophic loss due to pests or disease outbreaks when compared to historically lower population levels. One commenter expressed concern over the effects of pesticides on the Kirtland's warbler and its insect prey.

Our Response (12): Our review of the best available science did not identify any known threats to the status of the Kirtland's warbler from forest pests, disease, or the use of pesticides. We acknowledge that new threats from insects, fungi, other pests, or the use of a new pesticide may emerge in the future, but our analysis concluded that the species has good redundancy, representation, and resiliency, which should allow the species to withstand potential future stressors.

We agree with the reviewer that the management of forest pests and disease primarily falls under the authority of the forest management agencies. Through collaborative efforts, the KWCT and its Breeding Range Subcommittee, the land management agencies' silviculturists, and the forest product industry can collectively monitor these potential threats and respond accordingly if the threats are determined to impact Kirtland's warbler nesting habitat.

We added additional discussion and references regarding forest pests, disease, and pesticides to this rule (see discussions under *Factors A* and *E*).

Comment (13): A peer reviewer requested that additional discussion be added regarding recreation, access, and development, including current restrictions in areas occupied by the Kirtland's warbler, and regarding changes that would occur if the Kirtland's warbler is delisted. The reviewer expressed concern that unrestricted recreational activity and nearby development could have unforeseen impacts on the population and that this should be more explicitly considered in our analysis.

Our Response (13): Currently, only a portion of the Kirtland's warbler's nesting habitat in the northern Lower Peninsula is posted closed during the species' breeding season by the respective land management agency. Many of the recreational uses of the Kirtland's warbler's nesting habitat (*e.g.,* hunting, blueberry picking) are typically conducted at times when impacts to the species are limited. Further, in areas that are not posted closed, we have not seen evidence of impacts to the species. Delisting Kirtland's warbler would not limit the authority of the land management agencies to close areas as needed to limit resource damage or protect sensitive species. We added additional information and discussion related to other uses of the Kirtland's warbler's nesting habitat to this rule (see *Factor B* discussion).

Comment (14): Several peer reviewers provided additional information and suggested additional references to support statements in the proposed rule. This included information regarding mortality due to lighted cruise ships in the Caribbean, presence of other avian brood parasites (*i.e.,* cuckoo species) in the Kirtland's warbler breeding range, and new information on wintering habitat and distribution.

Our Response (14): We appreciate the additional information provided by the reviewers. We reviewed the additional information and corresponding references, and we updated this final rule accordingly.

Comment (15): A peer reviewer suggested adding a discussion of reproductive rates to the ''Demographics'' section of the rule.

Our Response (15): We added this discussion as suggested.

Comment (16): A peer reviewer commented that the assumption regarding number of singing males equating to number of breeding pairs needs clarification and suggested caution when interpreting the number of singing males as an indication of number of breeding pairs.

Our Response (16): We added additional clarification to this rule under *Abundance and Population Trends.*

Comment (17): One commenter requested peer review and a public comment period greater than or equal to 90 days.

Our Response (17): The proposed rule was open for public comments for 90 days, from April 12, 2018, through July 11, 2018, and we solicited peer review on the proposal.

Comment (18): One commenter asked for additional detail on State regulatory protections if the Kirtland's warbler is delisted.

Our Response (18): The Kirtland's warbler is currently protected by State law in a number of States in the species' breeding and migratory ranges under the respective State endangered species regulations. Changing the Federal status of the Kirtland's warbler will not automatically change the listing status of the Kirtland's warbler under State law. Each State evaluates the current status of a species to determine whether it warrants protection under the State's respective statutes. We expect that each State will evaluate the State listing status of the Kirtland's warbler at some point in the next several years, but we cannot speculate as to their decisions under State law. Similarly, the Kirtland's warbler is also protected as endangered under Canada's Species at Risk Act of 2003. Canadian officials will decide whether to retain protected status for the Kirtland's warbler based on their laws and regulations.

Comment (19): One commenter asked if we were proposing delisting to benefit the wind industry and suggested the proposed rule was motivated by reducing regulatory burden to make it easier to get ''wind towers in place in rural Ohio.''

Our Response (19): Our determination is based solely on the status of the species utilizing the best available science, and our status review was initiated due to the species' population and range expansion in recent years, the development of the Kirtland's Warbler Conservation Plan and MOU, and development of a long-term endowment and MOA to conduct brown-headed cowbird management.

Determination

Section 4 of the ESA (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for determining whether a species is an endangered species or threatened species and should be included on the Federal Lists of Endangered and Threatened Wildlife and Plants. The

ESA defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

Under section 4(a)(1) of the ESA, we determine whether a species is an endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. These same factors apply whether we are analyzing the species' status throughout all of its range or throughout a significant portion of its range.

Determination of Status Throughout All of the Kirtland's Warbler's Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Kirtland's warbler. We assessed the five factors to evaluate whether the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. The size of the Kirtland's warbler population is currently at its known historical maximum, which is nearly 10 times larger than it was at the time of listing and more than double the recovery goal. The population's breeding range also expanded outside of the northern Lower Peninsula to areas in Michigan's Upper Peninsula, Wisconsin, and Ontario. This recovery is attributable to successful interagency cooperation in the management of habitat and brood parasitism. The amount of suitable habitat has increased by approximately 150 percent since listing, primarily due to the increased amount of planted habitat generated from adaptive silvicultural techniques. Brown-headed cowbird control has been conducted on an annual basis within the majority of Kirtland's warbler nesting areas since 1972, and has greatly reduced the impacts of brood parasitism.

During our analysis, we found that impacts believed to be threats at the time of listing have been eliminated or reduced, or are being adequately managed since listing, and we do not expect any of these conditions to substantially change after delisting and into the foreseeable future. Population modeling that assessed the long-term population viability of Kirtland's warbler populations showed stable populations over a 50-year simulation period with current habitat management and maintaining sufficient brown-headed cowbird removal (see *Population Viability,* above). Brood parasitism and availability of sufficient suitable breeding habitat are adequately managed through the Kirtland's Warbler Breeding Range Conservation Plan and the 2016 MOU. The Conservation Plan and the MOU acknowledge the conservation-reliant nature of the Kirtland's warbler and the need for continued habitat management and brown-headed cowbird control, and affirm that the necessary long-term management actions will continue. The species is resilient to threats including changing weather patterns and sea level rise due to the effects of climate change, collision with lighted and human-made structures, impacts to wintering and migratory habitat, and cumulative effects, and existing information indicates that this resilience will not change in the foreseeable future. These conclusions are supported by the available information regarding the species' abundance, distribution, and trends. Thus, after assessing the best available information, we conclude that the Kirtland's warbler is not in danger of extinction throughout all of its range, nor is it likely to become so within the foreseeable future.

Determination of Status Throughout a Significant Portion of the Kirtland's Warbler's Range

Under the ESA and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). Where the best available information allows the Service to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the ESA. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language.

Having determined that the Kirtland's warbler is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in an SPR. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant; and (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the SPR prongs: (1) The portion is significant; and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both SPR prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify any portions that warrant further consideration and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question

that we address, we do not need to evaluate the second question for that portion of the species' range.

For the Kirtland's warbler, we chose to evaluate the status question (*i.e.,* identifying portions where the Kirtland's warbler may be in danger of extinction or likely to become so in the foreseeable future) first. To conduct this screening, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale.

Kirtland's warblers occupy different geographic areas (breeding grounds, migratory routes, wintering grounds) throughout the course of a year. Although there are different threats acting on the species on the breeding grounds, migratory routes, and wintering grounds (see discussion under *Factors A* through *E,* above), the threats associated with these areas are uniformly spread across each area (*e.g.,* threats on the breeding grounds are uniform across the breeding range, threats on the wintering grounds are uniform across the winter range). The entire population moves through the full annual cycle (breeding, migration, and wintering) and functions as a single panmictic population (see discussion under ''Genetics,'' above); therefore, these different geographic areas do not represent biologically separate populations that could be exposed to different threats.

We examined the following threats: Availability and distribution of breeding, migration, and wintering habitat; pesticides; brood parasitism; the effects of climate change; collision with lighted and human-made structures; and the cumulative effects of these threats. We found no concentration of threats in any portion of the Kirtland's warbler's range at a biologically meaningful scale. If both (1) a species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range and (2) the threats to the species are essentially uniform throughout its range, then the species could not be in danger of extinction or likely to become so in the foreseeable future in any biologically meaningful portion of its range. For the Kirtland's warbler, we found both: The species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, and there is no geographical concentration of threats so the threats to the species are essentially uniform throughout its range. Therefore, no portions warrant further consideration through a more detailed analysis, and the species is not in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. Our approach to analyzing SPR in this determination is consistent with the court's holding in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018).

Our review of the best available scientific and commercial information indicates that the Kirtland's warbler is not in danger of extinction or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, we find that listing the Kirtland's warbler as an endangered species or a threatened species under the ESA is not warranted at this time.

Conclusion

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Kirtland's warbler. The threats that led to the species being listed under the ESA (*i.e.,* primarily loss of the species' habitat (Factor A) and effects of brood parasitism by brown-headed cowbirds (Factor E)) have been removed, have been ameliorated, or have been appropriately managed by the actions of multiple conservation partners over the past 50 years. These actions include habitat management, brown-headed cowbird control, monitoring, research, and education. Given commitments shown by the cooperating agencies entering into the Kirtland's warbler MOU and the long record of engagement and proactive conservation actions implemented by the cooperating agencies over a 50-year period, we expect conservation efforts will continue to support a healthy, viable population of the Kirtland's warbler post-delisting and into the foreseeable future. Furthermore, there is no information to conclude that, at any time over the next 50-year window (as we define the foreseeable future for this species), the species will be in danger of extinction. Thus, we have determined that none of the existing or potential threats, either alone or in combination with others, is likely to cause the Kirtland's warbler to be in danger of extinction throughout all or a significant portion of its range, nor are any of the existing or potential threats likely to cause the species to become endangered within the foreseeable future throughout all or a significant portion of its range. On the basis of our evaluation, we conclude that, due to recovery, the Kirtland's warbler is not an endangered or threatened species. We, therefore, remove the Kirtland's warbler from the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) due to recovery.

Effects of This Rule

This rule revises 50 CFR 17.11(h) by removing the Kirtland's warbler from the Federal List of Endangered and Threatened Wildlife. On the effective date of this rule (see **DATES**, above), the prohibitions and conservation measures provided by the ESA, particularly through sections 7 and 9, no longer apply to this species. Federal agencies are no longer required to consult with the Service under section 7 of the ESA in the event that activities they authorize, fund, or carry out may affect the Kirtland's warbler. There is no critical habitat designated for this species; therefore, this rule does not affect 50 CFR 17.95. Removal of the Kirtland's warbler from the List of Endangered and Threatened Wildlife does not affect the protection given to all migratory bird species under the MBTA.

Post-Delisting Monitoring

Section 4(g)(1) of the ESA requires us, in cooperation with the States, to implement a system to monitor for not less than 5 years the status of all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the ESA. If, at any time during the monitoring period, data indicate that protective status under the ESA should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

The PDM for the Kirtland's warbler was developed in coordination with our Federal, State, and other partners. The PDM is based upon current research and effective management practices that have improved the status of the species since listing. Ensuring continued implementation of proven management strategies, such as brown-headed cowbird control and habitat management, that have been developed to sustain the species is a fundamental goal of the PDM. The PDM identifies measurable management thresholds and responses for detecting and reacting to significant changes in the Kirtland's warbler's numbers, distribution, and persistence. If declines are detected equaling or exceeding these thresholds, the Service, in combination with other PDM participants, will investigate causes of these declines. The investigation will be to determine if the Kirtland's warbler warrants expanded monitoring, additional research, additional habitat protection or brood

parasite management, or resumption of Federal protection under the ESA. For example, monitoring Kirtland's warbler singing males, annual habitat management acres, and brown-headed cowbird abundance or parasitism rates will inform partners on the Kirtland's warbler's status. If the population falls below 1,300 pairs, this would trigger the partners to (1) schedule a meeting, (2) discuss what is causing the decline, (3) decide how to respond, and (4) implement the recommended changes. The PDM requires census or selectively sampling the Kirtland's warbler breeding population every other year for a period of 12 years. The final PDM plan is available at *https://www.fws.gov/midwest/Endangered/birds/Kirtland*.

Required Determinations

National Environmental Policy Act

We determined that we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the ESA. 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, Secretarial Order 3206, the Department of the Interior's manual at 512 DM 2, and the Native American Policy of the Service, January 20, 2016, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We contacted the tribes in the Midwest within the range of the Kirtland's warbler and requested their input and comments on the proposed delisting rule.

References Cited

A complete list of all references cited in this rule is available at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0005 or upon request from the Field Supervisor, Michigan Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are staff members of the Michigan Ecological Services Field Office in East Lansing, Michigan, in coordination with the Midwest Regional Office in Bloomington, Minnesota.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

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; 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11 in the table in paragraph (h) by removing the entry for ''Warbler (wood), Kirtland's'' under ''BIRDS'' from the List of Endangered and Threatened Wildlife.

Dated: August 29 2019.

Stephen Guertin,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–22096 Filed 10–8–19; 8:45 am]

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