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

Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0663; Product Identifier 2018–SW–057–AD; Amendment 39–21025; AD 2020–02–17]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Sikorsky Aircraft Corporation (Sikorsky) Model S–70, S–70A, S–70C, S–70C(M), and S–70C(M1) helicopters. This AD was prompted by four incidents of disbonding between the tail rotor (T/R) blade pitch horn and the torque tube. This AD requires recurring visual and tap inspections of the T/R blade, and depending on the outcome, replacing the T/R blade. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 13, 2020.

ADDRESSES: For service information related to this final rule, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *wcs_cust_service_eng.gr-sik@lmco.com.* Operators may also log on to the Sikorsky 360 website at *https://www.sikorsky360.com.* You may view the related service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0663; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is Docket Operations, 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: Kristopher Greer, Aviation Safety Engineer, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7799; email *kristopher.greer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Sikorsky Model S–70, S–70A, S–70C, S–70C(M), and S–70C(M1) helicopters with T/R blade part number 70101–31000 (all dash numbers) and with a serial number up to and including A009–08915. The NPRM published in the **Federal Register** on September 6, 2019 (84 FR 46903). The NPRM was prompted by four incidents of disbonding between the T/R blade pitch horn and the torque tube on military-operated Model UH–60L and SH–60F helicopters. The disbonding produced minor to severe vibrations due to the mass imbalance. This condition may also occur on Sikorsky Model S–70, S–70A, S–70C, S–70C(M), and S–70C(M1) helicopters due to design similarity.

Disbonding between the T/R blade pitch horn and the torque tube, if not addressed, could result in the T/R blade pitch horn rocking in the torque tube, leading to increased T/R vibrations. These vibrations could lead to crushing of the torque tube and subsequent loss of control of the helicopter. While Sikorsky continues to test T/R blades returned from the field, investigation has revealed blades produced prior to manufacturing improvements implemented between 2006 and 2007 are prone to this disbonding. To address this condition, Sikorsky is assessing design change options to retrofit the affected T/R blades.

The NPRM proposed to require, before the first flight of each day, visually inspecting each T/R blade for any crack, leading edge erosion, and trailing edge skin disbonding and separation, paying particular attention to the area from the midspan to the pitch control horn; and tap inspecting for disbonding in the pitch horn to torque tube bond area. Depending on the outcome of these inspections, the NPRM proposed to require replacing the T/R blade. The FAA is issuing this AD to address the unsafe condition on these products.

Comments

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

FAA's Determination

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information

The FAA reviewed Sikorsky Aircraft Model S–70 Blackhawk Derivatives Maintenance Manual Temporary Revision No. 72, dated October 12, 2017. This service information specifies replacing a 10-hour/14-day T/R inspection with a before first flight of the day T/R inspection.

The FAA also reviewed section 5–3–13.2 Coin-Tapping Inspection Method of Sikorsky Technical Manual TM 1–70–23–3, Change 12, dated July 1, 2018. This service information specifies procedures for coin-tap inspecting T/R blades. This service information also specifies general repair limits and includes figures illustrating the different types of materials of the T/R blade skin and core regions.

Interim Action

The FAA considers this AD an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 13 helicopters of U.S. registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Inspecting the T/R blades takes about 1 work-hour for an estimated cost of $85 per helicopter and $1,105 for the U.S. fleet, per inspection cycle.

Replacing a set of two T/R blades takes about 6 work-hours and parts cost about $192,304 for an estimated replacement cost of $192,814 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this 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.

The FAA prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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):

2020–02–17 Sikorsky Aircraft Corporation: Amendment 39–21025; Docket No. FAA–2019–0663; Product Identifier 2018–SW–057–AD.

(a) Effective Date

This AD is effective March 13, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Model S–70, S–70A, S–70C, S–70C(M), and S–70C(M1) helicopters, certificated in any category, with a tail rotor (T/R) blade part number 70101–31000 (all dash numbers) with a serial number (S/N) up to and including A009–08915.

Note 1 to paragraph (c) of this AD: Each T/R blade is marked with the S/N.

(d) Subject

Joint Aircraft System Component (JASC): 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by four incidents of disbonding between the T/R blade pitch horn and the torque tube. The FAA is issuing this AD to detect disbonding. The unsafe condition, if not addressed, could result in increased T/R vibrations, physical failure of the torque tube, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) T/R Blade Inspection

Before the first flight of each day:

(1) Visually inspect each T/R blade for a crack, leading edge erosion, and trailing edge skin disbonding and separation, paying particular attention to the area from the midspan to the pitch control horn. If there is a crack, any leading edge erosion, trailing edge disbonding, or trailing edge separation, before further flight, replace the T/R blade with an airworthy part.

(2) Tap test inspect each T/R blade for disbonding in the pitch horn to torque tube bond area. If there is any disbonding, before further flight, replace the T/R blade with an airworthy part.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Kristopher Greer, Aviation Safety Engineer, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7799; email *kristopher.greer@faa.gov.*

(2) For service information related to this AD, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *wcs_cust_service_eng.gr-sik@lmco.com.* Operators may also log on to the Sikorsky 360 website at *https://www.sikorsky360.com.* You may view the related service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Issued in Fort Worth, Texas, on January 26, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02446 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0767; Airspace Docket No. 19–AGL–26]

RIN 2120–AA66

Amendment of Class E Airspace; Neillsville, WI

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 Neillsville Municipal Airport, Neillsville, WI. This action is due to an airspace review due to the decommissioning of the Neillsville non-directional radio beacon (NDB).

DATES: Effective 0901 UTC, May 21, 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 *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. 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: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5957.

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 Neillsville Municipal Airport, Neillsville, WI, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 54528; October 10, 2019) for Docket No. FAA–2019–0767 to amend the Class E airspace extending upward from 700 feet above the surface at Neillsville Municipal Airport, Neillsville, WI. 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.

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 within a 6.3-mile radius of the Neillsville Municipal Airport, Neillsville, WI; and removes the NDB and the associated extension. This action is necessary due to the decommissioning and removal of the Neillsville NDB, and for the safety and management of instrument flight rules, at this airport.

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

Regulatory Notices and Analyses

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

* * * * *

AGL WI E5 Neillsville, WI [Amended]

Neillsville Municipal Airport, WI
(Lat. 44°33′29″ N, long. 90°30′44″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Neillsville Municipal Airport.

Issued in Fort Worth, Texas, on January 30, 2020.

Steve Szukala,

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

[FR Doc. 2020–02380 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31295; Amdt. No. 3890]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 7, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 7, 2020.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html* .

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on January 24, 2020.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
27–Feb–20	GA	Atlanta	Dekalb-Peachtree	0/0682	1/10/20	ILS OR LOC RWY 21L, Amdt 8C.
27–Feb–20	GA	Atlanta	Dekalb-Peachtree	0/0683	1/10/20	RNAV (GPS) Y RWY 21L, Amdt 1C.
27–Feb–20	ND	Harvey	Harvey Muni	0/0747	1/8/20	RNAV (GPS) RWY 29, Orig-C.
27–Feb–20	TX	Taylor	Taylor Muni	0/1830	1/8/20	VOR RWY 17, Amdt 1C.
27–Feb–20	MS	Tupelo	Tupelo Rgnl	0/2032	1/9/20	VOR RWY 18, Amdt 1B.
27–Feb–20	MO	Camdenton	Camdenton Memorial-Lake Rgnl.	0/2698	1/13/20	RNAV (GPS) RWY 15, Amdt 1A.
27–Feb–20	MO	Camdenton	Camdenton Memorial-Lake Rgnl.	0/2699	1/13/20	RNAV (GPS) RWY 33, Amdt 1B.
27–Feb–20	IN	South Bend	South Bend Intl	0/2700	1/13/20	RNAV (GPS) RWY 36, Amdt 1.
27–Feb–20	OK	Claremore	Claremore Rgnl	0/2714	1/13/20	VOR/DME–B, Amdt 3A.
27–Feb–20	AL	Monroeville	Monroe County Aeroplex	0/2719	1/13/20	RNAV (GPS) RWY 3, Orig-E.
27–Feb–20	AL	Monroeville	Monroe County Aeroplex	0/2720	1/13/20	VOR RWY 3, Amdt 10C.
27–Feb–20	GA	Hazlehurst	Hazlehurst	0/2727	1/13/20	NDB RWY 14, Amdt 5.
27–Feb–20	IN	Marion	Marion Muni	0/2734	1/13/20	VOR RWY 15, Amdt 10E.
27–Feb–20	MS	Corinth	Roscoe Turner	9/8983	1/13/20	RNAV (GPS) RWY 18, Amdt 1.
27–Feb–20	MS	Corinth	Roscoe Turner	9/8984	1/13/20	RNAV (GPS) RWY 36, Amdt 1B.
27–Feb–20	NM	Taos	Taos Rgnl	9/9998	1/13/20	RNAV (GPS) RWY 4, Orig-A.
27–Feb–20	NM	Taos	Taos Rgnl	9/9999	1/13/20	VOR/DME–B, Amdt 3A.

[FR Doc. 2020–02014 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31294; Amdt. No. 3889]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 7, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 7, 2020.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29 Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on January 24, 2020.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 26 March 2020

Oakland, CA, Metropolitan Oakland Intl, ILS OR LOC RWY 12, ILS RWY 12 (SA CAT I), Amdt 8B
Denver, CO, Rocky Mountain Metropolitan, RNAV (GPS) RWY 12L, Amdt 1
Denver, CO, Rocky Mountain Metropolitan, Takeoff Minimums and Obstacle DP, Amdt 7
Kremmling, CO, Mc Elroy Airfield, RNAV (GPS) RWY 27, Amdt 1
Windsor Locks, CT, Bradley Intl, RNAV (GPS) RWY 15, Amdt 4
Dawson, GA, Dawson Muni, RNAV (GPS) RWY 32, Orig-D
Dawson, GA, Dawson Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Dawson, GA, Dawson Muni, VOR RWY 32, Orig-D
Salem, IL, Salem-Leckrone, NDB RWY 18, Amdt 10B, CANCELLED
La Porte, IN, La Porte Muni, LOC/NDB RWY 2, Amdt 1D, CANCELLED
Terre Haute, IN, Terre Haute Rgnl, LOC BC RWY 23, Amdt 19D, CANCELLED
Atchison, KS, Amelia Earhart, RNAV (GPS) RWY 16, Orig
Atchison, KS, Amelia Earhart, VOR/DME RWY 16, Orig-B, CANCELLED
Hazard, KY, Wendell H Ford, VOR RWY 14, Amdt 1D, CANCELLED
Bogalusa, LA, George R Carr Memorial Air Fld, LOC RWY 18, Amdt 3B
Bogalusa, LA, George R Carr Memorial Air Fld, RNAV (GPS) RWY 18, Amdt 1C
Bogalusa, LA, George R Carr Memorial Air Fld, RNAV (GPS) RWY 36, Amdt 1B
Slidell, LA, Slidell, RNAV (GPS) RWY 36, Orig-E
Marshfield, MA, Marshfield Muni-George Harlow Field, NDB RWY 24, Amdt 3, CANCELLED
Norwood, MA, Norwood Memorial, RNAV (GPS) RWY 35, Amdt 1D
Holland, MI, West Michigan Rgnl, ILS OR LOC RWY 26, Amdt 3
Holland, MI, West Michigan Rgnl, RNAV (GPS) RWY 26, Amdt 4
Jackson, MI, Jackson County-Reynolds Field, ILS OR LOC RWY 25, Amdt 1
Jackson, MI, Jackson County-Reynolds Field, RNAV (GPS) RWY 7, Amdt 1
Omaha, NE, Eppley Airfield, RNAV (RNP) Z RWY 14R, Orig-D
New York, NY, LaGuardia, RNAV (GPS) RWY 13, Amdt 1
Willard, OH, Willard, RNAV (GPS)-A, Orig
Willard, OH, Willard, VOR–A, Orig-C, CANCELLED

Murfreesboro, TN, Murfreesboro Muni, NDB RWY 18, Amdt 2, CANCELLED
El Paso, TX, El Paso Intl, ILS OR LOC RWY 22, Amdt 32D
El Paso, TX, El Paso Intl, RADAR–1, Amdt 15B
El Paso, TX, El Paso Intl, RNAV (GPS) Y RWY 26L, Amdt 1C
El Paso, TX, El Paso Intl, RNAV (RNP) Y RWY 4, Orig-F
El Paso, TX, El Paso Intl, RNAV (RNP) Z RWY 4, Orig-E
El Paso, TX, El Paso Intl, VOR RWY 26L, Amdt 32B
Kountze/Silsbee, TX, Hawthorne Field, NDB RWY 13, Amdt 3A, CANCELLED
Mineral Wells, TX, Mineral Wells Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2A
Mineral Wells, TX, Mineral Wells Rgnl, VOR RWY 31, Amdt 10D
Bremerton, WA, Bremerton National, Takeoff Minimums and Obstacle DP, Amdt 6
Hayward, WI, Sawyer County, ILS OR LOC RWY 21, Orig-B

[FR Doc. 2020–02013 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM18–20–000; ORDER NO. 866]

Critical Infrastructure Protection Reliability Standard CIP–012–1—Cyber Security—Communications Between Control Centers

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final action.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves Reliability Standard CIP–012–1 (Cyber Security—Communications between Control Centers). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization, submitted Reliability Standard CIP–012–1 for Commission approval in response to a Commission directive. In addition, the Commission directs NERC to develop modifications to the CIP Reliability Standards to require protections regarding the availability of communication links and data communicated between bulk electric system Control Centers.

DATES: This final action is effective April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Vincent Le (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6204, *vincent.le@ferc.gov.*

Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6840, *kevin.ryan@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA),[1] the Commission approves Reliability Standard CIP–012–1 (Cyber Security—Communications between Control Centers). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted Reliability Standard CIP–012–1 for Commission approval in response to a Commission directive in Order No. 822.[2] In Order No. 822, the Commission directed NERC, pursuant to section 215(d)(5) of the FPA, to develop modifications to the Reliability Standards to require responsible entities to implement controls to protect, at a minimum, communications links and sensitive bulk electric system data communicated between bulk electric system Control Centers ''in a manner that is appropriately tailored to address the risks posed to the bulk electric system by the assets being protected (*i.e.,* high, medium, or low impact).'' [3]

2. Consistent with the directive in Order No. 822, Reliability Standard CIP–012–1 improves upon the currently-effective Critical Infrastructure Protection (CIP) Reliability Standards to mitigate cyber security risks associated with communications between bulk electric system Control Centers. Specifically, Reliability Standard CIP–012–1 supports situational awareness and reliable bulk electric system operations by requiring responsible entities to protect the confidentiality and integrity of Real-time Assessment [4] and Real-time monitoring data transmitted between bulk electric system Control Centers. Accordingly, the Commission approves Reliability Standard CIP–012–1 because it is largely responsive to the Commission's directive in Order No. 822 and improves the cyber security posture of responsible entities. We also approve the associated violation risk factors and violation severity levels, implementation plan, and effective date.

3. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop modifications to the CIP Reliability Standards to require protections regarding the *availability* of communication links and data communicated between bulk electric system Control Centers. As discussed in the notice of proposed rulemaking (NOPR), Reliability Standard CIP–012–1 does not require protections regarding the availability of communication links and data communicated between bulk electric system Control Centers, as directed in Order No. 822.[5] In the NOPR, the Commission indicated that it did not agree with NERC's assertion that currently-effective Reliability Standards address availability, and we are not persuaded by NOPR comments raising the same argument. Instead, pursuant to section 215(d)(5) of the FPA, we determine that the absence of a requirement that specifically pertains to the availability of communication links and data communicated between bulk electric system Control Centers represents a reliability gap in the CIP Reliability Standards that should be addressed by NERC.

4. The Commission, in the NOPR, also proposed to direct NERC to identify clearly the types of data that must be protected under Reliability Standard CIP–012–1. The NOPR expressed concern that Reliability Standard CIP–012–1 does not adequately identify the types of data covered by its requirements, due to, among other things, the fact that the term ''Real-time monitoring'' is not defined in the Reliability Standard or the NERC Glossary. After considering the NOPR comments, however, we determine not to direct the proposed modification based on the explanation of the types of data that must be protected set forth in the NOPR comments.

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[1] 16 U.S.C. 824o(d)(2).

[2] *Revised Critical Infrastructure Protection Reliability Standards,* 81 FR 4177 (Jan. 26, 2016), Order No. 822, 154 FERC ¶ 61,037, at P 53, *order denying reh'g,* Order No. 822–A, 156 FERC ¶ 61,052 (2016).

[3] 16 U.S.C. 824o(d)(5); Order No. 822, 154 FERC ¶ 61,037 at P 53.

[4] The NERC Glossary defines Real-time Assessment as, ''An evaluation of system conditions using Real-time data to assess existing (pre-Contingency) and potential (post-Contingency) operating conditions. The assessment shall reflect applicable inputs including, but not limited to: load, generation output levels, known Protection System and Special Protection System status or degradation, Transmission outages, generator outages, Interchange, Facility Ratings, and identified phase angle and equipment limitations. (Real-time Assessment may be provided through internal systems or through third-party services.)'' NERC Glossary of Terms Used in NERC Reliability Standards (July 3, 2018).

[5] *See Critical Infrastructure Protection Reliability Standard CIP–012–1—Cyber Security—Communication between Control Centers,* Notice of Proposed Rulemaking, 84 FR 17105 (April 24, 2019), 167 FERC ¶ 61,055, at P 54 (2019) (NOPR).

I. Background

A. Section 215 and Mandatory Reliability Standards

5. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[6] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[7] and subsequently certified NERC.[8]

B. Order No. 822

6. In Order No. 822, the Commission approved seven modified CIP Reliability Standards and directed NERC to develop additional modifications to the CIP Reliability Standards.[9] Specifically, the Commission directed that NERC, among other things, develop modifications to the CIP Reliability Standards to require that responsible entities implement controls to protect, at a minimum, communications links and sensitive bulk electric system data communicated between bulk electric system Control Centers ''in a manner that is appropriately tailored to address the risks posed to the bulk electric system by the assets being protected (*i.e.,* high, medium, or low impact).'' [10] The Commission observed that NERC, as well as other commenters in that proceeding, ''recognize that inter-Control Center communications play a critical role in maintaining bulk electric system reliability by . . . helping to maintain situational awareness and support reliable operations through timely and accurate communication between Control Centers.'' [11]

7. The Commission explained that Control Centers associated with responsible entities, including reliability coordinators, balancing authorities, and transmission operators, must be capable of receiving and storing a variety of bulk electric system data from their interconnected entities in order to adequately perform their reliability functions. The Commission, therefore, determined that ''additional measures to protect both the integrity and availability of sensitive bulk electric system data are warranted.'' [12]

The Commission cautioned, however, that ''not all communication network components and data pose the same risk to bulk electric system reliability and may not require the same level of protection.'' [13] Therefore, the Commission determined that NERC should develop controls that reflect the risk being addressed in a reasonable manner.

C. NERC Petition and Reliability Standard CIP–012–1

8. On September 18, 2018, NERC submitted for Commission approval proposed Reliability Standard CIP–012–1 and the associated violation risk factors and violation severity levels, implementation plan, and effective date.[14] NERC states that the purpose of Reliability Standard CIP–012–1 is to help maintain situational awareness and reliable bulk electric system operations by protecting the confidentiality and integrity of Real-time Assessment and Real-time monitoring data transmitted between Control Centers.

9. NERC states that Reliability Standard CIP–012–1 ''requires Responsible Entities to develop and implement a plan to address the risks posed by unauthorized disclosure (confidentiality) and unauthorized modification (integrity) of Real-time Assessment and Real-time monitoring data while being transmitted between applicable Control Centers.'' [15] According to NERC, the required plan must include the following: (1) Identification of security protections; (2) identification of where the protections are applied; and (3) identification of the responsibilities of each entity in case a Control Center is owned or operated by different responsible entities.[16]

10. As noted above, the types of data within the scope of Reliability Standard CIP–012–1 consist of Real-time Assessment and Real-time monitoring data exchanged between Control Centers. NERC states that it is critical that this information is accurate since responsible entities operate and monitor the bulk electric system based on this Real-time information. NERC explains that Reliability Standard CIP–012–1 ''excludes other data typically transferred between Control Centers, such as Operational Planning Analysis data, that is not used by the Reliability Coordinator, Balancing Authority, and Transmission Operator in Real-time.'' [17]

11. NERC also indicates that data at rest and oral communications fall outside the scope of Reliability Standard CIP–012–1. Regarding data at rest, NERC states that the standard drafting team determined that since data at rest resides within BES Cyber Systems,[18] it is already protected by the controls mandated by Reliability Standards CIP–003–6 through CIP–011–2. According to NERC, oral communications are out of scope of Reliability Standard CIP–012–1 ''because operators have the ability to terminate the call and initiate a new one via trusted means if they suspect a problem with, or compromise of, the communication channel.'' [19] NERC notes that Reliability Standard COM–001–3 requires reliability coordinators, balancing authorities, and transmission operators to have alternative interpersonal communication capability, which could be used if there is a suspected compromise of oral communication on one channel.

D. Notice of Proposed Rulemaking

12. On April 18, 2019, the Commission issued a NOPR proposing to approve Reliability Standard CIP–012–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[20] The NOPR stated that Reliability Standard CIP–012–1 is largely responsive to the Commission's directive in Order No. 822 and improves the cyber security posture of the bulk electric system by requiring responsible entities to protect the confidentiality and integrity of Real-time Assessment and Real-time monitoring data transmitted between bulk electric system Control Centers, which supports situational awareness and reliable bulk electric system operations.

13. While proposing to approve Reliability Standard CIP–012–1, the Commission also proposed to direct NERC to develop modifications to the CIP Reliability Standards to address potential reliability gaps. First, the NOPR stated that Reliability Standard CIP–012–1 does not require protections regarding the availability of

[6] 16 U.S.C. 824o(e).

[7] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* 71 FR 19814 (April 18, 2006), Order No. 672, 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 114 FERC ¶ 61,328 (2006).

[8] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[9] Order No. 822, 154 FERC ¶ 61,037 at PP 1, 3.

[10] *Id.* P 53.

[11] *Id.* P 54.

[12] *Id.*

[13] *Id.* P 56.

[14] Reliability Standard CIP–012–1 is not attached to this final action. The Reliability Standard is available on the Commission's eLibrary document retrieval system in Docket No. RM18–20–000 and on the NERC website, *www.nerc.com.*

[15] NERC Petition at 10.

[16] *Id.* at 3.

[17] *Id.* at 12.

[18] BES Cyber System is defined as ''[o]ne or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity.'' NERC Glossary. The acronym BES refers to the bulk electric system.

[19] NERC Petition at 14.

[20] NOPR, 167 FERC ¶ 61,055 at P 1.

communication links and data communicated between bulk electric system Control Centers as directed in Order No. 822. The NOPR explained that the Commission was not persuaded by NERC's explanation that certain currently-effective Reliability Standards address the issue of availability. Second, the NOPR raised a concern that Reliability Standard CIP–012–1 does not adequately identify the types of data covered by its requirements, due to, among other things, the fact that Real-time monitoring is not defined in the proposed Reliability Standard or the NERC Glossary.[21]

14. In response to the NOPR, eight entities submitted comments. A list of commenters appears in Appendix A. The discussion below addresses the proposals in the NOPR as well as the NOPR comments.

II. Discussion

15. Pursuant to section 215(d)(2) of the FPA, the Commission approves Reliability Standard CIP–012–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. Reliability Standard CIP–012–1 largely addresses the Commission's directive in Order No. 822 because it will enhance existing protections for bulk electric system reliability by augmenting the currently-effective CIP Reliability Standards to mitigate cyber security risks associated with communications between bulk electric system Control Centers. Reliability Standard CIP–012–1 achieves this by requiring responsible entities to protect the confidentiality and integrity of Real-time Assessment and Real-time monitoring data transmitted between bulk electric system Control Centers, thereby supporting situational awareness and reliable bulk electric system operations.

16. While the Commission approves Reliability Standard CIP–012–1, we also determine that the reliability risks identified in Order No. 822 will not be fully addressed with the implementation of the Reliability Standard. As discussed below, a significant cyber security risk associated with the protection of communications links and sensitive bulk electric system data communicated between bulk electric system Control Centers remains because Reliability Standard CIP–012–1 does not address the availability of communication links and data communicated between bulk electric system Control Centers. To address this gap, the Commission directs NERC, pursuant to section 215(d)(5) of the FPA, to develop modifications to the CIP Reliability Standards to require protections regarding the availability of communication links and data communicated between bulk electric system Control Centers.

17. Below, we discuss the following issues: (A) Availability of bulk electric system communication links and data; and (B) scope of bulk electric system data that must be protected.

A. Availability of Bulk Electric System Communication Links and Data

1. NOPR

18. The NOPR stated that Reliability Standard CIP–012–1 does not address the availability component of the Commission's directive in Order No. 822. The NOPR identified this as a gap because ensuring timely and reliable access to and use of data is essential to the reliable operation of the bulk electric system. The NOPR indicated that the existing Reliability Standards cited in NERC's petition do not require responsible entities to protect the availability of sensitive bulk electric system data in a manner consistent with Order No. 822.[22] In particular, the NOPR stated that the cited Reliability Standards either do not apply to communications between individual Control Centers or, while their effect may be to support availability, the Reliability Standards do not create an obligation to protect availability.[23]

2. Comments

19. NERC, Trade Associations, Tri-State and IRC do not support a directive that addresses the availability of communication links and data communicated between bulk electric system Control Centers. Reclamation, Appelbaum, and Liu express support for the directive, while Bonneville offers qualified support.

20. Comments opposing the proposed directive largely reiterate the petition's assertion that currently-effective Reliability Standards adequately protect the availability of communication links and data communicated between bulk electric system Control Centers. For example, NERC contends that ''[w]hile IRO–002–5 and TOP–001–4 cover infrastructure within Control Centers, not between Control Centers, the requirements help protect the availability of data to be exchanged between Control Centers . . . [because] the data exchange infrastructure in scope of these requirements facilitates sending and receiving data between Control Centers.'' [24] NERC explains that if ''an applicable entity lost capability of some of this data exchange infrastructure, the applicable entity could continue to send and receive data between Control Centers because of the redundant data exchange infrastructure within its Control Center.[25] In addition, NERC states that Reliability Standards IRO–010–2 and TOP–003–3 require applicable entities to use a mutually agreeable security protocol between Control Centers. NERC explains that this supports availability by helping to ensure that conflicting protocols do not impede receipt of data between Control Centers.

21. NERC also contends that Reliability Standard EOP–008–2 helps support the availability of communication links between Control Centers by requiring reliability coordinators to have backup Control Center facilities, or backup Control Center functionality for balancing authorities and transmission operators, in addition to their primary Control Centers. NERC explains that ''[t]hese backup facilities supply redundancy of some communication links and data exchange infrastructure and capabilities at the backup Control Center.'' [26] NERC further explains that entities with geographically diverse primary and backup Control Centers may have communication links that are physically separate from one another. NERC concludes that although ''geographic diversity alone will not always provide redundancy of communication links, having backup Control Centers with different paths to communicate with other Control Centers helps support availability of communication links.'' [27]

22. In addition, comments opposing the directive maintain that it is premature to require protections for the availability of the communication links and data at issue. NERC states that it recognizes that ''there may be additional controls that could help address'' risks to the availability of data and communication links and commits to ''study the risks to availability of data and communication links between Control Centers and the current controls that support availability.'' [28] Trade Associations, similarly, ''encourage[s] the Commission to consider directing NERC to study the issue [of telecommunications security] to identify

[21] *Id.* P 16.

[22] *Id.* P 24.

[23] *Id.*

[24] NERC Comments at 5.

[25] *Id.; see also* Trade Associations Comments at 6–8, Tri-state Comments at 3.

[26] NERC Comments at 7; *see also* Trade Associations Comments at 9–10.

[27] NERC Comments at 7.

[28] *Id.* at 8–9.

specific availability vulnerabilities and potential mitigation methods.'' [29]

23. IRC, while not supporting the proposed directive, ''acknowledges that [the Commission] could require additional actions by responsible entities to *promote* the availability of [bulk electric system] communication links to the extent possible through contracts with telecommunications providers.'' [30] IRC recommends a best efforts approach similar to how supply chain risks are addressed under Reliability Standard CIP–013–1. Specifically, IRC suggests that ''NERC could adopt a standard that would require responsible entities, when negotiating these service contacts, to take reasonable steps or use best efforts to maximize the availability of communication links.'' [31]

24. Reclamation, in support of the Commission proposal, states that the availability of communication networks should encompass links between Control Centers owned by the same entity as well as Control Centers owned by different entities. Reclamation maintains that the requirements for electronic communications be parallel to the following requirements for oral communication contained in Reliability Standard COM–001–3: (1) Have electronic communication capability; (2) designate alternative electronic communication capability in the event of a failure of the primary communication capability; (3) test the alternate method of electronic communication; (4) notify the entity on the other end of the communication path if a failure is detected; and (5) establish mutually agreeable action to restore the electronic communication capability.

25. As an initial matter, Bonneville recommends delaying approval of Reliability Standard CIP–012–1 until NERC conducts a pilot project to study the most effective way to encrypt data while ensuring the data is available to responsible entities. However, if the Commission approves the Reliability Standard, Bonneville ''agrees with the Commission's proposal to address the availability of communication links and data communicated between Control Centers.'' [32] Bonneville explains that maintaining the availability of the communication links includes addressing both redundancy and recovery. Therefore, Bonneville recommends that, if Reliability Standard CIP–012–1 is approved, ''the Commission order NERC to adopt modifications requiring Responsible Entities to have incident recovery plans/continuity of operation plans addressing planning for recovery time, capability, and capacity.'' [33] Similarly, Appelbaum supports the proposed directive and contends that ''a requirement for a continuing operations plan for loss of critical data resulting for the loss of Control Center functionality should be directed.'' [34]

3. Commission Determination

26. We determine that modifications to the CIP Reliability Standards to address the availability of communication links and data communicated between bulk electric system control centers will enhance bulk electric system reliability. As the Commission stated in Order No. 822, bulk electric system Control Centers ''must be capable of receiving and storing a variety of sensitive bulk electric system data from interconnected entities.'' [35] We are not persuaded by the contention in the petition and comments that currently-effective Reliability Standards adequately address the directive in Order No. 822 regarding availability. Instead, we determine that the Reliability Standards cited by NERC either do not apply to communications between Control Centers or do not create an obligation to protect the availability of data between Control Centers. Accordingly, the directed modifications to the CIP Reliability Standards are not duplicative of existing Reliability Standards.

27. As the Commission explained in the NOPR, the existing Reliability Standards cited by NERC are not responsive to the availability directive in Order No. 822.[36] Reliability Standards IRO–002–5 and TOP–001–4 require responsible entities to have redundant and diversely routed data exchange infrastructure *within* the Control Center environment, but they do not address communications *between* individual Control Centers, which was the subject of the Commission's directive in Order No. 822.[37] While it is true that the infrastructure associated with communications within Control Centers may be useful to data exchange between Control Centers, nothing in the cited Reliability Standards creates an obligation to maintain data availability between Control Centers. Similarly, Reliability Standards IRO–010–2 and TOP–003–3 require responsible entities to have mutually agreeable security protocols for exchange of Real-time data, which may have the effect of contributing to greater availability; however, these requirements do not create an obligation, as directed in Order No. 822, to protect the availability of those communication capabilities and associated data by applying appropriate security controls.

28. As the NOPR explained, creating an obligation to protect availability, while affording flexibility in terms of what data is protected and how, is distinct from relying on currently-effective Reliability Standards whose effect may be to support availability.[38] The comments do not offer a new or persuasive reason to alter this view. For example, the Trade Associations repeat the line of reasoning in the NERC petition by ''encourag[ing] the Commission to focus holistically on the broad requirements contained with [the] IRO and TOP standards, which focus on the performance requirements necessary to support Real-time monitoring and Real-time Assessments.'' [39] In this circumstance, we disagree with that approach because, as the Commission observed in Order No. 822, ''NERC and other commenters recognize that inter-Control Center communications play a critical role in maintaining bulk electric system reliability by, among other things, helping to maintain situational awareness and reliable bulk electric system operations through timely and accurate communication between Control Center.'' [40] Thus, the holistic view urged by Trade Associations does not address the gap recognized by the Commission in Order No. 822.

29. The contention in NERC's comments that Reliability Standard EOP–008–2 could also help maintain the availability of communication links between bulk electric system Control Centers, rests on the same reasoning that the ancillary benefits of an existing Reliability Standard addresses the reliability gap identified by the Commission and concomitant availability directive in Order No. 822. While we agree that a requirement to maintain a backup Control Center arguably provides a level of redundancy for a responsible entity's overall operations, it does not require redundant and diversely routed

[29] Trade Associations Comments at 12.

[30] IRC Comments at 3 (emphasis in original).

[31] *Id.*

[32] Bonneville Comments at 5.

[33] *Id.* at 6.

[34] Appelbaum Comments at 7.

[35] Order No. 822, 154 FERC ¶ 61,037 at P 54.

[36] NOPR, 167 FERC ¶ 61,055 at P 24.

[37] NOPR, 167 FERC ¶ 61,055 at P 24; NERC Comments at 5 (''IRO–002–5 and TOP–011–4 cover infrastructure within Control Centers, not between Control Centers'').

[38] NOPR, 167 FERC ¶ 61,055 at P 24; NERC Comments at 6–7 (stating that alarms, recovery plans, and the ability to disable data encryption also support data availability).

[39] Trade Associations Comments at 8.

[40] Order No. 822, 154 FERC ¶ 61,037 at P 54.

communication paths between either the primary and backup Control Centers or third-party Control Centers.

30. In addition, we do not agree that it is premature to require protections for the availability of the communication links and data communicated between bulk electric system Control Centers. While NERC and Trade Associations advocate further study of the risks associated with availability, we conclude that the risks associated with losing the availability of either data or communication links between bulk electric system Control Centers is supported by the existing record and warrants a directive to modify the CIP Reliability Standards.[41]

31. We address several related issues raised in the comments. Commenters raise a concern that directing NERC to address requirements for certain aspects of availability, in particular redundancy and diverse routing, could have significant impacts on responsible entities using third-party telecommunications providers. Specifically, Trade Associations notes that responsible entities ''may not have sufficient control over the design of these networks to ensure that such requirements are met.'' [42] Without control over these networks, commenters suggest that the only options for addressing availability would be to construct costly private networks or implement less secure internet-based connections.[43]

32. We are not persuaded by these arguments. Rather, as IRC correctly notes in its discussion of the challenges raised in securing third-party telecommunications networks, while the Commission lacks jurisdiction over telecommunication service providers that may own and operate the communication links between bulk electric system Control Centers, the Commission has the authority to require responsible entities to take actions to promote the availability of communication links through service contracts with network providers.[44] For example, entities could enter into service contracts with telecommunication service providers that include an agreed-upon quality of service commitment to maintain the availability of the data exchange capability to minimize the availability risk. Such arrangements would mirror the approach in Reliability Standard CIP–013–1 (Cyber Security—Supply Chain Risk Management), which also involved non-jurisdictional entities.[45] NERC should likewise consider allowing responsible entities to contract with telecommunication service providers to minimize the risk of loss of availability of communication links and data communicated between bulk electric system Control Centers in cases where communications between Control Centers are managed by a third party.

33. We agree with Reclamation's comment that protections for the availability of communication links and data communicated between bulk electric system Control Centers should encompass both entity-owned and third-party owned Control Centers. The intent of the Commission's directive is for NERC to address the risks associated with the availability of communication links and data communicated between all bulk electric system Control Centers, which will require coordination between neighboring responsible entities.

34. We reject Bonneville's recommendation that the Commission delay approval of Reliability Standard CIP–012–1 to allow for a pilot project on encryption. The record in this proceeding does not support a delay, and Bonneville's request conflicts with the implementation plan proposed by NERC.[46] Moreover, the standard drafting team addressed the Commission's finding on this issue in Order No. 822. In Order No. 822, the Commission stated ''that any lag in communication speed resulting from implementation of protections should only be measurable on the order of milliseconds and, therefore, will not adversely impact Control Center communications . . . [but that] technical issues should be considered by the standard drafting team . . . *e.g.,* by making certain aspects of the revised CIP Standards eligible for Technical Feasibility Exceptions.'' [47] In response, NERC stated that the standard drafting team ''developed an objective-based rather than prescriptive requirement . . . [that] will allow Responsible Entities flexibility in mitigating the risks posed . . . in a manner suited to each of their respective operational environments.'' [48] Accordingly, we determine not to delay approval of Reliability Standard CIP–012–1.

35. We agree with Bonneville and Appelbaum that maintaining the availability of communication networks and data should include provisions for incident recovery and continuity of operations in a responsible entity's compliance plan. We recognize that the redundancy of communication links cannot always be guaranteed; responsible entities should therefore plan for both recovery of compromised communication links and use of backup communication capability should it be needed for redundancy (*i.e.,* satellite or other alternate backup communications).

36. Accordingly, pursuant to section 215(d)(5) of the FPA, we direct that NERC develop modifications to the CIP Reliability Standards to require protections regarding the availability of communication links and data communicated between bulk electric system Control Centers, as discussed above.

B. Scope of Bulk Electric System Data That Must Be Protected

1. NOPR

37. The NOPR observed that Reliability Standard CIP–012–1 requires the protection of Real-time Assessment and Real-time monitoring data. The Commission explained that that while Real-time Assessment is defined in the NERC Glossary, Real-time monitoring data is not defined. Accordingly, the NOPR expressed concern that Reliability Standard CIP–012–1 does not clearly indicate the types of data to be protected. To address this, the Commission proposed to direct that NERC develop modifications to the CIP Reliability Standards to clearly identify the types of data that must be protected, including whether a NERC Glossary definition of Real-time monitoring would assist with implementation and compliance.

2. Comments

38. Appelbaum and Reclamation support the development of one or more definitions. Specifically, Reclamation recommends that the Commission direct NERC to develop definitions for the terms: (1) Real-time monitoring data; (2) Real-time data; (3) BES Data; (4) Operational Data; (5) System Planning Data; (6) availability and (7) Real-time monitoring. Appelbaum supports requiring a definition of Real-time monitoring given its importance to triggering alarms that system operators respond to and because it is an input to automatic dispatch.

[41] *See* Appelbaum Comments at 7, Bonneville Comments at 5, IRC Comments at 3, Dr. Liu Comments at 1, Reclamation Comments at 1.

[42] Trade Associations Comments at 12.

[43] *See, e.g., id.,* Tri-State Comments at 2.

[44] IRC Comments at 3.

[45] The currently-approved supply chain risk management Reliability Standard exempts communication networks and data links between discrete Electronic Security Perimeters. *See* NERC Reliability Standard CIP–013–1, Applicability Section 4.2.3.2.

[46] *See* NERC Petition at Exhibit B.

[47] Order No. 822, 154 FERC ¶ 61,037 at P 62.

[48] NERC Petition, Exhibit D (Consideration of Issues and Directives) at 7.

39. NERC and other commenters maintain that a directive is unnecessary because the terms Real-time Assessment and Real-time monitoring are clear. NERC states that the ''language used in proposed Reliability Standard CIP–012–1, 'Real-time Assessment and Real-time monitoring data,' is sufficient to identify the data as described in TOP–003–3 and IRO–010–2.'' [49] Specifically, NERC explains that since the IRO and TOP Reliability Standards are the only currently-effective Reliability Standards that use the phrase Real-time monitoring and the term Real-time Assessment, ''[c]ompliance with these standards defines the data that is used in Real-time monitoring and Real-time Assessments.'' [50] NERC concludes that by ''using this language that is only referenced in the IRO and TOP Reliability Standards families, proposed CIP–012–1 brings the data identified pursuant to TOP–003–3 and IRO–010–2 into scope.'' [51]

40. Trade Associations and IRC concur with NERC that the scope of data subject to the requirements of proposed Reliability Standard CIP–012–1 is adequately clear. According to Trade Associations, responsible Entities and NERC understand that the types of data covered in CIP–012–1 is the data specified for Real-time Assessment and Real-time monitoring under TOP–003 and IRO–010. Similarly, IRC notes that ''all responsible entities must already know the universe of data needed for Real-time Assessment and Real-time monitoring activities in order to comply with NERC Reliability Standards TOP–003–3 and IRO–010–2.'' [52] Regarding the concern raised in the NOPR that the term Real-time monitoring is not defined, IRC states that it ''sees no reason that the term should be presumed to mean something different from what it means in other places where it is used in the NERC Reliability Standards.'' [53]

41. While Bonneville does not take a position on the NOPR proposal, it notes a concern over ''creating a compliance requirement to identify how different types of information are protected.'' [54] Bonneville states that, generally, the use of the same data exchange infrastructure will result in all data using that infrastructure receiving the same protection regardless of data type. Therefore, Bonneville avers that, if the Commission directs NERC to define the scope of data to be protected, then ''a Responsible Entity should have the option to show that all data types are protected at the highest level using the same security protocols, without having to identify and show how specific types of data are protected.'' [55]

3. Commission Determination

42. In view of the comments, we determine not to adopt the NOPR proposal to direct modifications to define the scope of data covered by Reliability Standard CIP–012–1. NERC, Trade Associations and IRC agree that Reliability Standard CIP–012–1 requires the protection of Real-time Assessment and Real-time monitoring data identified under Reliability Standards TOP–003–3 and IRO–010–2. This point is also confirmed in the Technical Rationale document for Reliability Standard CIP–012–1.[56] We are persuaded that responsible entities must know the types of data needed for Real-time Assessment and Real-time monitoring activities in order to comply with Reliability Standards TOP–003–3 and IRO–010–2.

43. With this understanding, we are satisfied that the data protected under Reliability Standard CIP–012–1 is the same data identified under Reliability Standards TOP–003–3 and IRO–010–2. We determine that this clarification addresses the concern in the NOPR that not defining the types of data that must be protected under Reliability Standard CIP–012–1 could result in uneven compliance and enforcement. In addition, we agree with Bonneville that responsible entities may show that all data types are protected at the highest level using the same security protocols, without having to identify and show how specific types of data are protected, so long as the security protocols are reasonable.

III. Information Collection Statement

44. The FERC–725B information collection requirements contained in this final action are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[57] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[58] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this action will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

45. The Commission received no comments on the validity of the burden and cost estimates in the NOPR. The Commission is updating the burden estimates and labor costs contained in the NOPR. The Commission in this final action corrected an error from the NOPR in the row ''Identification of Security Protection Application (if not owned by same Responsible Entity) (Requirement R1.3)'' where the total number of hours was understated by 100,000, and all calculations based upon this error.

46. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

47. The Commission bases its paperwork burden estimates on the changes in paperwork burden presented by Reliability Standard CIP–012–1.

48. The NERC Compliance Registry, as of December 2019, identifies approximately 1,482 unique U.S. entities that are subject to mandatory compliance with Reliability Standards. Of this total, we estimate that 719 entities will face an increased paperwork burden under proposed Reliability Standard CIP–012–1. Based on these assumptions, we estimate the following reporting burden:

[49] NERC Comments at 10.

[50] *Id.*

[51] *Id.*

[52] IRC Comments at 4.

[53] *Id.*

[54] Reclamation Comments at 6.

[55] *Id.*

[56] NERC Petition, Exhibit F (Technical Rationale) at 1–2.

[57] 44 U.S.C. 3507(d).

[58] 5 CFR part 1320.

FERC–725B, MODIFICATIONS DUE TO THE FINAL ACTION IN DOCKET NO. RM18–20–000

	Number of respondents (1)	Number of responses [59] per respondent (2)	Total number of responses (1) × (2) = (3)	Average burden hours & cost per response [60] (4)	Total annual burden hours & total annual cost (3) × (4) = 5
Implementation of Documented Plan(s) (Requirement R1) [61].	719	1	719	128 hrs.; $11,776	92,032 hrs.; $8,466,944.
Document Identification of Security Protection (Requirement R1.1) [61].	719	1	719	40 hrs.; $3,680	28,560 hrs.; $2,645,920.
Identification of Security Protection Application (if owned by same Responsible Entity) (Requirement R1.2) [61].	719	1	719	20 hrs.; $1,840	14,280 hrs.; $1,322,960.
Identification of Security Protection Application (if *not* owned by same Responsible Entity) (Requirement R1.3) [61].	719	1	719	160 hrs.; $14,720	14,240 hrs.; $10,583,680.
Maintaining Compliance (ongoing, starting in Year 2)	719	1	719	83 hrs.; $7,636	59,677 hrs.; $5,490,284.
Total (one-time, in Year 1)			2,876		250,212 hrs.; $23,019,504.
Total (ongoing, starting in Year 2)			719		59,677 hrs.; $5,490,284.

49. The one-time burden (in Year 1) for the FERC–725B information collection will be averaged over three years:

- 250,212 hours ÷ 3 = 83,404 hours/year over Years 1–3
- The number of one-time responses for the FERC–725B information collection is also averaged over Years 1–3: 2,876 responses ÷ 3 = 959 responses/year

50. The average annual number (for Years 1–3) of responses and burden for one-time and ongoing burden will total:

- 1,678 responses [959 responses (one-time) + 719 responses (ongoing)]
- 143,081 burden hours [83,404 hours (one-time) + 59,677 hours (ongoing)] hours (ongoing)]

51. *Title:* Mandatory Reliability Standards for Critical Infrastructure Protection [CIP] Reliability Standards.

Action: Revisions to FERC–725B information collection.

OMB Control No.: 1902–0248.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: One-time and Ongoing.

Necessity of the Information: This final action approves the requested modifications to Reliability Standards pertaining to critical infrastructure protection. As discussed above, the Commission approves NERC's proposed Reliability Standard CIP–012–1 pursuant to section 215(d)(2) of the FPA because they improve upon the currently-effective suite of cyber security Reliability Standards.

Internal Review: The Commission has reviewed the proposed Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA.

52. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

53. Please send comments concerning the collection of information and the associated burden estimate to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20503, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include FERC–725B (OMB Control No. 1902–0248).

IV. Environmental Analysis

54. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[62] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[63] The actions herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Analysis

55. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of proposed and final actions that will have significant economic impact on a substantial number of small entities.[64] The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[65] The SBA revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from the prior standard based on megawatt hour sales).[66]

56. Reliability Standard CIP–012–1 is expected to impose an additional burden on 719 entities [67] (reliability

[59] We consider the filing of an application to be a ''response.''

[60] The hourly cost for wages plus benefits is based on the average of the occupational categories for 2018 found on the Bureau of Labor Statistics website (*http://www.bls.gov/oes/current/naics2_22.htm*):

Information Security Analysts (Occupation Code: 15–1122): $61.494

Computer and Mathematical (Occupation Code: 15–0000): $63.54

Legal (Occupation Code: 23–0000): $142.86

Computer and Information Systems Managers (Occupation Code: 11–3021): $98.81.

These various occupational categories' wage figures are averaged as follows: $61.494/hour + $63.54/hour + $142.86/hour + $98.81/hour) ÷ 4 = $91.70/hour. The resulting wage figure is rounded to $92.00/hour for use in calculating wage figures in the final action in Docket No. RM18–20–000.

[61] This includes the record retention costs for the one-time and the on-going reporting documents.

[62] *Regulations Implementing the National Environmental Policy Act of 1969,* 52 FR 47897 (Dec. 17, 1987), Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[63] 18 CFR 380.4(a)(2)(ii).

[64] 5 U.S.C. 601–12.

[65] 13 CFR 121.101.

[66] 13 CFR 121.201, Subsection 221.

[67] Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. These entities may be included in the SBA categories for: Hydroelectric Power Generation, Fossil Fuel Electric Power Generation,

Continued

coordinators [RC], generator operators [GOP], generator owners [GO], transmission operators [TOP], balancing authorities [BA], and transmission owners [TO]).

57. Of the 719 affected entities discussed above, we estimate that approximately 82% percent of the affected entities are small entities. We estimate that each of the 590 small entities to whom the modifications to Reliability Standard CIP–012–1 apply will incur one-time, non-paperwork cost in Year 1 of approximately $17,051, plus paperwork cost in Year 1 of $32,016, giving a total cost in Year 1 of $49,067. In Year 2 and Year 3, each entity will incur only the ongoing annual paperwork cost of $7,594. We do not consider the estimated costs for these 590 small entities to be a significant economic impact.

58. Accordingly, we certify that Reliability Standard CIP–012–1 will not have a significant economic impact on a substantial number of small entities.

VI. Effective Date and Congressional Notification

59. This final action is effective April 7, 2020. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this action is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final action is being submitted to the Senate, House, and Government Accountability Office.

VII. Document Availability

60. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

61. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

62. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By the Commission.

Issued: January 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The following Appendix will not appear in the *Code of Federal Regulations.*

Appendix A

Commenters

Abbreviation	Commenter
Appelbaum	Jonathan Appelbaum.
Bonneville	Bonneville Power Administration.
IRC	ISO/RTO Council.
Dr. Liu	Dr. Chen-Ching Liu.
NERC	North American Electric Reliability Corporation.
Reclamation	Bureau of Reclamation.
Trade Associations	American Public Power Association, Edison Electric Institute, National Rural Electric Cooperative Association.
Tri-State	Tri-State Generation and Transmission Association, Inc.

[FR Doc. 2020–01595 Filed 2–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 20–02]

RIN 1515–AE51

Import Restrictions Imposed on Archaeological Material From Jordan

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological material from the Hashemite Kingdom of Jordan (Jordan). These restrictions are being imposed pursuant to an agreement between the United States and Jordan that has been entered into under the authority of the Convention on Cultural Property Implementation Act. The final rule amends the CBP regulations by adding Jordan to the list of countries which have a bilateral agreement with the United States that imposes cultural property import restrictions. The final rule also contains the Designated List that describes the types of archaeological material to which the restrictions apply.

DATES: Effective on February 5, 2020.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0300, *ot-otrrculturalproperty@cbp.dhs.gov.* For operational aspects, Genevieve S. Dozier, Management and Program Analyst, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 945–2942, *CTAC@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (''the

Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Biomass Electric Power Generation, or Electric Bulk Power Transmission and Control. These categories have thresholds for small entities varying from 250–750 employees. For the analysis in this final action, we are using a conservative threshold of 750 employees.

Cultural Property Implementation Act'') implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter, ''the Convention'' (823 U.N.T.S. 231 (1972))). Pursuant to the Cultural Property Implementation Act, the United States entered into a bilateral agreement with the Hashemite Kingdom of Jordan (Jordan) to impose import restrictions on certain Jordanian archaeological material. This rule announces that the United States is now imposing import restrictions on certain archaeological material from Jordan.

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On August 14, 2019, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological material originating in Jordan that is described in the Designated List set forth below in this document.

These determinations include the following: (1) That the cultural patrimony of Jordan is in jeopardy from the pillage of archaeological material representing Jordan's cultural heritage dating from approximately 1.5 million B.C. to A.D. 1750 (19 U.S.C. 2602(a)(1)(A)); (2) that the Jordanian government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meets the statutory definition of ''archaeological or ethnological material of the State Party'' (19 U.S.C. 2601(2)).

The Agreement

On December 16, 2019, the United States and Jordan entered into a bilateral agreement, ''Memorandum of Understanding between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of Jordan'' (''the Agreement''), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement enters into force on February 1, 2020, and enables the promulgation of import restrictions on categories of archaeological material representing Jordan's cultural heritage ranging in date from the Paleolithic period (approximately 1.5 million B.C.) to the middle of the Ottoman period in Jordan (A.D. 1750). A list of the categories of archaeological material subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire on February 1, 2025, unless extended.

Designated List of Archaeological Material of Jordan

The Agreement between the United States and Jordan includes, but is not limited to, the categories of objects described in the Designated List set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Jordan legally and not in violation of the export laws of Jordan.

The Designated List includes archaeological material in stone, metal, ceramic, and other categories ranging in date from the Paleolithic period (beginning around 1.5 million B.C.) to the middle of the Ottoman period in Jordan (A.D. 1750).

Archaeological Material

Approximate chronology of well-known archaeological periods and sites in Jordan:

(a) Paleolithic period (c. 1.5 million–10,000 B.C.): Azraq Basin, Masharia, Wadi Sirhan Basin, Wadi Uwaynid, Zarqa Valley
(b) Neolithic and Chalcolithic periods (c. 10,000–3,800 B.C.): Abu Hamid, Ayn Ghazal, Bab adh-Dhra, Basta, Bayda, Pella, Shkarat Msaied, Tulaylat Ghassul, Sahab, Tall Magass, Tall Shuna North, Tall Wadi Faynan, Wadi Shuayb
(c) Bronze and Iron periods (c. 3,800–539 B.C.): Amman, Bab adh-Dhra, Dhiban, Jarash, Jawa, Khirbat Iskander, Khirbat Zaraqun, Pella, Sahab, Tall Abu Kharaz, Tall Dayr Alla, Tall Hammam, Tall Hayyat, Tall Nimrin, Tall Shuna, Tall Umayri, Tall umm Hammad, Yiftahel
(d) Persian period (539–332 B.C.): Drayjat, Hisban, Khilda, Rujm Selim, Tall Dayr Alla, Tall Jalul, Tall Mazar, Tall Saidiyya, Tall Umayri, Tawilan
(e) Hellenistic period (332–30 B.C.): Gadara (Umm Qays), Gerasa (Jarash), Khirbat Dharayh, Khirbat Tannur, Machaerus, Petra, Philadelphia (Amman), Qasr Abd
(f) Roman period (c. 63 B.C.–A.D. 322): Abila (Quwayliba), Capitolias, Gadara (Umm Qays), Gerasa (Jarash), Petra, Philadelphia (Amman)
(g) Byzantine period (c. A.D. 322–600): Nebo, Pella, Tall Hisban, Umm el-Jimal, Umm Rasas
(h) Islamic period (c. A.D. 600–1516): Ajlun, Amman, Aylah (Aqaba), Azraq, Dhiban, Bayda, Gadara, Jerash, Khirbat Faris, Qasr Burqu, Pella (Fihl), Shawbak, Tall Abu Qadan, Tall Hisban, Umm Walid, Wuayrah (Petra)
(i) Ottoman period (c. A.D. 1516–1918): Aqaba, Khirbet Faris, Hubras, Shawbak, Tall Hisban, Qalat Unaya (noting that import restrictions for the Ottoman period apply to categories of archaeological material dating up to the middle of the Ottoman period in Jordan, A.D. 1750)

Categories of Archaeological Material

A. Stone
B. Ceramic
C. Metal
D. Bone, Ivory, Shell, and Other Organic Material
E. Glass, Faience, and Semi-Precious Stone
F. Painting and Plaster
G. Textiles, Basketry, and Rope
H. Wood
I. Leather

A. Stone

1. *Architectural Elements*—This category includes doors, door frames, window fittings, columns, capitals, bases, lintels, jambs, archways, friezes,

pilasters, engaged columns, altars, *mihrabs* (prayer niches), screens, fountains, inlays, and blocks from walls, floors, and ceilings of buildings. Architectural elements may be plain, molded, or carved and are often decorated with motifs and inscriptions. Marble, limestone, sandstone, and gypsum are most commonly used, in addition to porphyry and granite.

2. *Mosaics*—Floor mosaics are made from stone cut into small bits (tesserae) and laid into a plaster matrix. Wall and ceiling mosaics are made with a similar technique but may include tesserae of both stone and glass. Subjects can include landscapes, scenes of deities, humans, or animals, and activities such as hunting and fishing or religious imagery. There may also be vegetative, floral, or geometric motifs and imitations of stone.

3. *Architectural and Non-Architectural Relief Sculptures*—Types include carved slabs with figural, vegetative, floral, geometric, or other decorative motifs; carved relief vases; stelae; palettes and plaques. All types can sometimes be inscribed in various languages. Sculptures are used for architectural decoration, including in religious, funerary (*e.g.,* grave markers), votive, or commemorative monuments. Marble, limestone, and sandstone are most commonly used.

4. *Monuments*—Types include votive statues, funerary and votive stelae, and bases and base revetments in marble, limestone, and other kinds of stone. These may be painted, carved with relief sculpture, decorated with moldings, and/or carry dedicatory or funerary inscriptions in various languages.

5. *Statuary*—Statues are large-scale representations of deities, humans, animals, or hybrid figures in marble, limestone, or sandstone. Statuary figures may be painted.

6. *Figurines*—Figurines are small-scale representations of deities, humans, animals, or enigmatic forms such as the ''violin-shaped'' figures, in limestone, calcite, marble, greenstone, basalt, or sandstone.

7. *Sepulchers*—Types of burial containers include sarcophagi, caskets, reliquaries, and chest urns in marble, limestone, or other kinds of stone. Sepulchers may be plain or have figural, geometric, or floral motifs painted on them. They may be carved in relief and/or have decorative moldings.

8. *Vessels and Containers*—These include bowls, cups, jars, jugs, lamps, and flasks, and also smaller funerary urns and incense burners, in marble, basalt, limestone, calcite, alabaster, gypsum, or other stone. Sculpted vessels in the form of a human head or animal with a bowl on top (''pillar figures'') made of basalt are distinctive of the Chalcolithic period.

9. *Furniture*—Types include thrones, tables, and beds, from funerary or domestic contexts.

10. *Tablets and Ostraca*—Types include small-scale plaques and chips of stone used as surfaces for writing or drawing. These can be inscribed with pictographic, cuneiform, Aramaic, Greek, Punic, Latin, or Arabic scripts.

11. *Tools and Weapons*—Chipped stone types include blades (''Canaanean-type''), borers, scrapers, sickles, burins, notches, retouched flakes, cores, arrowheads, cleavers, knives, chisel, and microliths. Paleolithic period types are described as Acheulean, Mousterian, Ahmarian, Aurignacian, and Natufian complexes. Ground stone types include grinders (*e.g.,* mortars, pestles, millstones, whetstones, querns), choppers, spherical-shaped hand axes, hammers, mace heads, and weights. The most commonly used stones are flint, chert, limestone, granite, basalt, and obsidian; other examples are hematite and calcite.

12. *Jewelry*—Types include seals, beads, finger rings, masks, and other personal adornment in marble, limestone, or various semi-precious stones—including rock crystal, amethyst, jasper, agate, steatite, and carnelian.

13. *Seals and Stamps*—These are small devices with at least one side engraved with a design for stamping or sealing. They can be in the shapes of squares, disks, cones, cylinders, or animals.

B. Ceramic

1. *Architectural Elements*—These are baked clay (terracotta) elements used to decorate buildings. Examples include acroteria, antefixes, painted and relief plaques, revetments, carved and molded brick, knobs, roof tiles, and tile wall ornaments and panels.

2. *Figurines*—These include terracotta (clay) statues and statuettes in the shapes of deities, humans, and animals, ranging in height from approximately 5 cm to 20 cm (2 in to 8 in). Figurines may be undecorated or decorated with paint, appliques, or inscribed lines. Plaque types are made in a mold and have a flat back and image of a human form, often female, on the front.

3. *Models*—These are small-scale and in terracotta, including furniture such as chairs and beds, chariots, boats, and buildings.

4. *Vessels*—Types, forms, and decoration vary among archaeological styles and over time. Forms may be painted or unpainted, handmade or wheel-made and decorated with burnish, glazes, or carvings. Ceramic vessels can depict imagery of humans, deities, animals, floral decorations, or inscriptions. Some of the most well-known types are highlighted below:

a. Neolithic—This type is handmade and often decorated with a lustrous burnish and may also be decorated with appliqué and/or incision, sometimes with added paint. Yarmoukian style vessels feature banded herringbone impression. Jericho style vessels have slips and red pigment applied in geometric motifs.

b. Chalcolithic—This type is dominated by medium-sized holemouth or short-necked storage jars and holemouth cooking pots. Distinctive forms include cornet cups, fenestrated stands, necked churns, spoons, ''torpedo'' jars, and vessels in the shape of humans or animals. May be painted with geometric designs.

c. Bronze and Iron—Distinctive types include Grey Burnished Ware, Metallic Ware, Band Slip and Line Group painted decoration, Crackled Ware, Tall Yehudiyeh Ware, Khirbat Kerak Ware, Mycenaean types, Chocolate-on-White Ware, fenestrated stands, collared pithos jars, and holemouth jars with four pushed-up ledge handles on the shoulder.

d. Persian—This type includes locally produced wares, indistinguishable from other Iron period ceramics, as well as imported Greek wares from the fifth and fourth century B.C. Types include sausage jars, high-necked cooking pots, amphorae, narrow bottles, and bag-shaped perfume juglets.

e. Hellenistic—This type includes local and imported fine and coarse wares and amphorae. Examples include oil lamps, black-slipped pottery, rhodian amphorae, relief-bowls, plates, jugs and juglets, fishplates, and bowls with incurved and outcurved rims, mastoi, table amphorae, lagynoi, *amphoriskoi* and small vessels for unguents. Imports include black-slipped pottery from Greece, jugs and juglets, bowls, storage jars or cooking pots from Cyprus, and Rhodian wine amphoras.

f. Nabataean—This type is characterized by forms with thin walls and floral motifs, often red pottery with black designs. The designs on the wares are painted on or pressed into the surface with stamps and rouletting wheels. Vessels of this type come in a variety of shapes including plates, serving bowls, drinking bowls, flasks, jugs, *amphoriskoi,* and cooking pots.

g. Roman—This type includes fine and coarse wares, including *terra sigillata* and other red gloss wares,

cooking wares and *mortaria,* and storage and shipping amphorae.

h. Byzantine—This type includes undecorated plain wares, utilitarian tableware, storage jars, serving vessels, cook pots, amphorae, and special shapes such as pilgrim flasks. The fineware ''Jarash bowls,'' which are often slipped and painted, are particularly distinctive. Other styles can be matte painted or glazed—including incised ''sgraffitto''—and stamped with elaborate polychrome decorations using floral, geometric, human, and animal motifs.

i. Islamic and Ottoman—This type includes mostly unglazed earthen coarse wares as well as those painted with linear or vegetal designs. Examples include dark gray metallic wares with white paint; glazed fine cream wares; red-painted wares, including fine ''palace wares;'' and ceramic vessels imitating steatite vessels. The most common glazes are yellow, green, and blue. Vessels appear in a variety of shapes, including jars, jugs, bowls, basins, cups, zirs, and so-called ''sugar cones'' made of distinctly heavy ceramic.

5. *Lamps*—Lamps can be glazed or unglazed in ''saucer,'' ''slipper'' or other styles; they typically have rounded bodies with a hole on the top and in the nozzle, handles or lugs, and motifs such as beading, human faces, rosettes or other floral elements like bunched grapes or leaves. Inscriptions may also be found on the body. Later period examples may have straight or round, bulbous bodies with a flared top and several branches.

6. *Seals and Sealings*—These are small devices with at least one side engraved with a design for stamping or sealing. They can be in the shapes of squares, disks, cones, cylinders, or animals. Sealings are lumps of clay impressed with a seal used to secure doors or containers.

7. *Tablets*—Tablets are covered with wedge-shaped cuneiform characters or incised pictographs/hieroglyphics. Shapes range from very small rounded disk forms, to small square and rectangular pillow-shaped forms, to larger rectangular tablets. Tablets may be impressed with cylinder or stamp seals.

8. *Ostraca*—Ostraca are pottery sherds used as surfaces for writing or drawing.

9. *Objects of Daily Use*—These include game pieces, loom weights, toys, tobacco pipes, portable hearths, and andirons.

10. *Sepulchers*—Types of burial containers include reliquaries and ossuaries, the latter being rectangular in shape or in the shape of stylized animals with an opening in the short end of the container. Sepulchers may be decorated with paint or appliques, or incised.

C. Metal

1. *Statuary*—These are large- and small-scale, including deity, human, and animal figures in bronze, iron, silver, or gold. Common types are large-scale, free-standing statuary from approximately 1 m to 2.5 m (approximately 3 ft to 8 ft) in height and life-size busts (*i.e.,* head and shoulders of an individual).

2. *Reliefs*—These include plaques, appliques, stelae, and masks, often in bronze. Reliefs may include inscriptions in various languages.

3. *Inscribed or Decorated Sheet*—These are engraved inscriptions and thin metal sheets with engraved or impressed designs often used as attachments to furniture or figures. Primarily in bronze or lead, but also less frequently in gold and silver.

4. *Vessels and Containers*—Forms include bowls, cups, jars, jugs, strainers, cauldrons, and boxes, as well as vessels in the shape of an animal or part of an animal. This category also includes scroll and manuscript containers, reliquaries, and censers. In copper, bronze, silver, and/or gold. May portray deities, humans, or animals, as well as floral motifs in relief. They may include an inscription.

5. *Jewelry*—These include necklaces, chokers, pectorals, finger rings, beads, pendants, bells, belts, buckles, earrings, diadems, straight pins and fibulae, bracelets, anklets, girdles, wreaths and crowns, make-up accessories and tools, metal strigils (scrapers), crosses, and lamp-holders. In the Ottoman period, perforated coins were used as jewelry. In iron, bronze, silver, and gold. Metal can be inlaid with items such as colored stones and glass.

6. *Seals*—Seals are small devices with at least one side engraved with a design for stamping or sealing. Types include finger rings, amulets, and seals with a shank; in lead, tin, copper, bronze, silver, or gold.

7. *Tools*—Types include hooks, weights, axes, scrapers, hammerheads, trowels, locks, keys, nails, hinges, tweezers, mace heads, ingots, mirrors and fibulae (for pinning clothing), in copper, bronze, or iron.

8. *Weapons and Armor*—This includes body armor, such as helmets, cuirasses, bracers, and shin guards, shields, and horse armor; often decorated with elaborate designs that are engraved, embossed, or perforated. Both launching weapons (*e.g.,* spears, javelins, arrowheads) and hand-to-hand combat weapons (*e.g.,* swords, daggers, *etc.*), in copper, bronze, and iron; and in silver and gold for ceremonial use.

9. *Lamps*—Lamps can be open saucer-type or closed, rounded bodies with a hole on the top and in the nozzle, handles or lugs. They can include decorative designs such as beading, human faces, animals or animal parts, rosettes or other floral elements. This category includes handheld lamps, candelabras, braziers, sconces, chandeliers, and lamp stands.

10. *Coins*—Some of the best-known types include:

a. Nabataean—Coins in silver, lead, copper or bronze and struck at Petra. They typically have cornucopiae or wreaths on the reverse and portrait of the ruler or rulers on the obverse.

b. Roman Provincial—Coins in silver and bronze were struck through the third century A.D. at Roman and Roman provincial mints of Abila (Abel), Adraa (Daraa), Charachmoba (Al-Karak), Dium, Esbous (Heshbon), Gadara (Umm Qais), Gerasa (Jerash), Medaba (Madaba), Pella, Petra, Philadelphia (Amman), Rabbathmoba (Aroer) Capitolias/Dion (Beit Ras), and Raphana. This type also includes the pseudo-autonomous coinage of the second and first centuries B.C.

c. Byzantine—Coins in bronze and struck at the Arab-Byzantine mint of Aylah/Elath (Aqaba).

d. Early Islamic—Coins in bronze or silver and struck at the Umayyad mints of Adraa (Daraa), Gerasa (Jerash), Philadelphia/Rabbath-Ammon (Amman) and under the Abbasids at Philadelphia/Rabbath-Ammon (Amman). These coins are epigraphic in design, featuring one or more lines of Arabic script. Some Abbasid bronze coins from Philadelphia/Rabbath-Ammon (Amman) feature a small flower-like design in the center of one side.

e. Crusader—These coins appear as thin, light-weight, low-quality-silver billon. Examples usually feature crosses and/or crude portraits or buildings as central images.

D. Bone, Ivory, Shell, and Other Organic Material

1. *Small Statuary and Figurines*—These include representations of deities, humans, or animals, in bone or ivory.

2. *Reliefs, Plaques, Stelae, and Inlays*—These are carved and sculpted and may have figurative, floral, and/or geometric motifs.

3. *Jewelry*—Types include amulets, pendants, combs, pins, spoons, bracelets, buckles, beads, and pectorals. Jewelry can be made of bone, ivory, amber, coral, mother-of-pearl, tortoise shell, and cowrie shell.

4. *Seals and Stamps*—These are small devices with at least one side engraved with a design for stamping or sealing. They can be in the shapes of squares, disks, cones, cylinders, or animals.

5. *Vessels and Luxury Objects*—Ivory, bone, and shell were used either alone or as inlays in luxury objects, including furniture, chests and boxes, writing and painting equipment, musical instruments, games, cosmetic containers, combs, jewelry, amulets, and seals.

6. *Tools*—Tools include bone points and awls, burnishers, needles, spatulae, and fish hooks.

7. *Manuscripts*—Archaeological manuscripts can be written or painted on specially prepared animal skins (*e.g.,* cattle, sheep, goat, camel skins) known as parchment or papyrus. They occur as single leaves, bound as a book or codex, or rolled into a scroll.

8. *Human Remains*—This includes skeletal remains from the human body, preserved in burials or other contexts. Particular to early periods are human skulls painted or covered with lime plaster and bitumen.

E. Glass, Faience, and Semi-Precious Stone

1. *Architectural Elements*—These include glass inlay and tesserae pieces from floor and wall mosaics, mirrors, and windowpanes.

2. *Vessels and Containers*—These can take various shapes, such as jars, bottles, bowls, beakers, goblets, candle holders, perfume jars (*unguentaria*), and flasks. Vessels and containers may have cut, incised, raised, enameled, molded, or painted decoration. Ancient examples may be engraved and/or light blue, blue-green, green, or colorless while those from later periods may include animal, floral, and/or geometric motifs.

3. *Jewelry*—Jewelry includes bracelets and rings (often twisted with colored glass), pendants, and beads in various shapes (*e.g.,* circular, globular), some with relief decoration including multi-colored ''eye'' beads.

4. *Lamps*—Lamps may have a straight or round bulbous body, some in the form of a goblet, with flared top, and engraved or moulding decorations and may have several branches.

F. Painting and Plaster

1. *Rock Art*—Rock art can be painted and/or incised drawings on natural rock surfaces. Common motifs include humans, animals, geometric, and/or floral elements.

2. *Wall Painting*—With figurative (deities, humans, animals), floral, and/or geometric motifs, as well as funerary scenes. These are painted on stone, mud plaster, lime plaster (wet—*buon fresco*—and dry—*secco fresco*), sometimes to imitate marble.

3. *Stucco*—This is a fine plaster used for coating wall surfaces or molding into architectural decorations such as reliefs, plaques, stelae, and inlays.

4. *Jewelry*—Jewelry includes plaster beads from the Neolithic period.

5. *Figurines*—Figurines can be human statuettes made of marl lime plaster. They can be full body or busts with one or two heads, and may have detailed facial and body features like arms, hands, and breasts.

G. Textiles, Basketry, and Rope

1. *Textiles*—These include linen, hemp, and silk cloth used for burial wrapping, shrouds, garments, and sails. These also include linen and wool also used for garments and hangings.

2. *Basketry*—Plant fibers were used to make baskets and containers in a variety of shapes and sizes, as well as sandals and mats.

3. *Rope*—Rope and string were used for a great variety of purposes, including binding, lifting water for irrigation, fishing nets, measuring, lamp wicks, and stringing beads for jewelry and garments.

H. Wood

1. *Jewelry and Personal Items*—These include rings, bracelets, combs, and spindle whorls.

2. *Containers*—These include boxes, chests, and coffins.

I. Leather

Leather items include belts, sandals, necklaces, bracelets, and other items of personal adornment.

References

Coins of the Holy Land: The Abraham and Marian Sofaer Collection at the American Numismatic Society and the Israel Museum, volumes I and II, 2013, Y. Meshoreer, The American Numismatic Society, New York.

Jordan: An Archaeological Reader, 2008, R.B. Adams (editor), Equinox, London.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 or Executive Order 13771 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and section 4(a) of Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph (a) is amended by adding Jordan to the list in alphabetical order to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
* * * * * * *		
Jordan	Archaeological material representing Jordan's cultural heritage from the Paleolithic period (c. 1.5 million B.C.) to the middle of the Ottoman period in Jordan (A.D. 1750).	CBP Dec. 20–02.
* * * * * * *		

* * * * *

Dated: February 4, 2020.

Mark A. Morgan,

Acting Commissioner, U.S. Customs and Border Protection.

Approved:

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2020–02552 Filed 2–5–20; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 20–01]

RIN 1515–AE50

Emergency Import Restrictions Imposed on Archaeological and Ethnological Material From Yemen

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of emergency import restrictions on certain archaeological and ethnological material from the Republic of Yemen (Yemen). The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions warrant the imposition of emergency restrictions on categories of archaeological material and ethnological material of the Islamic cultural heritage of Yemen. This document contains the Designated List of Archaeological and Ethnological Material of Yemen that describes the types of objects or categories of archaeological and ethnological material to which the import restrictions apply. The emergency import restrictions imposed on certain archaeological and ethnological material from Yemen will be in effect for a five-year period from the date on which Yemen requested that such restrictions be imposed, until September 11, 2024, unless renewed. These restrictions are being imposed pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act.

DATES: Effective on February 5, 2020.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0300, *otrrculturalproperty@cbp.dhs.gov.* For operational aspects, Genevieve S. Dozier, Management and Program Analyst, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 945–2952, *CTAC@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (''the Cultural Property Implementation Act'' or ''Act''), implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (''the Convention''). Pursuant to the Cultural Property Implementation Act, the United States may enter into international agreements with another State Party to the Convention to impose import restrictions on eligible archaeological and ethnological material under procedures and requirements prescribed by the Act.

Under certain limited circumstances, the Cultural Property Implementation Act authorizes the imposition of import restrictions on an emergency basis (19 U.S.C. 2603). The emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered material (19 U.S.C. 2603(c)(3)). These restrictions may also be continued pursuant to an agreement concluded within the meaning of the Act (19 U.S.C. 2603(c)(4)).

Pursuant to 19 U.S.C. 2602(a), the government of the Republic of Yemen (Yemen), a State Party to the Convention, requested on September 11, 2019, that import restrictions be imposed on certain archaeological and ethnological material, the pillage of which jeopardizes the cultural heritage of Yemen. The Cultural Property Implementation Act authorizes the President (or designee) to apply import restrictions on an emergency basis if the President determines that an emergency condition applies with respect to any archaeological or ethnological material of any requesting state (19 U.S.C. 2603).

On December 5, 2019, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations necessary under the Act for the emergency imposition of import restrictions on certain archaeological material and ethnological material of the Islamic cultural heritage of Yemen. The Designated List below sets forth the categories of material to which the import restrictions apply. Thus, U.S. Customs and Border Protection (CBP) is amending § 12.104g(b) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(b)) accordingly.

Importation of covered material from Yemen will be restricted for a five-year period from the date of request by Yemen, through September 11, 2024. Importation of such material from Yemen will continue to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Designated List of Archaeological and Ethnological Material of Yemen

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I. Archaeological Material

Archaeological material dates from approximately 200,000 B.C. to A.D. 1750 and represents the following periods, styles, and cultures: Paleolithic, Neolithic, South Arabian, Abyssinian, Sasanian, and Islamic (Umayyad, Abbasid, Ziyadid, Zaydi, Najahid, Sulaihid, Zurayid, Ayyubid, Rasulid, and Tahirid), among others. A chronological outline of pre-Islamic Yemen includes the Paleolithic Period (c. 200,000–8000 B.C.), Neolithic Period (8000–3000 B.C.), Post-Neolithic/Bronze Age (3500–1200 B.C.), South Arabian Period (Sabaean, Minean, Qataban, Hadhramaut, Himyarite) (1200 B.C.–A.D. 570), Abyssinian (c. 4th century A.D.–A.D. 578), and the Sasanian Period (A.D. 570–628). Subsequent archaeological material from the Islamic Period covers A.D. 628–1750. The Designated List set forth below is representative only. Any dates and dimensions are approximate.

A. Stone

1. *Architectural Elements*—Primarily in limestone, marble, and sandstone; including blocks from walls, floors, and ceilings; columns, capitals, bases, lintels, jambs, friezes, and pilasters; doors, door frames, and window fittings; engaged columns, altars, prayer niches, screens, fountains, mosaics, and inlays. May be plain, molded, carved, or inscribed in various languages and scripts. Common decorative motifs include ibex heads and full animals, oxen or bull heads, rosettes, and curvilinear vine and floral patterns, and may be incised or in high relief. Approximate date: 1200 B.C.–A.D. 1750.

2. *Non-Architectural Relief Sculpture*—In alabaster, limestone, marble, calcite, and other kinds of stone. Types include carved slabs and plaques, funerary and votive stelae, and bases and base revetments. These may be painted, incised, or carved with relief sculpture, decorated with moldings, and/or carry dedicatory or funerary inscriptions. South Arabian Period styles include face plaques and stelae: Funerary images of faces; may be combined with ceramic or plaster sculpture; may be inscribed or painted. Common decorative motifs either incised or in high relief include oxen or bull heads, other animals, mythological creatures, human figures, which are usually clothed, and vegetative and floral patterns; may be inscribed in South Arabian script. Approximate date: 1200 B.C.–A.D. 570.

3. *Statuary*—Primarily in alabaster, also in calcite, limestone, sandstone, softstone (chlorite), and marble. Large- and small-scale, including deities; human figures, which are usually clothed; animals such as bulls, ibex, and camels; and hybrid or mythological creatures. May be inscribed. Includes fragments of statues. Some pieces may also include different material types, including multiple types of stone, metal staffs, shell or bone eyes, and metal, glass, and semi-precious stone jewelry inlay. Approximate date: 1200 B.C.–A.D. 570.

4. *Vessels and Containers*—Primarily in alabaster, softstone (chlorite), and limestone; may also be marble, basalt, or other stone. Vessels may be conventional shapes such as bowls, cups, jars, jugs, platters, and flasks, and also include smaller funerary urns and incense burners. Common forms include, but are not limited to:

a. South Arabian Period containers for unguents, powders, and liquids in all shapes and sizes. They are flat-bottomed and often have lids. Some pieces have protruding pierced lug handles, which may or may not be in the shape of an animal, usually a bull or ibex. Vessels may be otherwise decorated or inscribed with South Arabian, or other script. Other forms include pedestal dishes, bowls, saucers, and three-legged cosmetic palettes, as well as small, rectangular, square-sided boxes, usually decorated with bull's heads, used as containers for smaller bottles. Incense burners from the South Arabian period are usually cuboid and decorated with astral symbols or South Arabian script. Approximate date: 1200 B.C.–A.D. 570.

b. Stone vessels continue in similar form through the Sasanian and Islamic Periods, particularly in softstone and alabaster. Includes all vessel types and lamps, usually with geometric incised decoration; may have Arabic script. Approximate date: A.D. 570–1750.

5. *Furniture*—In marble, alabaster, and other stone. May include thrones, tables, and other examples. Also includes pieces of furniture such as legs and feet that may have been attached to a wooden frame; may be funerary. Includes South Arabian Period libation and sacrificial altars, which are oblong or square slabs with raised rims; altars have a run-off channel for liquid, usually in the form of an animal including bull's head or ibex. Approximate date: 200,000–1200 B.C.

6. *Tools and Weapons*—In flint/chert, obsidian, limestone, tuff, basalt, and other stones. Prehistoric and protohistoric microliths (small stone tools). Chipped stone types include blades, borers, scrapers, sickles, cores, and arrowheads. Ground stone types include grinders (*e.g.,* mortars, pestles, millstones, whetstones), choppers, axes, hammers, and mace heads. Approximate date: 200,000–1200 B.C.

7. *Jewelry, Seals, and Beads*—In marble, limestone, and various semi-precious stones, including rock crystal, amethyst, garnet, jasper, agate, steatite, and carnelian. Seals may include animals, human figures, and/or inscriptions in various languages. Beads include cylindrical, spherical, conical, disc, and other types; may have cut, incised, or raised decoration.

B. Metal

1. *Non-Architectural Relief Sculpture*—Includes cast relief plaques or tablets, appliques, stelae, and masks; often in bronze or copper. Decoration includes human and animal figures, geometric, and floral motifs. May be inscribed/cast relief in South Arabian, Arabic, or other script. Approximate date: 1200 B.C.–A.D. 1750.

2. *Statuary*—Primarily in copper, bronze, silver, or gold; includes fragments of statues. Range from larger-than-life-size to small figurines; forms include human figures, which may be clothed or not; animals such as camels, ibex, oxen, bulls, and lions; or mythological creatures/figures; and trophies such as votive hands. May be painted or inscribed/cast relief in South Arabian, Arabic, or other script.

3. *Vessels and Containers*—Primarily in copper, bronze, or iron; Islamic Period includes more examples in silver and gold. May include forms such as bowls, cups, jars, jugs, strainers, buckets, cauldrons, boxes, oil lamps, incense burners, and scroll or manuscript containers; may occur in the shape of an animal or part of an animal. Decoration may include humans or animal figures, or geometric or floral motifs in relief. Incense burners from this period may be square or cylindrical; front decorated with astral symbols and/or animals. May be inscribed/cast relief in South Arabian, Arabic, or other script.

4. *Furniture*—Primarily in bronze and iron; may include thrones, tables, and other examples. Includes pieces of furniture and decorative fittings such as legs and feet that may have been attached to a wooden frame; or thin metal sheets with engraved or impressed designs.

5. *Tools and Instruments*—In copper, bronze, iron, silver, and gold. Types include hooks, weights, axes, scrapers, trowels, keys, ladles, tools of craftspersons such as carpenters, masons, and metal smiths. Approximate date: 1200 B.C.–A.D. 570.

6. *Weapons and Armor*—In copper, bronze, and iron. Body armor, such as helmets, cuirasses, shin guards, shields, and horse armor; often decorated with elaborate engraved, embossed, or perforated designs. Launching weapons (spears, javelins, socketed arrowheads); hand-to-hand combat weapons (swords, daggers, jambiyas); and sheaths. Approximate date: 1200 B.C.–A.D. 570.

7. *Jewelry and Other Items for Personal Adornment*—In iron, bronze, silver, and gold. Metal can be inlaid (with items such as colored stones, and glass). Types include necklaces, amulets and pendants, rings, bracelets, anklets, earrings, diadems, wreaths and crowns, beads, buttons, purses, belts, belt buckles, mirrors, and make-up accessories and tools.

8. *Seals and Stamps*—In lead, tin, copper, bronze, silver, and gold. Small devices with at least one side engraved with a design for stamping or sealing; includes rings, amulets, and seals with a shank; may include animals, human figures, and/or inscriptions in various languages.

9. *Coins*—A reference book for ancient, pre-Islamic material in Yemen is M. Huth, *Coinage of the Caravan Kingdoms: Ancient Arabian Coins from the Collection of Martin Huth,* New York, 2010, pp. 68–152. A reference book for Islamic coinage to A.D. 1750 is S. Album, *Checklist of Islamic Coins,* Santa Rosa, 2011, pp. 116–127. Some of the best-known types are described below:

a. Ancient—In gold, silver, and bronze/copper, with units ranging from tetradrachms down to various fractional levels.

i. Earliest coins from Yemen are imitations of silver tetradrachms from Athens; feature a bust of Athena on the obverse and an owl on the reverse. The style of these imitations is distinctive, and they are usually marked with Arabian monograms or graffiti. Approximate date: 500 B.C. and later.

ii. Minaeans produced schematic imitations of the Athenian coinage; these coins have angular shapes, often triangular. Style is distinctive with monograms with Arabian letters. Approximate date: 200 B.C.

iii. Sabaeans struck distinctive local imitations of Athenian tetradrachms, with or without monograms, often with the curved symbol of Almaqah to the right of the owl, and of smaller units than previously. In the 1st century A.D., the head of Athena is replaced with a male bust resembling Augustus; owl on the reverse continues, as do monograms and the curved symbol. In the 2nd and 3rd centuries A.D., a beardless male head appears on the coins with the curved symbol, and a facing bucranium (a bull's head) appears on the reverse with the curved symbol and monograms. Approximate date: 400 B.C.–A.D. 300.

iv. Himyarite coins feature beardless male heads on the obverse coupled with bearded male heads on the reverse. Various South Arabian monograms appear on the coins. Rulers include Yuhabirr, Karib'il Yehun'im Wattar, Amdan Yuhaqbid, Amdan Bayan, Tha'ran Ya'ub, Shamnar Yuhan'am, and unknown kings. Approximate date: 110 B.C.–A.D. 200.

v. Qatabians produced imitations of Athenian coins also in 2nd–4th century B.C., with or without monograms; distinctive style. From the 2nd century B.C. to the 2nd century A.D., head of Athena is replaced with male ruler portraits, including those of Yad'ab Dhubyan Yuhargib, Dhub, Hawfi'Amm Yuhan'am III, Shahr Yagul, Waraw'il Ghaylan, Shahr Hilal, Yad'ab Yanaf, and various unknown rulers. Reverses of early types have the owl, while later types have a second portrait on the reverse. Approximate date: 400 B.C.–A.D. 200.

vi. Bronze coins from Hadramawt have radiate male portraits in a circle on the obverse and a standing bull on the reverse; Arabian symbols appear. Approximate date: A.D. 200–400.

vii. Various South Arabian types imitate Athenian coins, Hellenistic Alexander tetradrachms with a head of Herakles on the obverse and Zeus seated on the reverse, and Ptolemaic coins with a cornucopia on the reverse. Style is distinctive; designs are accompanied by Arabian monograms.

b. Islamic Period—In gold, silver, and bronze, and including anonymous mints in Yemen, and coins of unknown rulers attributed to Yemen. Non-exclusive mints are the primary manufacturers of the listed coins, but there may be other production mints.

i. 'Abbasid coins struck in gold, silver, and bronze, at non-exclusive mints San'a, Zabid, 'Adan, Dhamar, 'Aththar, and Baysh mints. Approximate date: A.D. 786–974.

ii. Coins of the Amirs of San'a, struck in gold, at the mint of San'a. Approximate date: A.D. 909–911.

iii. Rassid (1st period) coins struck in gold and silver at Sa'da, San'a, Tukhla', and 'Aththar. Approximate date: A.D. 898–1014.

iv. Coins of the Amirs of Yemen, struck in silver, at an uncertain mint. Approximate date: A.D. 1000–1100.

v. Coins of the Amirs of 'Aththar, struck in gold, at the mint of 'Aththar. Approximate date: A.D. 957–988.

vi. Tarafid coins, struck in silver, at the mint of 'Aththar. Approximate date: A.D. 991–1004.

vii. Ziyadid coins, struck in gold and silver, at non-exclusive mint Zabid. Approximate date: A.D. 955–1050s.

viii. Khawlanid coins, struck in silver, at the mint of San'a. Approximate date: A.D. 1046–1047.

ix. Najjahid coins, struck in gold, at the mints Zabid and Dathina. Approximate date: A.D. 1021–1158.

x. Sulayhid coins, struck in gold and debased silver, at non-exclusive mints Zabid, 'Aththar, 'Adan, Dhu Jibla. Approximate date: A.D. 1047–1137.

xi. Zuray'id coins, struck in gold, at the mints of 'Adan and Dhu Jibla. Approximate date: A.D. 1111–1174.

xii. Coins of Mahdid of Zabid, struck in silver, at the mint of Zabid. Approximate date: A.D. 1159–1174.

xiii. Rassid (2nd period) coins, struck in gold and silver, at non-exclusive mints Zufar, San'a, Sa'da, Huth, Dhirwah, Kahlan, Muda', 'Ayyan, Bukur, al-Jahili, and Dhamar. Approximate date: A.D. 1185–1390.

xiv. Ayyubid coins, struck in gold, silver, and bronze, at the mints of Zabid, 'Adan, Ta'izz, San'a, al-Dumluwa, Bukur, and Mayban. Approximate date: A.D. 1174–1236.

xv. Rasulid coins, struck in gold, silver, and bronze, at non-exclusive mints 'Adan, Zabid, al-Mahjam, Ta'izz, San'a, Tha'bat, and Hajja. Approximate date: A.D. 1229–1439.

xvi. Tahirid coins, struck in silver, at the mint of 'Adan. Approximate date: A.D. 1517–1538.

xvii. Rassid (3rd period) coins, struck in silver and bronze, at the mints of San'a, Zafir, and Thula. Approximate date: A.D. 1506–1572.

xviii. Ottoman coins, struck in gold, silver and bronze, at the mints of Zabid, San'a, 'Adan, Kawkaban, Ta'izz, Sa'da, al-Mukha, and Malhaz. Approximate date: A.D. 1520–1750.

C. Ceramic and Clay

1. *Architectural Elements*—Baked clay (terracotta) elements used to decorate buildings. Elements include acroteria, antefixes, painted and relief plaques, revetments, carved and molded brick, and wall ornaments and panels.

2. *Non-Architectural Relief Sculpture*—Types include carved slabs and plaques, funerary and votive stelae, and bases and base revetments. Common decorative motifs include ibex

heads and full animals, oxen or bull heads, rosettes, and curvilinear vine and floral patterns, and may be incised or in high relief; inscribed with South Arabian, Arabic, or other script. Includes face plaques and stelae: Funerary images of faces; may be combined with ceramic or plaster sculpture; may be inscribed or painted. Approximate date: 1200 B.C.–A.D. 1750.

3. *Statuary*—Range from large to small figurines; forms include human figures, usually clothed; animals such as camels, ibex, oxen, bulls, and lions; or mythological creatures/figures; and trophies such as votive hands. May be glazed or painted; may include South Arabian script. Approximate date: 1200 B.C.–A.D. 570.

4. *Vessels*—Include utilitarian types and fine tableware, incense burners, and oil lamps.

a. Post-Neolithic/Bronze Age—Includes hand built grey-brown or reddish-brown coarseware with large black or white inclusions, occasionally burnished; and fineware, which can have slipwash or burnish with incised or punctate decoration. Some pieces may also have imprints of basketry. Common forms include but are not limited to platters and shallow bowls with flat bases, deep bowls and basins with rounded bases, rimmed hemispheric bowls with rounded bases, hole-mouthed jars, necked jars, and large storage jars. Approximate date: 3500–900 B.C.

b. South Arabian Period—Includes hand built reddish-brown, yellow, and gray fabrics, which may be unfinished, burnished, or slip-glazed; the most common is red-burnished slip with carinated vessel shapes. Common forms include but are not limited to small rimmed jugs with flat base; small beakers and goblets; rimmed bowls, jars, and vases with ring bases; cooking pots with flat bases and straight walls; hemispherical bowls with ledge handles, often with black burnished slip; plates/platters with flat bases; goblets; amphorae; and oil lamps. Decoration includes paint, punctuation, incised or pressed designs including South Arabian script, and raised dots. Imported Roman *terra sigillata* ware, Nabatean painted pottery, Iranian fine orange painted ware, and Indian red polished ware are also common. Incense burners from this period may be square or cylindrical; decorated with astral symbols or South Arabian script. Approximate date: 1200 B.C.–A.D. 570.

c. Sasanian-Islamic Period—Includes stoneware, pottery, and porcelain, which may be unglazed utilitarian wares or glazed types; local types include but are not limited to reddish, pink, and white fabrics with glaze styles including turquoise slip-painted, bright yellow glaze, green-painted glaze, salad ware (light green), pseudo-celadon glazed, brown-painted, and blue glazed on white slip; may include Arabic calligraphy. Imported types are also common and include Abbasid Period alkaline blue Sasanian-Islamic jars (A.D. 700–1100); Abbasid Period opaque white glazed bowls, either plain or decorated with cobalt (A.D. 800–900); and sgraffiatto types in various forms with red fabric and incised and painted designs on white slip including floral, geometric, human, and animal motifs (A.D. 1100–1400); other types from China, Arabo-Persian Gulf, Indian Ocean, and East Africa are also present. Oil lamps from this period typically have rounded bodies with a hole on the top and in the nozzle, and may have handles or lugs and figural motifs; include glazed ceramic lamps, which may have a straight or round bulbous body with flared top, and several branches. Approximate date: A.D. 570–1750.

D. Glass, Faience, and Semi-Precious Stone

1. *Architectural Elements*—Mosaics; designs include landscapes, scenes of deities, humans, or animals, and activities such as hunting and fishing. There may also be vegetative, floral, or geometric motifs; often with religious imagery. Approximate date: A.D. 500–1750.

2. *Vessels*—Forms include small jars, bowls, animal-shaped vessels, goblets, spherical forms, candle holders, perfume and unguent jars, and lamps; may have cut, incised, raised, enameled, molded, or painted decoration; various colors. South Arabian Period and early Islamic Period types may be engraved and/or colorless or blue, green, or orange; may include floral, and/or geometric motifs; may include Arabic calligraphy. Approximate date: 1200 B.C.–A.D. 1750.

3. *Jewelry*—Forms include beads that may be cylindrical, spherical, conical, disc, and others; may have cut, incised, or raised decoration; various colors; molded and carved glass gemstones; may include other types of glass inlay. Approximate date: 1200 B.C.–A.D. 1750.

E. Painting

1. *Rock Art*—Incised, pecked, or painted drawings on natural rock surfaces. Decoration includes crosses; humans; animals, particularly camels, ibex, and snakes; and geometric and/or floral designs; includes fragments. May include pre-Islamic graffiti, commonly in South Arabian script. Approximate date: 12,000 B.C.–A.D. 100.

2. *Wall Painting*—Decoration includes crosses; humans; animals, particularly camels, ibex, and snakes; and geometric and/or floral designs; includes fragments. Painted on wood, stone, and plaster. May be on domestic or public walls or tombs.

F. Plaster

1. *Stucco*—Stucco reliefs, plaques, stelae, and inlays or other architectural decoration in stucco.

2. *Face Plaques and Stelae*—Funerary images of faces; may be combined with stone or ceramic sculpture; may be inscribed or painted.

G. Textiles

—Linen cloth used for mummy wrapping. Approximate date: 500 B.C.–A.D. 500.

H. Leather, Parchment, and Paper

1. *Books and Manuscripts*—Either scrolls, sheets, or bound volumes; including both secular texts and Islamic religious texts such as Qurans. Text is often written on vellum or other parchment (cattle, sheep, goat, or camel) and then gathered in leather bindings. Paper may also be used. Types include books and manuscripts, often written in brown ink, and then further embellished with colorful floral or geometric motifs; covers may also be stamped, gilded, or inset with metal, glass, and semi-precious stones.

2. *Items for Personal Adornment*—Primarily in leather, including belts, sandals, shoes, armor, necklaces, bracelets, and other types of jewelry.

I. Wood, Bone, Ivory, Shell, and Other Organics

1. *Architectural and Non-Architectural Relief Sculpture*—Carved and inlaid wood panels, rooms, beams, balconies, stages, panels, ceilings, and doors, frequently decorated with religious, floral, or geometric motifs; may have script in Arabic. Bone, ivory, and shell reliefs, plaques, stelae, and inlays may be carved or sculpted; commonly include human or animal figures, floral, and/or geometric motifs.

2. *Statuary and Figurines*—Primarily small-size figurines; forms include human figures, which may be clothed or not; animals such as camels, ibex; oxen, bulls, and lions; or mythological creatures/figures. May be painted or inscribed/cast relief in South Arabian, Arabic, or other script.

3. *Furniture*—Primarily in wood; may include thrones, other chairs, tables, and other examples.

4. *Personal Ornaments and Objects of Daily Use*—Types include amulets, combs, pins, spoons, small containers, bracelets, buckles, and beads. Wood, bone, ivory, and shell were also used either alone or as inlays in luxury objects including furniture, chests and boxes, writing and painting equipment, musical instruments, games, cosmetic containers, combs, and jewelry.

5. *Seals and Stamps*—Small devices with at least one side engraved with a design for stamping or sealing; they can be discoid, cuboid, or conoid; may include animals, human figures, and/or inscriptions in various languages.

6. *Human Remains*—Bone and bone fragments.

II. Ethnological Material

Ethnological material of Islamic cultural heritage form part of the remains of the Islamic period culture and civilization ranging in date from A.D. 1517 to 1918. Some of these items may occur in archaeological contexts.

A. Stone

1. *Architectural Elements*—Primarily in limestone, marble, and sandstone; including blocks from walls, floors, and ceilings; columns, capitals, bases, lintels, jambs, friezes, and pilasters; doors, door frames, and window fittings; altars, prayer niches, screens, fountains, mosaics, and inlays. May be plain, molded, carved, or inscribed in Arabic. Common decorative motifs include geometric, floral, and religious motifs, and may be incised or in high relief.

2. *Non-Architectural Relief Sculpture*—In alabaster, limestone, marble, and other types of stone. Types include carved slabs with religious, floral, or geometric motifs. Includes inscribed plaques, stelae, memorial stones, and tombstones; primarily in marble; may be engraved with Arabic script.

3. *Statuary*—Primarily in marble, but also in limestone and sandstone. Large- and small-scale, such as human and animal figures. May be inscribed. Includes fragments of statues. Some pieces may also include different material types, including multiple types of stone, metal staffs, shell or bone eyes, and metal and semi-precious stone jewelry inlay.

4. *Vessels and Containers*—Primarily in alabaster, softstone (chlorite), and limestone; may also be marble, basalt, or other stone. Vessels may be conventional shapes such as bowls, cups, jars, jugs, platters, and flasks, and include smaller funerary urns, incense burners, and lamps.

B. Metal

1. *Architectural Elements*—Primarily copper, brass, lead, and alloys, including doors, door fixtures, chandeliers, screens.

2. *Vessels and Containers*—In brass, copper, silver, or gold; plain, engraved, or hammered. May include forms such as bowls, cups, jars, jugs, strainers, buckets, pitchers, plates, tea pots, boxes, oil lamps, incense burners, lamps, and scroll or manuscript containers.

3. *Tools and Instruments*—In copper, bronze, iron, silver, and gold. Types include hooks, weights, axes, scrapers, trowels, keys, ladles, tools of craftspersons such as carpenters, masons, and metal smiths, and scientific instruments such as measuring containers, clocks, and astrolabes.

4. *Weapons and Armor*—In copper, bronze, and iron. Body armor, such as helmets, cuirasses, shin guards, shields, and horse armor; often decorated with elaborate engraved, embossed, or perforated designs. Launching weapons (spears, javelins, socketed arrowheads); hand-to-hand combat weapons (swords, daggers, jambiyas); and sheaths.

5. *Jewelry and Other Items for Personal Adornment*—In iron, bronze, silver, and gold. Metal can be inlaid (with items such as colored stones, and glass). Types include necklaces, amulets and pendants, rings, bracelets, anklets, earrings, diadems, wreaths and crowns, beads, buttons, purses, belts, belt buckles, mirrors, and make-up accessories and tools.

6. *Ceremonial and Religious*—Includes boxes (such as Quran boxes), plaques, amulets and pendants, stamps, and seal rings.

C. Ceramic and Clay

1. *Architectural Elements*—Baked clay (terracotta) elements used to decorate buildings. Elements include painted and relief plaques, revetments, carved and molded brick, wall ornaments and panels and/or painted tile wall ornaments and panels, sometimes with Arabic script.

2. *Vessels and Containers*—Include utilitarian types and fine tableware, incense burners, and oil lamps. Include glazed, molded, and painted ceramics, and molds. Types include boxes, plates, lamps, jars, and flasks. May be plain or decorated with floral or geometric patterns, or Arabic script, primarily using blue, green, brown, black, or yellow colors.

D. Glass

1. *Beads*—Forms include cylindrical, spherical, conical, disc, and others; may have cut, incised, or raised decoration; various colors.

E. Painting and Drawing

May depict courtly themes (*e.g.,* rulers, musicians, riders on camels) and city and architectural views, among others; may also be represented in manuscripts.

F. Textiles, Basketry, and Rope

1. *Religious Textiles*—In linen, silk, and wool. Islamic textiles and fragments. Includes garments, hangings, shrine covers, and fragments.

2. *Clothing*—Embroidered veils and head coverings, traditional Islamic wedding and ceremonial clothing, for both religious and secular purposes.

3. *Rugs*—Primarily in wool; sometimes with reeds or leather. Both for decorative purposes as well as prayer. Often woven with floral or geometric designs in bright colors.

4. *Baskets and Woven Mats*—Plant fibers used to make baskets and containers in a variety of shapes and sizes; sandals and mats.

5. *Nets and Ropes*—Rope and string used for a variety of purposes, including binding, lifting water for irrigation, fishing, measuring, and stringing beads for jewelry and garments.

G. Leather and Parchment

1. *Books and Manuscripts*—Either as sheets or bound volumes; including both secular texts and Islamic religious texts such as Qurans. Text is often written on vellum or other parchment (cattle, sheep, goat, or camel) then gathered in leather bindings. Paper may also be used. Types include books, scrolls, and manuscripts. May be decorated with colorful religious, geometric, or floral motifs.

2. *Saddles, Saddle Bags, and Saddle Covers*—Made of leather; for riding horses or camels.

3. *Bags*—In addition to saddlebags, include leather Quran pouches, or water pouches.

4. *Items for Personal Adornment*—Primarily in leather, including belts, sandals, shoes, armor, necklaces, bracelets, and other types of jewelry.

H. Wood

1. *Architectural Elements*—Includes doors, door fixtures, panels, beams, balconies, altars, stages, screens, ceilings, and tent posts. Types include doors, door frames, windows, window frames, walls, panels, beams, ceilings, balconies, altars. May be decorated with religious, geometric, or floral motifs; may have Arabic script.

2. *Architectural and Non-Architectural Relief Sculpture*—Carved and inlaid wood panels, rooms, beams, balconies, stages, panels, ceilings, and doors, frequently decorated with

religious, floral, or geometric motifs; may have script in Arabic.

3. *Ceremonial and Religious*—Includes pulpits (minbars) and prayer niches (mihrabs); book holders, lecterns, and cabinets; Quran boxes or other smaller objects such as chests and cases; Islamic study tables.

4. *Vessels and Containers*—Boxes, containers, chests, and other utilitarian objects. May be carved, painted, or inlaid. May be decorated with religious, geometric, or floral motifs; may have Arabic script.

5. *Furniture*—Includes thrones, chairs, tables, book holders, and cabinets.

I. Bone and Ivory

1. *Vessels and Containers*—Forms include small jars, perfume and unguent jars, and ritual vessels; may have cut, incised, raised, or painted decoration. May be decorated with religious, geometric, or floral motifs; may have Arabic script.

2. *Ceremonial and Religious*—Types include boxes, reliquaries (and their contents), plaques, amulets and pendants, stamps, and seal rings.

3. *Inlays*—For decorative furniture and architectural elements above.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 or Executive Order 13771 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and section 4(a) of Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph (b) is amended by adding Yemen to the list to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

* * * * *

(b) * * *

TABLE 2 TO PARAGRAPH (b)

State party	Cultural property	Decision No.
Yemen	Archaeological and ethnological material from Yemen	CBP Dec. 20–01.

Dated: February 4, 2020.

Mark A. Morgan,

Acting Commissioner, U.S. Customs and Border Protection.

Approved:

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2020–02553 Filed 2–5–20; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Transportation Security Administration

19 CFR Chapter I

49 CFR Chapter XII

Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People's Republic of China

AGENCY: U.S. Customs and Border Protection and U.S. Transportation Security Administration, Department of Homeland Security.

ACTION: Notification of arrival restrictions.

SUMMARY: This document announces a modification to the January 31, 2020 decision of the Secretary of the Department of Homeland Security (DHS) to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the People's Republic of China to arrive at one of the United States airports where the United States Government is focusing public health resources. This document adds four additional airports to the list of airports where flights can land and describes when the arrival restrictions will include those airports.

DATES: Flights departing after 5 p.m. EST on Sunday, February 2, 2020 and covered by the arrival restrictions are required to land at one of the airports identified in the January 31, 2020 document (JFK, ORD, SFO, SEA, HNL, LAX, ATL) or at IAD. Beginning at 6:30 a.m. EST on Monday February 3, 2020, DHS will expand the list of authorized airports to include EWR. Beginning at 7:30 a.m. EST on Monday, February 3,

2020, DHS will further expand the list of authorized airports to include DFW and DTW. Arrival restrictions continue until cancelled or modified by the Secretary of DHS and notification is published in the **Federal Register** of such cancellation or modification.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

The Centers for Disease Control and Prevention (CDC) is closely monitoring an outbreak of respiratory illness caused by a novel (new) coronavirus first identified in Wuhan City, Hubei Province, China. Coronaviruses are a large family of viruses that are common in many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people such as with Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).

The potential for widespread transmission of this virus by infected individuals seeking to enter the United States threatens the security of our transportation system and infrastructure, and the national security. In an abundance of caution and to assist in preventing the introduction and spread of this communicable disease in the United States, DHS, in coordination with the CDC and other Federal, state and local agencies charged with protecting the American public, is implementing enhanced arrival protocols to ensure that all travelers with recent travel from the People's Republic of China are provided public health services. Entry screening is part of a layered approach used with other public health measures already in place to detect arriving travelers who are exhibiting overt signs of illness, reporting of ill travelers by air carriers during travel, and referral of ill travelers arriving at a U.S. port of entry by U.S. Customs and Border Protection (CBP) to appropriate public health officials to slow and prevent the spread of communicable disease into the United States.

To ensure that travelers with recent travel from the People's Republic of China are screened, DHS directs that all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the People's Republic of China arrive at airports where enhanced public health services and protocols are being implemented. While DHS anticipates working with air carriers to identify potential persons from the affected area prior to boarding, air carriers shall comply with the requirements of this document.

On Friday, January 31, 2020, DHS posted a document on the **Federal Register** public inspection page, announcing the DHS Secretary's decision that arrival restrictions would go into effect at 5 p.m. EST on Sunday, February 2, 2020 at seven airports. This document adds four additional airports to the list of airports where flights can land and describes when the arrival restrictions will include those airports.

DHS notes that implementation of the arrival restrictions in this document and in the January 31, 2020 document may entail technical and logistical difficulties for airlines. We are confident that all airlines will make every effort to comply. DHS is appreciative of good faith attempts at compliance by airlines.

Notification of Arrival Restrictions Applicable to All Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People's Republic of China

Pursuant to 19 U.S.C. 1433(c), 19 CFR 122.32, 49 U.S.C. 114, and 49 CFR 1544.305 and 1546.105, DHS has the authority to limit the location where all flights entering the U.S. from abroad may land. Under this authority and effective for flights departing after 5 p.m. EST on Sunday, February 2, 2020, I hereby direct all operators of aircraft to ensure that all flights carrying persons who have recently traveled from, or were otherwise present within, the People's Republic of China only land at one of the following airports:

- John F. Kennedy International Airport (JFK), New York;
- Chicago O'Hare International Airport (ORD), Illinois;
- San Francisco International Airport (SFO), California;
- Seattle-Tacoma International Airport (SEA), Washington;
- Daniel K. Inouye International Airport (HNL), Hawaii;
- Los Angeles International Airport, (LAX), California;
- Hartsfield-Jackson Atlanta International Airport (ATL), Georgia;
- Washington-Dulles International Airport (IAD), Virginia;

Effective at 6:30 a.m. EST on Monday February 3, this list of airports is expanded to include:

- Newark Liberty International Airport (EWR), New Jersey.

Effective at 7:30 a.m. EST on Monday February 3, this list of airports is expanded to include:

- Dallas/Fort Worth International Airport (DFW), Texas; and
- Detroit Metropolitan Airport (DTW), Michigan.

This direction considers a person to have recently traveled from the People's Republic of China if that person departed from, or was otherwise present within, the People's Republic of China (excluding the special autonomous regions of Hong Kong and Macau) within 14 days of the date of the person's entry or attempted entry into the United States. Also, for purposes of this document, crew, and flights carrying only cargo (*i.e.,* no passengers or non-crew), are excluded from the measures herein. This direction is subject to any changes to the airport landing destination that may be required for aircraft and/or airspace safety as directed by the Federal Aviation Administration.

This list of affected airports may be modified by the Secretary of Homeland Security in consultation with the Secretary of Health and Human Services and the Secretary of Transportation. This list of affected airports may be modified by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cbp.gov.* The restrictions will remain in effect until superseded, modified, or revoked by publication in the **Federal Register**.

For purposes of this **Federal Register** document, ''United States'' means the States of the United States, the District of Columbia, and territories and possessions of the United States (including Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam).

Chad F. Wolf,

Acting Secretary, U.S. Department of Homeland Security.

[FR Doc. 2020–02413 Filed 2–6–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2019–N–5325]

Medical Devices; Immunology and Microbiology Devices; Classification of Human Immunodeficiency Virus Drug Resistance Genotyping Assay Using Next Generation Sequencing Technology

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is classifying the human immunodeficiency virus (HIV) drug resistance genotyping assay using next generation sequencing (NGS) technology into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the HIV drug resistance genotyping assay using NGS technology's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective on February 7, 2020. The classification was applicable on November 5, 2019.

FOR FURTHER INFORMATION CONTACT: Sana F. Hussain, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the HIV drug resistance genotyping assay using NGS technology as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976 (Pub. L. 94–295), which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order [1] finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

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

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

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

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

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

On March 19, 2019, Vela Diagnostics USA Inc. submitted a request for De Novo classification of the SENTOSA SQ HIV Genotyping Assay. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

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

Therefore, on November 5, 2019, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 866.3955. We have named the generic type of device ''Human immunodeficiency virus drug resistance genotyping assay using next generation sequencing technology,'' and it is identified as a prescription in vitro diagnostic device intended for use in detecting HIV genomic mutations that confer resistance to specific antiretroviral drugs. The device is intended to be used as an aid in monitoring and treating HIV infection.

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

[1] In December 2019, FDA began adding the term ''Final amendment'' to the ''ACTION'' caption for these documents, typically styled ''Final order'', to indicate that they ''amend'' the Code of Federal Regulations. This editorial change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

TABLE 1—IN VITRO HIV DRUG RESISTANCE GENOTYPE ASSAY USING NGS TECHNOLOGY RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Inaccurate detection of resistance mutation(s).	Device description information, including performance characteristics, and performance studies in labeling.
	Device description validation procedures and performance studies meeting acceptance criteria.
	Device limitations in labeling for genetic mutation detection.
Incorrect interpretation of test results.	Device description information, performance characteristics, and performance studies in labeling.

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

At the time of classification, HIV drug resistance genotyping assays using NGS technology are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

Section 510(m)(2) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) if, after notice of our intent to exempt and consideration of comments, we determine by order that premarket notification is not necessary to provide reasonable assurance of safety and effectiveness of the device. We are not announcing intent to exempt at this time.

III. Analysis of Environmental Impact

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

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

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

■ 2. Add § 866.3955 to subpart D to read as follows:

§ 866.3955 Human immunodeficiency virus (HIV) drug resistance genotyping assay using next generation sequencing technology.

(a) *Identification.* The HIV drug resistance genotyping assay using next generation sequencing (NGS) technology is a prescription in vitro diagnostic device intended for use in detecting HIV genomic mutations that confer resistance to specific antiretroviral drugs. The device is intended to be used as an aid in monitoring and treating HIV infection.

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

(1) The intended use of the device must:

(i) Specify the analyte (RNA or DNA), the genes in which mutations are detected, the clinical indications appropriate for test use, the sample type, and the specific population(s) for which the device in intended.

(ii) State that the device in not intended for use as an aid in the diagnosis of infection with HIV or to confirm the presence of HIV infection, or for screening donors of blood, plasma, or human cells, tissues, and cellular and tissue-based products.

(2) The labeling must include:

(i) A detailed device description, including but not limited to, all procedures from collection of the patient sample to reporting the final result, all device components, the control elements incorporated into the test procedure, instrument requirements, and reagents required for use but not provided as part of the device.

(ii) Performance characteristics from analytical studies and all intended specimen types.

(iii) A list of specific mutations detected.

(iv) The name and version of the standardized database used for sequence comparison and results derivation.

(v) A detailed explanation of the interpretation of test results, including acceptance criteria for evaluating the validity of a test run.

(vi) A limitation statement that the device is intended to be used in conjunction with clinical history and other laboratory findings. Results of this test are intended to be interpreted by a physician or equivalent.

(vii) A limitation statement that lack of detection of drug resistance mutations does not preclude the possibility of genetic mutation.

(viii) A limitation statement indicating the relevant genetic mutations that are included in the standardized database of HIV genomic sequences used for comparison and results derivation but that are not detected by the test.

(ix) A limitation statement that detection of a genomic drug resistance mutation may not correlate with phenotypic gene expression.

(x) A limitation statement that the test does not detect all genetic mutations associated with antiviral drugs.

(xi) A limitation statement listing the HIV types for which the test is not intended, if any.

(3) Device verification and validation must include:

(i) Design of primer sequences and rationale for sequence selection.

(ii) Computational path from collected raw data to reported result.

(iii) Detailed documentation of analytical studies including, but not limited to, characterization of the cutoff, analytical sensitivity, inclusivity, reproducibility, interference, cross reactivity, instrument and method carryover/cross contamination, sample stability, and handling for all genomic mutations claimed in the intended use.

(iv) Precision studies that include all genomic mutations claimed in the intended use.

(v) Detailed documentation of a multisite clinical study evaluating the sensitivity and specificity of the device. Clinical study subjects must represent the intended use population and device results for all targets claimed in the intended use must be compared to Sanger sequencing or other methods found acceptable by FDA. Drug resistance-associated mutations at or above the 20 percent frequency level must detect the mutations in greater than 90 percent of at least 10 replicates, for each of drug class evaluated.

(vi) Documentation that variant calling is performed at a level of coverage that supports positive detection of all genomic mutations claimed in the intended use.

(vii) Detailed documentation of limit of detection (LoD) studies in which device performance is evaluated by testing a minimum of 100 HIV-positive clinical samples including samples with analyte concentrations near the clinical decision points and near the LoD.

(A) The LoD for the device must be determined using a minimum of 10 HIV–1 group M genotypes if applicable. A detection rate at 1 × LoD greater than or equal to 95 percent must be demonstrated for mutations with a frequency greater than 20 percent.

(B) The LoD of genetic mutations at frequency levels less than 20 percent must be established.

(viii) A predefined HIV genotyping bioinformatics analysis pipeline (BAP). The BAP must adequately describe the bioinformatic analysis of the sequencing data, including but not limited to read alignment, variant calling, assembly, genotyping, quality control, and final result reporting.

(ix) A clear description of the selection and use of the standardized database that is used for sequence comparison and results derivation.

(4) Premarket notification submissions must include the information in paragraphs (b)(3)(i) through (ix) of this section.

Dated: January 27, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01725 Filed 2–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM–2019–0079]

RIN 1010–AE05

2020 Civil Penalties Inflation Adjustments for Oil, Gas, and Sulfur Operations in the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements the 2020 inflation adjustments to the maximum daily civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations for violations of the Outer Continental Shelf Lands Act (OCSLA) and the Oil Pollution Act of 1990 (OPA), pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (FCPIA Improvements Act) and relevant Office of Management and Budget (OMB) guidance. The 2020 adjustment multiplier of 1.01764 accounts for one year of inflation from October 2018 through October 2019.

DATES: This rule is effective on February 7, 2020.

FOR FURTHER INFORMATION CONTACT: Deanna Meyer-Pietruszka, Chief, Office of Policy, Regulation, and Analysis, Bureau of Ocean Energy Management, at (202) 208–6352 or by email at *deanna.meyer-pietruszka@boem.gov*.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

OCSLA authorizes the Secretary of the Interior to impose a daily civil monetary penalty for a violation of OCSLA or its regulations, leases, permits, or orders and directs the Secretary to adjust the maximum penalty at least every three years to reflect any inflation increase in the Consumer Price Index. 43 U.S.C. 1350(b)(1). Similarly, OPA authorizes civil monetary penalties for failure to comply with OPA's financial responsibility provisions or its implementing regulations. 33 U.S.C. 2716a(a). OPA does not include a maximum daily civil penalty inflation adjustment provision. Id.

The FCPIA Improvements Act [1] requires that Federal agencies publish inflation adjustments to their civil monetary penalties in the **Federal Register** not later than January 15 annually.[2] Public Law 114–74, sec. 701(b)(1). The purposes behind these inflation adjustments are to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, sec. 2 (codified at 28 U.S.C. 2461 note).

II. Background

BOEM implemented the 2019 inflation adjustment for its civil monetary penalties through a final rule published in the **Federal Register** on March 26, 2019, which accounted for

[1] The FCPIA Improvements Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990. Public Law 101–410 (codified at 28 U.S.C. 2461 note).

[2] Under the FCPIA Improvements Act, Federal agencies were required to adjust their civil monetary penalties for inflation with an initial ''catch-up'' adjustment through an interim final rulemaking in 2016 and are required to make subsequent inflation adjustments not later than January 15 annually, beginning in 2017. Public Law 114–74, sec. 701(b)(1).

inflation through October 2018. Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Civil Penalties Inflation Adjustments, 84 FR 11,222 (Mar. 26, 2019).[3]

For 2020, OMB issued guidance that explains agency statutory responsibilities for identifying applicable civil monetary penalties and performing the annual adjustment; publishing revisions to regulations to implement the adjustment in the **Federal Register**; applying adjusted penalty levels; and performing agency oversight of inflation adjustments. Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, OMB Memorandum M–20–05, December 16, 2019 (OMB M–20–05), available at *https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf*.

BOEM is implementing the 2020 inflation adjustments to the OCSLA and OPA maximum daily civil monetary penalties through this final rule pursuant to the FCPIA Improvements Act and OMB M–20–05. A proposed rule is unnecessary. The FCPIA Improvements Act expressly exempts annual civil penalty inflation adjustments from the Administrative Procedure Act's (APA) notice of proposed rulemaking, public comment, and standard effective date provisions. FCPIA Improvements Act, Public Law 114–74, sec. 701(b)(1)(D); APA, 5 U.S.C. 553.[4]

III. Calculation of 2020 Adjustments

OMB issued guidance to Federal agencies on implementing the 2020 annual civil monetary penalties inflation adjustments, including the adjustment multiplier: 1.01764. OMB M–20–05; FCPIA Improvements Act, sec. 701(b)(4).[5] In accordance with the FCPIA Improvements Act and OMB M–20–05, BOEM determined that the OCSLA and OPA maximum daily civil monetary penalties require annual inflation adjustments and is issuing this final rule adjusting those penalty amounts for inflation through October 2019.

For 2020, BOEM multiplied the current OCSLA maximum daily civil penalty of $44,675 by the multiplier 1.01764 to equal $45,463.07 rounded to nearest cent ($44,675 × 1.01764 = $45,463.07). The FCPIA Improvements Act requires the resulting amount be rounded to the nearest dollar. Accordingly, the 2020 adjusted OCSLA maximum daily civil penalty is $45,463.

For 2020, BOEM multiplied the current OPA maximum daily civil penalty amount of $47,357 by the multiplier 1.01764 to equal $48,192.38 rounded to nearest cent ($47,357 × 1.01764 = $48,192.38). The FCPIA Improvements Act requires that the resulting amount be rounded to the nearest dollar. Accordingly, the 2020 adjusted OPA maximum daily civil penalty is $48,192.

The adjusted penalty amounts take effect immediately upon publication of this rule. Under the FCPIA Improvements Act, the adjusted amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates the increase.

This table summarizes BOEM's 2020 maximum daily civil monetary penalties for each OCSLA and OPA violation:

CFR citation	Description of the penalty	Current maximum penalty	Multiplier	Adjusted maximum penalty
30 CFR 550.1403 (OCSLA)	Failure to comply per day per violation	$44,675	1.01764	$45,463
30 CFR 553.51(a) (OPA)	Failure to comply per day per violation	$47,357	1.01764	48,192

IV. Procedural Requirement

A. Statutes

1. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) is not required because, as a regulation of an administrative nature, this rule is covered by a categorical exclusion. See 43 CFR 46.210(i). BOEM also has determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, a detailed statement under NEPA is not required.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The FCPIA Improvements Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. FCPIA Improvements Act, Public Law 114–74, sec. 701(b)(1)(D); OMB M–20–05 at 4. Thus, the RFA does not apply to this rulemaking.

3. Paperwork Reduction Act

This rule does not contain information collection requirements, and, therefore, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments, or the private sector, of more than $164 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

[3] The delayed publication resulted from a lapse of Federal government funding from December 22, 2018, until January 25, 2019. 84 FR 11,222, 11,222 (Mar. 26, 2019).

[4] Specifically, Congress directed that agencies adjust civil monetary penalties ''notwithstanding section 553 of title 5, United States Code [Administrative Procedure Act (APA)],'' which generally requires prior notice of proposed rulemaking, opportunity for public comment on proposed rulemaking, and publication of a final rule at least 30 days before its effective date. FCPIA Improvements Act, sec. 4(b)(2); APA, 5 U.S.C. 553. OMB confirmed this interpretation of the FCPIA Improvements Act. OMB M–20–05 at 4 (''This means that the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.'').

[5] The annual inflation adjustment is based on the percent change between the Consumer Price Index for All Urban Consumers (CPI–U) for the October preceding the date of the adjustment and the prior year's October CPI–U. Consistent with OMB M–20–05, the 2020 multiplier can be calculated by dividing the October 2019 CPI–U by the October 2018 CPI–U. In this case, October 2019 CPI–U (257.346)/October 2018 CPI–U (252.885) = 1.01764.

5. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Will not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*) and OMB guidance,[6] the Office of Information and Regulatory Affairs (OIRA) designated this rule as not a major rule as defined by that act.[7] Office of Info. & Regulatory Affairs, Office of Mgmt. & Budget, *Fall 2019 Unified Agenda of Regulatory and Deregulatory Actions*, Dep't of the Interior, RIN 1010–AE03 (note the RIN for this rule is listed in error, the correct RIN is 1010–AE05), available at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1010-AE03.*

B. Executive Orders (E.O.)

1. Governmental Actions and Interference with Constitutionally Protected Property Rights (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

2. Regulatory Planning and Review (E.O. 12866); Improving Regulation and Regulatory Review (E.O. 13563); and Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

E.O. 12866 provides that OIRA will review all significant rules. OIRA has determined that this rule is not significant. See OMB M–20–05 at 3.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to reduce uncertainty and to promote predictability and the use of the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. However, there is no science being used in this rulemaking, as Congress directed agencies to adjust the maximum daily civil penalty amounts using a particular equation and BOEM does not have discretion to use any other factor in the adjustment. BOEM has developed this rule in a manner consistent with these requirements, to the extent relevant and feasible given the limited discretion provided agencies under the FCPIA Improvements Act.

E.O. 13771 directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in section 3(f) of E.O. 12866. OIRA has determined this rule is not significant. This final rule exclusively implements the annual inflation adjustments consistent with OMB's guidance and its determination that this rule is not a significant regulatory action. OMB M–20–05 at 3. Thus, this rule is not considered an E.O. 13771 regulatory action. Id.

3. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

4. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. To the extent State and local governments have a role in outer continental shelf activities, this rule will not affect that role. Therefore, a federalism summary impact statement is not required.

5. Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

The Department of the Interior and BOEM strive to strengthen their government-to-government relationships with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. BOEM has evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual part 512, chapters 4 and 5, and under the criteria in E.O. 13175. BOEM has determined that this rule has no substantial direct effects on Federally-recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department of the Interior's and BOEM's tribal and ANCSA consultation policies is not required.

6. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, Liability, Limit of liability, Oil and gas exploration, Oil pollution, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Surety bonds, Treasury securities.

Dated: January 28, 2020.

Casey Hammond,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, BOEM amends title 30, chapter V, subchapter B, parts 550 and 553 of the Code of Federal Regulations as follows:

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 2. Revise § 550.1403 to read as follows:

[6] Office of Mgmt. & Budget, Exec. Office of the President, OMB M–19–14, Guidance on Compliance with the Congressional Review Act (2019).

[7] 5 U.S.C. 804(2).

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is $45,463 per day per violation.

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

■ 3. The authority citation for part 553 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

■ 4. Revise § 553.51(a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to $48,192 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

* * * * *

[FR Doc. 2020–02059 Filed 2–6–20; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1241

[Docket No. ONRR–2017–0003; DS63644000 DRT000000.CH7000 201D1113RT]

RIN 1012–AA25

Inflation Adjustments to Civil Monetary Penalty Rates for Calendar Year 2020

AGENCY: Office of the Secretary, Office of Natural Resources Revenue, Interior.

ACTION: Final rule.

SUMMARY: The Office of Natural Resources Revenue (ONRR) publishes this final rule to increase our maximum civil monetary penalty (CMP) rates for inflation occurring between October 2018 and October 2019.

DATES: This rule is effective on February 7, 2020.

FOR FURTHER INFORMATION CONTACT: For questions on procedural issues, contact Luis Aguilar, Regulatory Specialist, by telephone at (303) 231–3418 or email to *Luis.Aguilar@onrr.gov.* For questions on technical issues, contact Michael Marchetti, Chief of Enforcement, by telephone at (303) 231–3125 or email to *Michael.Marchetti@onrr.gov.* You may obtain a paper copy of this rule by contacting Mr. Aguilar by phone or email.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively, ''the Act''), codified at 28 U.S.C. 2461 (specifically, see the notes for more information), requires Federal agencies to adjust their civil monetary penalty (CMP) rates for inflation every year.

In accordance with sections 4 and 5 of the Act, the annual CMP inflation adjustment for 2020 is based on the percent change in the Consumer Price Index for all Urban Consumers (CPI–U) between October 2018 and October 2019. The CPI–U for October 2018 was 252.885, and for October 2019 was 257.346, for an increase of 1.764%. In accordance with section 5(a) of the Act, the new maximum CMP rates must be rounded to the nearest whole dollar. In accordance with section 6 of the Act, the new maximum penalty rates will apply only to CMPs, including those which are associated with violations predating the increase, that are assessed after the date the increase takes effect.

ONRR assesses CMPs under the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1719, and our regulations at 30 CFR part 1241. We calculate and assess CMPs per violation, at the applicable rate, for each day such violation continues.

II. Inflation-Adjusted Maximum Rates

This final rule increases the maximum CMP rates for each of the four categories of violations identified in 30 U.S.C. 1719(a)–(d) and 30 CFR part 1241. The following list identifies the existing ONRR regulations containing CMP rates and shows those rates before and after this increase.

30 CFR citation	Current penalty rate	2020 inflation adjustment multiplier	2020 adjusted penalty rate
1241.52(a)(2)	$1,251	1.01764	$1,273
1241.52(b)	12,519	1.01764	12,740
1241.60(b)(1)	25,037	1.01764	25,479
1241.60(b)(2)	62,595	1.01764	63,699

III. Procedural Requirements

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in OMB will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.,* because the rule only makes adjustments for inflation. The Federal

Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties with an annual inflation adjustment. Therefore, the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, local government agencies; or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States–based enterprises to compete with foreign–based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, we are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) requires because this rule is not an unfunded mandate.

E. Takings (E.O. 12630)

This rule does not result in a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, this rule does not require a takings implication assessment.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of section 3(a), which requires that we review all regulations to eliminate errors and ambiguity and to write them to minimize litigation.

b. Meets the criteria of section 3(b)(2), which requires that we write all regulations in clear language, using clear legal standards.

H. Consultation With Indian Tribal Governments (E.O. 13175)

The Department strives to strengthen its government–to–government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it will have no substantial, direct effects on federally-recognized Indian Tribes and does not require consultation.

I. Paperwork Reduction Act

This rule:

(a) Does not contain any new information collection requirements.

(b) Does not require a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). See 5 CFR 1320.4(a)(2).

J. National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under NEPA because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) in that this rule is ''. . . *of an administrative, financial, legal, technical, or procedural nature.*. . .'' We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211 and, therefore, does not require a Statement of Energy Effects.

L. Clarity of This Regulation

We are required by E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), and E.O. 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized.

(b) Use the active voice to address readers directly.

(c) Use common, everyday words and clear language rather than jargon.

(d) Be divided into short sections and sentences.

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send your comments to *Luis.Aguilar@onrr.gov.* Your comments should be as specific as possible. For example, you should tell us the number of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Administrative Procedure Act (APA)

The Act requires agencies to publish annual inflation adjustments by no later than January 15 of each year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, we are issuing the 2020 annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that ''notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest,'' the agency may issue a rule without providing notice and an opportunity for prior public comment. Under section 553(b), ONRR finds that there is good cause to promulgate this rule without first providing for public comment. ONRR is promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish a final rule and to update the civil penalty amounts by applying a specified formula. We have no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule prior to promulgation. Thus, providing for notice and public comment is unnecessary.

Furthermore, ONRR finds under section 553(d)(3) of the APA that good cause exists to make this direct final rule effective immediately upon publication in the **Federal Register**. In the Act, Congress expressly required Federal agencies to publish annual inflation adjustments to civil penalties in the **Federal Register** no later than January 15 of every year, notwithstanding section 553 of the APA. Under the statutory framework and OMB guidance, the new penalty levels

are to take effect immediately upon publication. Moreover, an effective date after January 15 would delay application of the new penalty levels, contrary to Congress's intent.

List of Subjects in 30 CFR Part 1241

Administrative practice and procedure, Civil penalties, Coal, Geothermal, Inflation, Mineral resources, Natural gas, Notices of non-compliance, Oil.

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

Authority and Issuance

For the reasons discussed in the preamble, ONRR amends 30 CFR part 1241 as set forth below:

PART 1241—PENALTIES

■ 1. The authority citation for part 1241 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* 1801 *et seq.*

§ 1241.52 [Amended]

■ 2. Amend § 1241.52 by:
■ a. In paragraph (a)(2), removing ''$1,251'' and adding in its place ''$1,273''.
■ b. In paragraph (b) introductory text, removing ''$12,519'' and adding in its place ''$12,740''.

§ 1241.60 [Amended]

■ 3. Amend § 1241.60 by:
■ a. In paragraph (b)(1) introductory text, removing ''$25,037'' and adding in its place ''$25,479''.
■ b. In paragraph (b)(2), removing ''$62,595'' and adding in its place ''$63,699''.

[FR Doc. 2020–01724 Filed 2–6–20; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 555

Mali Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is adding regulations to implement Executive Order 13882 of July 26, 2019 (''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Mali''). OFAC intends to supplement these regulations with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy.

DATES: *Effective Date:* February 7, 2020.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*www.treasury.gov/ofac*).

Background

On July 26, 2019, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA) and the United Nations Participation Act (22 U.S.C. 287c) (UNPA), issued Executive Order 13882 (84 FR 37055, July 30, 2019) (E.O. 13882).

In E.O. 13882, the President determined that the situation in Mali, including repeated violations of ceasefire arrangements made pursuant to the 2015 Agreement on Peace and Reconciliation in Mali; the expansion of terrorist activities into southern and central Mali; the intensification of drug trafficking and trafficking in persons, human rights abuses, and hostage-taking; and the intensification of attacks against civilians, the Malian defense and security forces, the United Nations Multidimensional Integrated Stabilizations Mission in Mali (MINUSMA), and international security presences, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States, and declared a national emergency to deal with that threat.

OFAC is issuing the Mali Sanctions Regulations, 31 CFR part 555 (the ''Regulations''), to implement E.O. 13882, pursuant to authorities delegated to the Secretary of the Treasury in E.O. 13882. A copy of E.O. 13882 appears in appendix A to this part.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 555 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy. The appendix to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 555

Administrative practice and procedure, Banks, Banking, Blocking of assets, Mali, Penalties, Reporting and recordkeeping requirements, Sanctions.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 555 to 31 CFR chapter V to read as follows:

PART 555—MALI SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

Subpart B—Prohibitions

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13882, 84 FR 37055, July 30, 2019.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 555.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Note 1 to § 555.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy.

Subpart B—Prohibitions

§ 555.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13882 of July 26, 2019, or any further Executive orders issued pursuant to the national emergency declared in Executive Order 13882, are prohibited pursuant to this part.

Note 1 to § 555.201: The names of persons designated pursuant to Executive Order 13882, or pursuant to any further Executive orders issued pursuant to the national emergency declared in Executive Order 13882, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) using the identifier formulation ''[MALI–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked]].'' The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 555.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 555.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List using the identifier formulation ''[BPI–MALI–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked pending investigation]].''

Note 3 to § 555.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

§ 555.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 555.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or interest in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 555.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or

maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

(e) The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(f) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 555.201.

§ 555.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 555.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 555.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 555.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 555.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 555.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 555.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 555.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 555.205 Exempt transactions.

(a) *United Nations Participation Act.* The exemptions described in this section do not apply to transactions involving property or interests in property of persons whose property and interests in property are blocked pursuant to the authority of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA).

Note 1 to paragraph (a): Persons whose property and interests in property are blocked pursuant to the authority of the UNPA include those listed on *both* OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) and the Consolidated United Nations Security Council Sanctions List (see *https://www.un.org*) as well as persons listed on the SDN List for being owned or controlled by, or acting for or on behalf of, such persons.

(b) *Personal communications.* Except as provided in paragraph (a), the prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(c) *Information or informational materials.* (1) Except as provided in paragraph (a), the prohibitions contained in this part do not apply to the importation from any country and the exportation to any country of any information or informational materials, as defined in § 555.305, whether commercial or otherwise, regardless of format or medium of transmission.

(2) Except as provided in paragraph (a) of this section, this section does not exempt from regulation transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of information or informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include payment of advances for information or

informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) Except as provided in paragraph (a) of this section, this section does not exempt transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730 through 774, or to the exportation of goods (including software) or technology for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property and interests in property are blocked pursuant to § 555.201 are prohibited.

(d) *Travel.* Except as provided in paragraph (a) of this section, the prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation or exportation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 555.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 555.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 555.201 held in the name of a person whose property and interests in property are blocked pursuant to § 555.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note 1 to § 555.301: *See* § 555.406 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 555.201.

§ 555.302 Effective date.

(a) The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, and with respect to a person whose property and interests in property are blocked pursuant to § 555.201, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

(b) For the purposes of this section, c*onstructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the **Federal Register**.

§ 555.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 555.304 Financial, material, or technological support.

The term *financial, material, or technological support* means any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

§ 555.305 Information or informational materials.

(a)(1) The term *information or informational materials* includes publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered information or informational materials, artworks must be classified under heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials,* with respect to exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (EAA), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 555.306 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 555.307 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

Note 1 to § 555.307: *See* § 501.801 of this chapter on licensing procedures.

§ 555.308 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

§ 555.309 Person.

The term *person* means an individual or entity.

§ 555.310 Property; property interest.

The terms *property* and *property interest* include money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any

documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 555.311 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 555.312 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 555.313 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 555.314 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or other extensions of credit, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, trust companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 555.401 [Reserved]

§ 555.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 555.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 555.201, such property shall no longer be deemed to be property blocked pursuant to § 555.201, unless there exists in the property another interest that is blocked pursuant to § 555.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 555.201, such property shall be deemed to be property in which such person has an interest and therefore blocked.

§ 555.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 555.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 555.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 555.201 if effected after the effective date.

§ 555.406 Entities owned by one or more persons whose property and interests in property are blocked.

Persons whose property and interests in property are blocked pursuant to § 555.201 have an interest in all property and interests in property of an entity in which such persons directly or indirectly own, whether individually or in the aggregate, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 555.201, regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 555.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Mali sanctions page on OFAC's website: *www.treasury.gov/ofac*.

§ 555.502 [Reserved]

§ 555.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 555.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 555.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note 1 to § 555.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 555.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 555.505 Entries in certain accounts for normal service charges.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 555.506 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 555.201 is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to § 555.507, which authorizes certain payments for legal services from funds originating outside the United States; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 555.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by this section. Additionally, U.S. persons who provide services authorized by this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. *See* § 555.404.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 555.201 is prohibited unless licensed pursuant to this part.

Note 1 to § 555.506: Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available.

§ 555.507 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 555.506(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 555.201 is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 555.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in paragraph (a) authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 555.201, any other part of this chapter, or any Executive order has an interest.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual

reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) Email (preferred method): *OFAC.Regulations.Reports@treasury.gov*; or

(ii) U.S. mail: OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

§ 555.508 Emergency medical services.

The provision and receipt of nonscheduled emergency medical services that are otherwise prohibited by this part are authorized.

Subpart F—Reports

§ 555.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties and Findings of Violation

§ 555.701 Penalties and Findings of Violation.

(a) The penalties available under section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), as adjusted annually pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note) or, in the case of criminal violations, as adjusted pursuant to 18 U.S.C. 3571, are applicable to violations of the provisions of this part.

(b) OFAC has the authority, pursuant to IEEPA, to issue Pre-Penalty Notices, Penalty Notices, and Findings of Violation; impose monetary penalties; engage in settlement discussions and enter into settlements; refer matters to the United States Department of Justice for administrative collection; and, in appropriate circumstances, refer matters to appropriate law enforcement agencies for criminal investigation and/or prosecution. For more information, see appendix A to part 501 of this chapter, which provides a general framework for the enforcement of all economic sanctions programs administered by OFAC, including enforcement-related definitions, types of responses to apparent violations, general factors affecting administrative actions, civil penalties for failure to comply with a requirement to furnish information or keep records, and other general civil penalties information.

Subpart H—Procedures

§ 555.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 555.802 Delegation of certain authorities of the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13882 of July 26, 2019, and any further Executive orders issued pursuant to the national emergency declared in Executive Order 13882 of July 26, 2019, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 555.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures, and other procedures, see § 501.901 of this chapter. 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 OMB.

Appendix A to Part 555—Executive Order 13882

Executive Order 13882 of July 26, 2019

Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Mali

By the authority vested in me as President by the Constitution and the laws of the United States of America of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), the United Nations Participation Act of 1945 (22 U.S.C. 287c) (UNPA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution (UNSCR) 2374 of September 5, 2017, and UNSCR 2432 of August 30, 2018,

I, DONALD J. TRUMP, President of the United States of America, find that the situation in Mali, including repeated violations of ceasefire arrangements made pursuant to the 2015 Agreement on Peace and Reconciliation in Mali; the expansion of terrorist activities into southern and central Mali; the intensification of drug trafficking and trafficking in persons, human rights abuses, and hostage-taking; and the intensification of attacks against civilians, the Malian defense and security forces, the United Nations Multidimensional Integrated Stabilizations Mission in Mali (MINUSMA), and international security presences, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat. I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be responsible for or complicit in, or to have directly or indirectly engaged in, any of the following in or in relation to Mali:

(A) Actions or policies that threaten the peace, security, or stability of Mali;

(B) actions or policies that undermine democratic processes or institutions in Mali;

(C) a hostile act in violation of, or an act that obstructs, including by prolonged delay, or threatens the implementation of, the 2015 Agreement on Peace and Reconciliation in Mali;

(D) planning, directing, sponsoring, or conducting attacks against local, regional, or state institutions, the Malian defense and security forces, any international security presences, MINUSMA peacekeepers, other United Nations or associated personnel, or any other peacekeeping operations;

(E) obstructing the delivery or distribution of, or access to, humanitarian assistance;

(F) planning, directing, or committing an act that violates international humanitarian law or that constitutes a serious human rights

abuse or violation, including an act involving the targeting of civilians through the commission of an act of violence, abduction or enforced disappearance, forced displacement, or an attack on a school, hospital, religious site, or location where civilians are seeking refuge;

(G) the use or recruitment of children by armed groups or armed forces in the context of the armed conflict in Mali;

(H) the illicit production or trafficking of narcotics or their precursors originating or transiting through Mali;

(I) trafficking in persons, smuggling migrants, or trafficking or smuggling arms or illicitly acquired cultural property; or

(J) any transaction or series of transactions involving bribery or other corruption, such as the misappropriation of Malian public assets or expropriation of private assets for personal gain or political purposes;

(ii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property and interests in property are blocked pursuant to this order; or

(iii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order.

Sec. 2. The unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 1 of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended, except where the Secretary of State determines that the person's entry is in the national interest of the United States, including when the Secretary so determines based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 3. I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 4. The prohibitions in section 1 of this order include but are not limited to:

(a) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. For the purposes of this order:

(a) The term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including promulgating rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to implement this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All agencies of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 10. (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

(c) This order 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.

DONALD J. TRUMP
THE WHITE HOUSE,
July 26, 2019.

Dated: January 30, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Approved:

Dated: February 3, 2020.

Justin G. Muzinich,

Deputy Secretary, Department of the Treasury.

[FR Doc. 2020–02441 2–6–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 36 and 42

RIN 2900–AQ85

Federal Civil Penalties Inflation Adjustment Act Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is providing public notice of inflationary adjustments to the maximum civil monetary penalties assessed or enforced by VA, as implemented by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, for calendar year 2020. VA may impose civil monetary penalties for false loan guaranty certifications. Also, VA may impose civil monetary penalties for fraudulent claims or written statements made in connection with VA programs generally. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, sets forth a formula that increases the maximum statutory amounts for civil monetary penalties and directs VA to give public notice of the new maximum amounts by regulation. Accordingly, VA is providing notice of the calendar year 2020 inflationary adjustments that increase maximum civil monetary penalties from $22,927 to $23,331 for false loan guaranty certifications and from $11,463 to $11,665 for fraudulent claims or written statements made in connection with VA programs generally.

DATES: *Effective Date:* This rule is effective February 7, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Team,

Loan Guaranty Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8862. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (Pub. L. 114–74, sec. 701, 129 Stat. 599), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act was codified in a note following 28 U.S.C. 2461. The 2015 Act requires agencies to publish annual adjustments for inflation, based on the percent change between the Consumer Price Index (defined in the Act as the Consumer Price Index for all-urban consumers (CPI–U) published by the Department of Labor) for the month of October preceding the date of the adjustment and the prior year's October CPI–U. 28 U.S.C. 2461 note, secs. 4(a) and (b) and 5(b)(1). This rule implements the 2020 calendar year inflation adjustment amounts.

Under 38 U.S.C. 3710(g)(4)(B), VA is authorized to levy civil monetary penalties against private lenders that originate VA-guaranteed loans if a lender falsely certifies that they have complied with certain credit information and loan processing standards, as set forth by chapter 37, title 38 U.S.C. and part 36, title 38 CFR. Under section 3710(g)(4)(B), any lender who knowingly and willfully makes such a false certification shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater. VA implemented the penalty amount in 38 CFR 36.4340(k)(1)(i) and (k)(3). On December 16, 2019, OMB issued Circular M–20–05. This circular reflects that the October 2018 CPI–U was 252.855 and the October 2019 CPI–U was 257.346, resulting in an inflation adjustment multiplier of 1.01764. Accordingly, the calendar year 2020 inflation revision imposes an adjustment from $22,927 to $23,331.

Under 31 U.S.C. 3802, VA can impose monetary penalties against any person who makes, presents, or submits a claim or written statement to VA that the person knows or has reason to know is false, fictitious, or fraudulent, or who engages in other covered conduct. The statute permits, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each claim. 31 U.S.C. 3802(a)(1) and (2). VA implemented the penalty amount in 38 CFR 42.3(a)(1) and (b)(1). As previously noted, Circular M–20–05 reflects an inflation adjustment multiplier of 1.01764. Therefore, the calendar year 2020 inflation revision imposes an adjustment from $11,463 to $11,665.

Accordingly, VA is revising 38 CFR 36.4340(k)(1)(i) and (3) and 38 CFR 42.3(a)(1) and (b)(1) to reflect the 2020 inflationary adjustments for civil monetary penalties assessed or enforced by VA.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for prior notice and public comment and to publish this rule with an immediate effective date. The 2015 Act requires agencies to make annual adjustments for inflation to the allowed amounts of civil monetary penalties ''notwithstanding section 553 of title 5, United States Code.'' 28 U.S.C. 2461 note, sec. 4(a) and (b). The penalty adjustments, and the methodology used to determine the adjustments, are set by the terms of the 2015 Act. VA has no discretion to make changes in those areas. Therefore, an opportunity for prior notice and public comment and a delayed effective date is unnecessary.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.'' This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This final rule is exempt from the notice and comment requirements of the APA because the 2015 Act directed the Department to issue the annual adjustments without regard to section 553 of the APA. Therefore, the requirements of the RFA applicable to notice and comment rulemaking do not apply to this rule. Accordingly, the Department is not required either to certify that the final rule would not have a significant economic impact on a substantial number of small entities or to conduct a regulatory flexibility analysis.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing Guaranteed and Insured Loans.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects

38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—veterans, Manufactured

homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 42

Administrative practice and procedure, Claims, Fraud, Penalties.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on January 14, 2020, for publication.

Jeffrey M. Martin,

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

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR parts 36 and 42 as set forth below:

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

§ 36.4340 [Amended]

■ 2. In § 36.4340, amend paragraphs (k)(1)(i) introductory text and (k)(3) by removing ''$22,927'' and adding in its place ''$23,331''

PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

■ 3. The authority citation for part 42 continues to read as follows:

Authority: Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1874, codified at 31 U.S.C. 3801–3812.

§ 42.3 [Amended]

■ 4. In § 42.3, amend paragraphs (a)(1)(iv) and (b)(1)(ii) by removing ''$11,463'' and adding in its place ''$11,665''.

[FR Doc. 2020–01717 Filed 2–6–20; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0770; FRL–10004–01–Region 6]

Withdrawal of Finding of Substantial Inadequacy of Implementation Plan and of Call for Texas State Implementation Plan Revision—Affirmative Defense Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) Region 6 Regional Administrator finds that the affirmative defense provisions in the State Implementation Plan (SIP) for the State of Texas applicable to excess emissions that occur during certain upset events and unplanned maintenance, startup, and shutdown activities are consistent with CAA requirements. Accordingly, EPA Region 6 is withdrawing the SIP call issued to Texas that was published on June 12, 2015. This action is limited to the SIP call issued to Texas and does not otherwise change or alter the EPA's June 12, 2015 action.

DATES: This final action is effective on March 9, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2018–0770. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, EPA Region 6 Office, SO_2 and Regional Haze Section (6ARSH), 1201 Elm Street, Suite 500, Dallas, TX 75270, 214–665–6691, *Shar.Alan@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Alan Shar.

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

Definitions

For the purpose of this document, the following definitions apply:

i. The word Act or initials CAA mean or refer to the Clean Air Act.

ii. The initials EPA mean or refer to the United States Environmental Protection Agency.

iii. The initials MSS mean unplanned Maintenance, Startup or Shutdown activities, specific to Texas regulations.

iv. The term Malfunction means a sudden and unavoidable breakdown of process or control equipment.

v. The initials NAAQS mean National Ambient Air Quality Standards.

vi. The initials NESHAP mean National Emission Standards for Hazardous Air Pollutants.

vii. The initials OAQPS mean the Office of Air Quality Planning and Standards.

viii. The initials OMB mean the Office of Management and Budget.

ix. The initials PSD mean Prevention of Significant Deterioration.

x. The terms EPA Region 6 and Region 6 refer to the United States Environmental Protection Agency, Region 6, located in Dallas, Texas.

xi. The initials RTC mean Response To Comment.

xii. The initials SIP mean State Implementation Plan.

xiii. The word State means the State of Texas, unless the context indicates otherwise.

xiv. The initials STEERS mean the State of Texas Environmental Electronic Reporting System.

xv. The term Shutdown means, generally, the cessation of operation of a source.

xvi. The initials SSM mean Startup, Shutdown, or Malfunction.

xvii. The term Startup means, generally, the setting in operation of a source.

xviii. The initials TAC mean the Texas Administrative Code.

xix. The initials TCEQ mean the Texas Commission on Environmental Quality.

Table of Contents

I. Summary of the Final Action

In this document, Region 6 is making a finding that the affirmative defense provisions in Texas's SIP applicable to excess emissions that occur during upsets (30 TAC 101.222(b)), unplanned events (30 TAC 101.222(c)), upsets with respect to opacity limits (30 TAC 101.222(d)), and unplanned events with respect to opacity limits (30 TAC

101.222(e)) do not make Texas's SIP substantially inadequate to meet the requirements of the Act. Accordingly, Region 6 is withdrawing the SIP call issued to Texas that was published on June 12, 2015 (80 FR 33968–9).

II. Background

The background for this action is discussed in detail in our April 29, 2019 (84 FR 17986) proposed action. In that document, Region 6 invited comment on its belief that the best policy may be to permit certain affirmative defense provisions in SIPs, consistent with the court's decision in *Luminant Generation* v. *EPA,* 714 F.3d 841 (5th Cir. 2013), *cert. denied,* 134 S. Ct. 387 (2013). See 84 FR 17990. Region 6 recognized that such a policy, if adopted, would depart from the policy set forth in the EPA's 2015 Startup, Shutdown and Malfunction (SSM) SIP Action.[1] EPA Region 6 also proposed to make a finding that the affirmative defense provisions in the Texas SIP applicable to excess emissions that occur during certain upset events [2] and unplanned maintenance, startup, or shutdown activities [3] would be consistent with CAA requirements if the alternative interpretation were adopted. Accordingly, Region 6 proposed to withdraw the SIP call [4] issued to Texas that was published on June 12, 2015.

The 60-day public comment period closed on June 28, 2019, and Region 6 received numerous comments on the proposed action. The public comments are included in the publicly posted docket associated with this action at *www.regulations.gov.* Region 6 reviewed all public comments received on the proposed action and considered them before finalizing this action. In this preamble, Region 6 provides a summary of certain significant comments received on the 2019 Proposal and the Region's response to those comments. The Response To Comment (RTC) document for this action summarizes and responds to all other relevant comments received. The RTC document may be found in the docket for this action.

A. Clean Air Act and the Texas SIP

The CAA creates a framework for cooperative state and Federal programs to prevent and control air pollution providing states with the ''primary responsibility'' for prevention and control of air pollution and flexibility for specific state needs and priorities.[5] The Act requires the EPA to identify pollutants that could endanger the public health and welfare and to establish national ambient air quality standards (NAAQS), which the EPA has done for six criteria pollutants. Each state prepares a State Implementation Plan (SIP) that identifies the controls and programs the state will use to attain and maintain the NAAQS.[6] In Texas, the Texas Commission on Environmental Quality (TCEQ) is the State agency responsible for implementing the requirements of the CAA related to SIPs. Since the EPA's approval of the initial Texas SIP in 1972, there has been a separate regulatory control strategy for unauthorized emissions [7] due to malfunction events based on the acknowledgement that imposition of civil penalties may not be appropriate every time unauthorized emissions result from such events. The regulatory regime has evolved since 1972, with each iteration tightening requirements. In 2005, TCEQ adopted the affirmative defenses found at 30 TAC 101.222(b)–(e).[8] The EPA approved these affirmative defense provisions related to upsets and unplanned maintenance, startup, or shutdown (MSS) activities as a revision to the Texas SIP in November 2010.[9] The EPA subsequently issued a SIP call for these provisions as part of its 2015 SSM SIP Action based on the position that the affirmative defense provisions made the SIP substantially inadequate to meet the requirements of the Act. The 2015 SSM SIP Action included SIP calls for 45 jurisdictions in 36 states. For more information concerning the SIP call issued to Texas, see section II.(C) of the proposed action (84 FR at 17988). On March 15, 2017, TCEQ petitioned the EPA to reconsider the SIP call issued to Texas in the 2015 SSM SIP Action.

B. Affirmative Defense Provisions in the Texas SIP

As stated above, the EPA approved the affirmative defense provisions found at 30 TAC 101.222(b)–(e) as a revision to the Texas SIP in November 2010.[10] These provisions provide a narrowly tailored affirmative defense for emissions that exceed applicable emissions limitations that occur during upsets and unplanned MSS activities and are considered functionally equivalent to malfunctions. That is, the affirmative defense provisions in the EPA-approved Texas SIP apply to unplanned and unavoidable upset events and unplanned MSS activities that are not part of normal or routine operations and arise from sudden and unforeseeable events beyond the control of the operator. In addition, the affirmative defense provisions are inapplicable to emission events determined to be excessive [11] based on a number of criteria including frequency, duration, and impact on human health, and are unavailable in criminal actions or civil enforcement actions seeking administrative technical orders and actions for injunctive relief. In the context of an enforcement proceeding,[12] an affirmative defense is a response or defense put forward by a defendant, who bears the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. See section IV.A of the proposed action for more information (84 FR 17991–92). The EPA's 2010 approval of the Texas SIP revision adding these affirmative defense provisions was subsequently challenged in court and upheld as reasonable under the Act by the U.S. Court of Appeals for the Fifth Circuit in *Luminant.* 714 F.3d 841.

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[1] See section XI.F of the Statement of the EPA's SSM SIP Policy as of 2015 as set forth in ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; Final Rule'' (80 FR 33840, 33981–2).

[2] See 30 TAC 101.1(110).

[3] See 301 TAC 101.1(109).

[4] ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; Final Rule.'' (80 FR 33840), June 12, 2015. (2015 SSM SIP Action).

[5] 42 U.S.C. 7401(a)(3); 42 U.S.C. 7407(a); *Train* v. *NRDC,* 421 U.S. 60, 79 (1975).

[6] 42 U.S.C. 7407(a) & 7410(a).

[7] See 30 TAC 101.1(108).

[8] See 30 Texas Register 8884 (Dec. 30, 2005), codified at 30 TAC 101.222.

[9] 75 FR 68989 (Nov. 10, 2010).

[10] Id.

[11] To determine whether an emissions event or emissions events are excessive, the following factors are evaluated: (1) The frequency of the facility's emissions events; (2) the cause of the emissions event; (3) the quantity and impact on human health or the environment of the emissions event; (4) the duration of the emissions event; (5) the percentage of a facility's total annual operating hours during which emissions events occur; and (6) the need for startup, shutdown, and maintenance activities. See 30 TAC 101.222(a). The current EPA-approved Texas SIP does not provide any affirmative defense for an emissions event or emissions events that are determined to be excessive emission events. Such events trigger a requirement to develop a corrective action plan and are subject to a penalty action. See 30 TAC 101.223.

[12] See Appendix 2 of the RTC document, found in the docket for this action, for more information on how TCEQ implements Texas affirmative defense provisions.

III. Evaluation of the Affirmative Defense Provisions in the Texas SIP

A. Summary of Proposal

Pursuant to 40 CFR 56.5(b), on October 16, 2018, Region 6 received EPA headquarters concurrence to convene a proceeding for reconsideration of the SIP call issued to Texas and to undertake a rulemaking pursuant to this reconsideration that may deviate from the EPA's national policy that provisions providing an affirmative defense to civil penalties for excess emissions during periods of startup, shutdown, malfunction, or maintenance are not consistent with CAA requirements. In the proposal, Region 6 explained that in light of the *Luminant* decision, a more appropriate policy approach may be to permit certain affirmative defense provisions in the SIPs of states in Region 6, and invited comment on this issue. Region 6 explained that it may be inappropriate to impose a civil penalty on sources for sudden and unavoidable emissions caused by circumstances beyond the control of the owner or operator. Region 6 recognized that even equipment that is properly designed and maintained can sometimes fail. Further, because the specific affirmative defense provisions in the Texas SIP apply only to excess emissions that cannot be avoided by a source operator,[13] removing these affirmative defense provisions from SIPs will not reduce emissions and therefore would not result in an environmental or public health or welfare benefit.

In the proposal, Region 6 analyzed 30 TAC 101.222(b), 30 TAC 101.222(c), 30 TAC 101.222(d) and 30 TAC 101.222(e) to see if such provisions were consistent with CAA requirements according to the policy under consideration. Based on this analysis, Region 6 proposed to determine that these provisions were consistent with CAA requirements and therefore are permissible components of a SIP if Region 6 were to adopt the new policy under consideration.

B. Final Action

As explained in the proposal, Region 6 invited comment on whether to adopt a policy that certain affirmative defense provisions are generally permissible in SIPs in states in Region 6. However, after reviewing the comments received on Region 6's proposal, including on the regionwide policy under consideration, Region 6 has decided to limit this final action to the specific Texas affirmative defense provisions that were the subject of the 2015 SSM SIP Action and for which Texas filed a petition for reconsideration. Region 6 is not herein announcing any alternative CAA interpretation that would be applicable outside of Texas; Region 6 will determine whether to adopt a similar or other alternative interpretation for other Region 6 states if and when the need for such a determination arises in the future.

After considering the public comments received, Region 6 is finalizing its proposed determination that 30 TAC 101.222(b), 30 TAC 101.222(c), 30 TAC 101.222(d), and 30 TAC 101.222(e) are permissible affirmative defense provisions. As outlined in the 2015 SSM SIP Action, the EPA views all emissions that are in excess of applicable limitations as violations. Nevertheless, Region 6 recognizes that imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances beyond the control of the owner or operator may not be appropriate. In the context of unplanned events or malfunctions, Region 6 is cognizant of the reality that even process equipment or a control device that is properly designed, maintained, and operated can sometimes fail. At the same time, as outlined in the 2015 SSM SIP Action, the EPA has a fundamental responsibility under the CAA to ensure that SIPs provide for attainment and maintenance of the NAAQS and protection of air quality increments in the Prevention of Significant Deterioration (PSD) program. After balancing these considerations, Region 6 has concluded that the Texas SIP provisions containing affirmative defenses are appropriately narrowly tailored and will not undermine the fundamental requirement of attainment and maintenance of the NAAQS, or any other requirement of the CAA.

In its 2010 approval, Region 6 determined that the Texas affirmative defense provisions met the criteria outlined in the 1999 Guidance,[14] which was the relevant guidance at the time outlining how the EPA would assess the approvability of affirmative defense provisions in SIPs. That guidance set forth the EPA's thinking at the time that if affirmative defense provisions met specific enumerated criteria, they generally would be consistent with the fundamental requirements of the CAA. Region 6 finds that the Texas affirmative defense provisions still meet the criteria from that memo, namely that the ''defendant'' has the burden of proof of demonstrating that:

1. The excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond the control of the owner or operator;
2. The excess emissions (a) did not stem from any activity or event that could have been foreseen and avoided, or planned for, and (b) could not have been avoided by better operation and maintenance practices;
3. To the maximum extent practicable the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
4. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
5. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
6. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;
7. All emission monitoring systems were kept in operation if at all possible;
8. The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence;
9. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and
10. The owner or operator properly and promptly notified the appropriate regulatory authority.

The affirmative defense provisions in the Texas SIP related to non-excessive upset events that were approved in 2010, and that were subsequently made the subject of the SIP call issued in 2015 include a series of specific criteria enumerated in 30 TAC 101.222(b)(1)–(b)(11):

''*(1) the owner or operator complies with the requirements of § 101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements). In the event the owner or operator fails to report as required by § 101.201(a)(2) or (3), (b), or (e) of this title, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply when there are minor omissions or inaccuracies that do not impair the commission's ability to review the event according to this rule, unless the owner or operator knowingly or intentionally falsified the information in the report;*

(2) the unauthorized emissions were caused by a sudden, unavoidable breakdown

[13] See 30 TAC 101.222(b)(2), 30 TAC 101.222(c)(2), 30 TAC 101.222(d)(2), and 30 TAC 101.222(e)(2).

[14] ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, to EPA Regional Administrators, September 20, 1999 (1999 Guidance).

of equipment or process, beyond the control of the owner or operator;

(3) the unauthorized emissions did not stem from any activity or event that could have been foreseen and avoided or planned for, and could not have been avoided by better operation and maintenance practices or technically feasible design consistent with good engineering practice;

(4) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events;

(5) prompt action was taken to achieve compliance once the operator knew or should have known that applicable emission limitations were being exceeded, and any necessary repairs were made as expeditiously as practicable;

(6) the amount and duration of the unauthorized emissions and any bypass of pollution control equipment were minimized and all possible steps were taken to minimize the impact of the unauthorized emissions on ambient air quality;

(7) all emission monitoring systems were kept in operation if possible;

(8) the owner or operator actions in response to the unauthorized emissions were documented by contemporaneous operation logs or other relevant evidence;

(9) the unauthorized emissions were not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance;

(10) the percentage of a facility's total annual operating hours during which unauthorized emissions occurred was not unreasonably high; and

(11) the unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, or to a condition of air pollution.''

In Section 16, Table VII of the TSD [15] prepared in conjunction with the final rule approving 30 TAC 101.222(a)–(g) of the Texas SIP (''2010 final action'') (November 10, 2010, 75 FR 68989), Region 6 compared the criteria in 30 TAC 101.222(b)(1)–(b)(11) with the affirmative defense criteria outlined above and included in the EPA's 1999 Guidance. In the 2010 final action, Region 6 concluded that the criteria in 30 TAC 101.222(b) are very similar to those of the 1999 Guidance. Because EPA's thinking at the time was that, if affirmative defense provisions met the specific enumerated criteria from the 1999 Guidance, they generally would be consistent with the fundamental requirements of the CAA, and so Region 6 approved the affirmative defense provisions into the Texas SIP.[16] As discussed previously, that approval action was upheld by the Fifth Circuit. See *Luminant,* 714 F.3d 841.

In addition, 30 TAC 101.222(f) states that meeting the affirmative defense criteria does not remove any obligations to comply with any other existing permit, rule, or order provisions that are applicable to an emissions event or a maintenance, startup, or shutdown activity. It also states that an affirmative defense cannot apply to violations of federally promulgated performance or technology-based standards, such as those found in 40 CFR parts 60, 61, and 63. Additionally, the affirmative defense is available only for emissions that have been reported or recorded.

Furthermore, 30 TAC 101.222(g) states that evidence of any past event with respect to which an owner or operator invoked the affirmative defense provision shall nonetheless be admissible in litigation proceedings and can be considered as relevant to demonstrate a frequent or recurring pattern of events, even if all of the criteria to receive an affirmative defense are proven.

As outlined above, Region 6 is herein reaffirming the determination that these affirmative defense provisions in the Texas SIP are very similar to, and compatible with, the criteria outlined in the 1999 Guidance. Because the affirmative defense provisions in the Texas SIP pertaining to upsets and unplanned events (malfunctions) are narrowly tailored, properly drafted, limited in scope or application, and effective in practice, EPA Region 6 finds that 30 TAC 101.222(b), 30 TAC 101.222(c), 30 TAC 101.222(d) and 30 TAC 101.222(e) are consistent with CAA requirements for SIPs and permissible affirmative defense provisions.

C. Comments and Responses

In this subsection, Region 6 provides a summary of certain significant comments received on the 2019 Proposal and the Region's response to those comments. The RTC document, found in the docket for this action, summarizes and responds to all other relevant comments received.

1. Comments Alleging That EPA Region 6's Proposed Action Is Inconsistent With the CAA and D.C. Circuit Precedent

Comment: Commenters alleged that the proposal is inconsistent with CAA sections 304(a) and 113(e). The commenters asserted that the EPA cannot allow the affirmative defense provisions in the Texas SIP because those provisions directly conflict with Congress's exclusive grant of jurisdiction to the federal district courts to provide remedies in civil suits brought under the CAA for violations of emissions standards. The commenters noted that under CAA section 304, Congress gave ''any person'' the right to sue over violations of emission standards established in SIPs. Citing to language in the *NRDC* opinion, the commenters noted that CAA section 304 creates a private right of action, and it is the judiciary, not any executive agency, that determines the scope—including the available remedies—of judicial power vested by the CAA. *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014). The commenters also pointed to CAA section 113(e), noting that Congress expressly requires courts to consider enumerated penalty assessment criteria when they decide the amount of civil penalties to apply when they find a violation of an emission limitation; weighing these criteria, courts decide on a case-by-case basis what penalty, if any, is appropriate. The commenters also cited to congressional intent by noting that CAA section 304(a) was amended in 1990 to provide district courts with the new authority to apply civil penalties, because Congress felt it was necessary for deterrence, restitution, and retribution. The commenters concluded that affirmative defenses which, if proven, prohibit federal district courts from imposing penalties are irreconcilable with this congressional intent.

The commenters also took issue with the EPA's statement in the proposal that ''states have latitude to define in their SIPs what constitutes an enforceable emission limitation, so long as the SIP meets all applicable CAA requirements.'' [17] The commenters assert that the EPA's claim is wrong for two reasons: (1) The CAA requires civil penalties be available as relief in a citizen enforcement case, so a SIP that limits that ability does not meet all the applicable CAA requirements; and (2) affirmative defense provisions are neither emission limitations nor control measures, but rather ancillary provisions that purport to limit the liability of a violating source, which is inconsistent with congressionally created remedies for violations of emission standards.

Response: Region 6 disagrees with the commenters. This action is not illegal, arbitrary, or inconsistent with any

[15] See Document ID No. EPA–R06–OAR–2006–0132–0018 at *www.regulations.gov.*

[16] Affirmative defense criteria similar to those found in 30 TAC 101.222(b)(1)–(b)(10) (for non-excessive upset events) may be found at 30 TAC 101.222(c), 30 TAC 101.222(d), and 30 TAC 101.222(e) (for unplanned MSS activity, excess opacity events, and opacity events resulting from unplanned MSS activity, respectively).

[17] 84 FR 17990 (April 29, 2019).

requirement of the CAA. The Act provides that, in the case of EPA enforcement and citizen suits, a federal district court ''shall have jurisdiction'' to assess civil penalties; in assessing the amount of a civil penalty, the court must consider the penalty assessment criteria outlined in CAA section 113(e). In 2013, in reviewing Region 6's approval of the same Texas SIP provisions in question here, the *Luminant* court held that approval was based upon a permissible interpretation of CAA section 113 and deserved deference. Region 6 acknowledges that an effective enforcement program must be able to collect penalties to deter avoidable violations. However, Region 6 also acknowledges—as did the *Luminant* court—that, despite good practices, sources may be unable to meet emission limitations during periods of unplanned malfunctions due to events beyond the control of the owner or operator. The EPA finds it reasonable to determine that a SIP can provide for an affirmative defense against civil penalties for circumstances where it is not feasible to meet the applicable emission limits, and the narrowly tailored criteria that the source must prove can ensure that the source has made every effort to comply with those emission limitations. This is consistent with the CAA because the criteria set forth in the Texas SIP that a source must meet to assert the affirmative defenses are consistent with the penalty assessment criteria identified in CAA section 113, which are considered by the courts and the EPA in determining whether or not to assess a civil penalty for violations, and, if so, the amount. The *Luminant* court upheld the EPA's approval of the Texas affirmative defense provisions on that basis. *See Luminant* 714 F.3d 853 (acknowledging that the Texas affirmative defense criteria are consistent with the penalty assessment criteria in CAA section 113).

In addition, the EPA's role, with respect to a SIP revision, is focused on reviewing the submission to determine whether it meets the applicable criteria of the CAA, and, where it does, section 110(k)(3) of the Act requires the EPA to approve the submission. In the context of a SIP, the EPA is not, as a matter of law or policy, exercising discretion to establish its own requirements for the state to implement beyond the requirements contained in the CAA. CAA section 110(a)(2)(A)–(B) requires states to submit SIPs with emission limits and other control measures necessary or appropriate to meet CAA requirements, and CAA section 110(a)(2)(C) requires SIPs to include ''a program to provide for the enforcement'' of those emission control measures. In light of the latitude provided to states by Congress in CAA section 110 for NAAQS implementation, Region 6 has determined that inclusion of Texas's affirmative defense provision in the SIP is appropriate due to the latitude that states have to define in their SIPs what constitutes an enforceable emission limitation, so long as the SIP meets all applicable CAA requirements.

As explained in the proposal for this action, the differences in scope and relative balance of state and federal authority between CAA sections 110 and 112 suggest that the D.C. Circuit's reasoning in *NRDC* with respect to limits on federal agency authority under CAA section 110 does not address the distinct question of whether a state may include affirmative defense provisions as part of its overall strategy for inclusion in their SIP submissions to the EPA under CAA section 110. In the *Luminant* case, the environmental petitioners raised the same basic argument that was key to the D.C. Circuit's *NRDC* holding: Environmental petitioners argued that the EPA's approval of the Texas affirmative defense SIP provision conflicts with the CAA's provision that, in the case of EPA enforcement and citizen suits, a federal district court ''shall have jurisdiction'' to assess a ''civil penalty.'' 42 U.S.C. 7413(b); 7604(a). The Fifth Circuit, however, upheld as ''neither contrary to law nor in excess of [the EPA's] statutory authority'' the EPA's position that the Texas provision at issue here is narrowly tailored and consistent with the penalty assessment criteria in CAA section 113(e). In addition, the Fifth Circuit stated that the availability of the affirmative defense in the Texas SIP ''does not negate the district court's jurisdiction to assess civil penalties using the criteria outlined in [CAA section 113(e)], . . . it simply provides a defense, under narrowly defined circumstances, if and when penalties are assessed.'' *Luminant,* 714 F.3d at 853 fn.9.

The commenters noted that Congress amended CAA section 304(a) in 1990 to provide courts the additional authority to assess civil penalties in citizen suit actions because civil penalties were thought necessary for deterrence. Even accepting this characterization of Congress's intent, it has no bearing on the permissibility of the Texas affirmative defense provisions because the use of those provisions is limited to malfunctions, which are sudden, unavoidable, and beyond the control of the owner or operator. Among other factors, in order to use the Texas affirmative defense, a source owner or operator must show that all possible steps were taken to minimize the impact of the unauthorized emissions on air quality. Malfunctions, as defined in the Texas affirmative defense provision, cannot be deterred. Therefore, Region 6 maintains that in light of the *Luminant* decision, the appropriate policy is to consider the Texas affirmative defense provisions to be consistent with CAA requirements.

Comment: The commenters asserted that the EPA fails to rationally explain why following the *NRDC* decision's statutory interpretation is inappropriate in light of *Luminant.* The commenters also noted EPA's claim that the application of the *NRDC* decision may be ''particularly inappropriate'' in light of *Luminant* is unexplained and conflicts with the 2015 SSM SIP Action. Furthermore, the commenters alleged that the proposal's change in position on affirmative defenses from the position expressed in the 2015 SSM SIP Action is irrational and cannot be reconciled with *NRDC.* Commenters particularly noted that the proposal fails to explain why the *NRDC* court's acknowledgment of *Luminant* matters or why it matters that *Luminant* upheld the EPA's prior interpretation at Chevron step two.

The commenters also stated that the enforcement provisions of CAA sections 304 and 113 were the sole basis for the *NRDC* court striking down affirmative defenses, rather than the applicability of these provisions to CAA sections 112 or 110. The commenters pointed out that the *NRDC* court did not specifically evaluate the question of whether affirmative defenses are appropriate in section 110 SIPs, and the commenters disagreed with the EPA's statement that ''the *NRDC* decision did not foreclose the EPA's ability to allow affirmative defense provisions in section 110 SIPs.'' [18] The commenters alleged that, as the *NRDC* court shows, the text, structure, context, purpose, and history of the CAA plainly demonstrate Congress's intent to give federal courts the authority and obligation to determine what penalties (if any) are appropriate in enforcement cases. The commenters asserted that the *NRDC* court's reasoning applies with equal force to citizen suits alleging violations of SIP emission limits and equally to any remedy Congress gave courts jurisdiction to order.

The commenters stated that to provide a rational basis for its policy reversal, the EPA must evaluate whether

[18] 84 FR 17989 (April 29, 2019).

the reasoning of the *NRDC* decision applies to CAA section 110 and explain the reasons for choosing to disregard the *NRDC* court's logic. The commenters alleged that the EPA premises its policy reversal on a belief that CAA section 110 somehow overrides the CAA's enforcement provisions, relying on what they characterize as an outdated notion of ''cooperative federalism'' that relies heavily on the *Train* and *Union Electric* decisions from the 1970s, which hold in keeping with what the commenters characterize as the antiquated notion that Congress deferred all specific decisions to the states as long as the result is compliance with national standards. The commenters asserted that the D.C. Circuit has since made clear that it has not suggested that states may develop SIPs free of extrinsic legal constraints, including those in the CAA, and that the EPA ignores subsequent amendments to the CAA that resulted in specific minimum requirements for SIPs in the Act, including specific control measures and permitting requirements. The commenters noted that demonstrating compliance with the national standards is not the sole measure for approval of a SIP revision.

Response: At the outset, Region 6 notes that it maintains discretion and authority to change its CAA interpretation from a prior position. In *FCC* v. *Fox,* the U.S. Supreme Court stated an agency's obligation with respect to changing a prior policy quite plainly:

> We find no basis . . . for a requirement that all agency change be subjected to more searching review. The [Administrative Procedure] Act mentions no such heightened standard. And our opinion in *State Farm* neither held nor implied that every agency action representing a policy change must be justified by reasons more substantial than those required to adopt a policy in the first instance.''
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> *FCC* v. *Fox Television Stations,* 556 U.S. 502, 514 (2009).

In cases where an agency is changing its position, the Court stated that a reasoned explanation for the new policy would ordinarily ''display awareness that it is changing position'' and ''show that there are good reasons for the new policy.'' *Id.* at 515. However, the Court held that the agency ''need not demonstrate . . . that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better.'' *Id.* In cases where a new policy ''rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account,'' the Court found that a more detailed justification might be warranted than what would suffice for a new policy. At the outset, it is important to note that the *Luminant* court upheld the EPA's approval of the very same affirmative defense provisions in the Texas SIP that are at issue in this action.[19] Furthermore, the *Luminant* decision is the *only* existing court precedent that addresses the approvability of affirmative defense provisions in SIPs. The *Luminant* court held that the EPA acted consistent with statutory authority and upheld the EPA's interpretation that affirmative defenses against civil penalties are not inconsistent with CAA section 113 if the defense is narrowly tailored to address unplanned, unavoidable excess emissions in a manner that is consistent with the penalty assessment criteria set forth in CAA section 113(e). By contrast, the D.C. Circuit's *NRDC* decision only evaluated the validity of an affirmative defense provision in an emission standard created by the EPA itself under CAA section 112, and that decision *expressly reserved judgment* regarding the validity of an affirmative defense in the context of a SIP approved under CAA section 110. The *NRDC* ruling explicitly states, ''[w]e do not here confront the question whether an affirmative defense may be appropriate in a State Implementation Plan.'' 749 F.3d at 1064 n.2 (citing *Luminant,* 714 F.3d 841). Therefore, the *NRDC* decision did not speak to the EPA's ability to allow for affirmative defense provisions in SIPs. Texas's narrowly tailored and limited affirmative defense SIP provisions for malfunctions, as upheld by the Fifth Circuit's *Luminant* decision, are consistent with CAA requirements and it is not necessary or appropriate to extend the D.C. Circuit's reasoning in *NRDC* to the specific affirmative defense provisions currently in the Texas SIP for the reasons discussed herein.

The commenters assert that Region 6 is reading the provisions of CAA section 110 to override the CAA's enforcement provisions, including CAA sections 113(b) and 304(a), but this is not true. Rather, Region 6 is reading all of these provisions together to authorize its approval of certain affirmative defense provisions in SIPs. SIPs are developed by the states under CAA section 110 and reflect the Act's core principle of cooperative federalism.[20] CAA section 110 affords broad discretion to states in how to develop and implement air emission controls after the federal government establishes NAAQS to be achieved. Region 6 agrees with the commenters' position that the flexibility afforded states in the development of SIPs is not without limitations and that demonstrating compliance with NAAQS is not the sole measure for SIP approvals. However, Region 6 finds the commenters' claims that subsequent amendments to the CAA (concerning control measures and permitting requirements) were ignored are misplaced and not relevant to this action. Also, as noted in an earlier response, the congressionally stated reasons for the amendment to CAA section 304(a) in 1990 (to provide deterrence) are not relevant to determining the permissibility of affirmative defense provisions that are limited to unavoidable, unpreventable malfunctions (which are beyond the control of the owner or operator and therefore cannot be deterred). This flexibility, and state discretion, under CAA section 110 has been acknowledged repeatedly by the EPA in its actions and in court decisions on those Agency actions.[21]

EPA Region 6 recognizes that the interpretation of the CAA to allow the Texas affirmative defenses in SIPs conflicts with the position taken in the 2015 SSM SIP Action; however, it is important to understand and acknowledge that the affirmative defense provisions for malfunctions in the Texas SIP are a key component of the state's overall clean air control strategy which has evolved since the initial Texas SIP in 1972. See page 3 of the TCEQ comment letter recognizing that affirmative defense provisions are ''part of a long-standing and integral part of the Texas SIP''.[22] Recognizing that states have latitude to define in their SIPs what constitutes an

[19] Some commenters have noted that the claims asserted in the *Luminant* decision may not be relitigated in any future challenge to this action. The EPA reserves the right to assert this argument (or similar arguments) as a defense to this final action.

[20] 42 U.S.C. 7401(a)(3); 42 U.S.C. 7407(a); *Train* v. *NRDC,* 421 U.S. 60, 79 (1975).

[21] See *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n,* 452 U.S. 264, 289 (1981) (noting that states are permitted ''within limits established by [the NAAQS], to enact and administer their own regulatory programs, structured to meet their own particular needs''). See *also Union Elec. Co.* v. *EPA,* 427 U.S. 246, 250 (1976) (acknowledging that states have ''wide discretion'' in formulating their SIPs and that ''[s]o long as national standards are met, the state may select whatever mix of control devices it desires''); *BCCA Appeal Grp.* v. *EPA,* 355 F.3d 817, 822 (5th Cir. 2003) (recognizing states have ''broad authority to determine the methods and particular control strategies they will use to achieve the statutory requirements'') (citing *Union Elec. Co.,* 427 U.S. at 266).

[22] Document ID No. EPA–R06–OAR–2018–0770–0018 at *www.regulations.gov.*

enforceable emission limitation, Region 6 has determined that the Texas SIP provisions are an example of how a limited affirmative defense can be properly crafted to be a part of an approved SIP.

One commenter quoted the D.C. Circuit as saying that it has avoided suggesting ''that under [section 7410] states may develop their plans free of extrinsic legal constraints,'' including those contained in the Act. *Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1047 (D.C. Cir. 2001). In this action, Region 6 is in no way suggesting that no limitations exist on states' SIP development. As noted previously in this response, Region 6 agrees with the commenters' position that the flexibility afforded states in the development of SIPs is not without limitations. However, as explained elsewhere in this action, Region 6 has determined that the affirmative defense provisions in Texas's SIP are consistent with CAA requirements.

Comment: The commenter stated that the EPA has not explained why it would be appropriate to prevent a federal court from imposing civil penalties for violation of a SIP emission limit while preserving the right of the court to impose civil penalties for violation of a NESHAP. The commenter claimed that, without a stated, logical reason for this distinction, it is arbitrary and capricious of the EPA to create a distinction.

Response: Region 6 disagrees with the commenter. As explained in the proposal, the mechanisms established under section 112 of the CAA to control air pollution are different than those under section 110 in significant ways. CAA section 110 functions within a cooperative federalism system in which states are required to develop plans to attain and maintain the NAAQS and the EPA determines whether the specific state plans comply with the Act's requirements. See 42 U.S.C. 7410(a) & (k)(4). On the other hand, CAA section 112 requires the EPA (not states) to establish federal emission limitations for a specific class of sources and pollutants and strictly prescribes how the EPA must establish those standards, which states have little flexibility in how to implement. See 42 U.S.C. 7412(d). More specifically, CAA section 110 requires states to adopt ''emission limitations and other control measures, means, or techniques . . . *as may be necessary or appropriate* to meet the applicable requirements of this chapter'' while CAA section 112 directs the EPA to adopt standards that ''*require the maximum degree of reduction* in emissions'' that the Administrator determines is achievable ''through application of measures, processes, methods, systems or techniques *including, but not limited to*'' measures meeting a list of five requirements. *Cf.* 42 U.S.C. 7410(a)(2)(a) with 7412(d)(2) (emphases added).

Region 6 now believes that the Agency gave insufficient weight to the fact that Region 6's prior approval of the Texas affirmative defense provisions that were subject to the 2015 SSM SIP Action had been upheld by the Fifth Circuit, the circuit to which review of Texas-specific actions is specifically assigned by Congress under CAA section 307(b), when applying the reasoning of *NRDC* to the SIP context in the EPA's 2014 supplemental proposal and the 2015 SSM SIP Action. As explained in the prior response, the petitioners in the *Luminant* case argued that the EPA's approval of the Texas affirmative defense SIP provision conflicts with CAA sections 113(b) and 304(a). As discussed above, the *Luminant* court was squarely presented with the argument that affirmative defense for malfunctions in the Texas SIP inappropriately altered or infringed upon federal district court jurisdiction to assess appropriate penalties and the court concluded that it did not, instead holding that it is permissible to include narrowly-tailored provisions that are consistent with the penalty assessment criteria in CAA section 113(e). The *Luminant* court acknowledged that ''states have wide discretion in formulating their SIPs, including the broad authority to determine the methods and particular control strategies they will use to achieve the statutory requirements.'' 714 F.3d at 845 (internal quotations deleted), *citing Union Elec.,* 427 U.S. at 250; *BCCA Appeal Grp.,* 355 F.3d at 822.

While the *NRDC* court clearly states that affirmative defenses under CAA section 112 are inappropriate, that court's opinion explicitly deferred judgment on whether they were permissible for inclusion in an approved SIP. The *only* court decision to reach the question of the appropriateness of affirmative defenses in SIPs is the *Luminant* court. Region 6 is applying this directly on-point court decision, from the court which Congress has assigned the role of hearing challenges to actions applicable to Texas, 42 U.S.C. 7606(b), to the review of the affirmative defense provisions in the Texas SIP, which is the *Luminant* decision. Region 6 thinks the distinction between CAA sections 110 and 112 set forth here is reasonable under the Act. Where the Act requires under CAA section 112 the EPA to directly establish federal limits that meet detailed and strict criteria and that are established to further a different purpose than that of CAA section 110, it is reasonable to take the position that the EPA's and a state's discretion is more limited than in the section 110 context, and that only a court should determine what penalties should apply when those limits are violated, as the *NRDC* court found. However, when addressing limits that have been established by the state as part of an overall plan to address the NAAQS under the CAA section 110 regime, and where states have primary responsibility for and flexibility in establishing those limits, Region 6 thinks it is reasonable for states to include—and the EPA to approve—certain defenses to penalties for violations of those limits, as the *Luminant* court found.

Comment: Commenters stated that the EPA lacks the authority to disapprove affirmative defense SIP provisions if it finds that the SIP will ensure compliance with the NAAQS. Commenters referenced several court cases where the courts stated that it is the states and not the EPA that retain primacy for NAAQS implementation. Commenters stated that development of affirmative defense provisions for SSM periods is plainly within the states' authority under this statutory structure, and the EPA's role is limited to determining whether such SIP provisions are approvable. Commenters referenced CAA section 110(k)(2) and the EPA's previous statements in a memorandum and stated that, in the absence of any demonstrated link to air quality issues rendering a SIP substantially inadequate, any effort by the EPA to impose its policy preference on the states is beyond the EPA's authority. Furthermore, commenters stated that there is no indication that the Texas affirmative defense for SSM provisions renders the Texas SIP substantially inadequate. The commenters alleged that the 2015 SSM SIP Action did not reflect the EPA's limited role, did not defer to the state on how to achieve CAA objectives, and wholly fails to demonstrate that the Texas SIP is in fact ''substantially inadequate to attain or maintain'' the NAAQS and meet other CAA requirements. The commenters stated that the EPA has failed to demonstrate that substantial reductions in emissions would result from eliminating affirmative defense provisions for SSM activities despite the reasonable design, operation, and maintenance of equipment to meet those requirements.

Response: This action is limited to Region 6's review of the SIP call issued to Texas in 2015. To the extent the

commenters are arguing about other aspects of the EPA's 2015 SSM SIP Action, that is outside the scope of this action. Within the confines of this action, which is limited to the Texas affirmative defense provisions, Region 6 agrees with the commenters that the CAA grants states considerable latitude in fashioning a plan to ensure the attainment and maintenance of the NAAQS, as provided by CAA section 110. Section 110(k)(5) of the CAA defines the basis upon which the EPA can issue a call to a state to revise its SIP. Section 110(k)(5) of the CAA provides that the EPA can issue a SIP call whenever the Agency ''finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS], . . . *or to otherwise comply with any requirement of this chapter*'' (emphasis added). Region 6 does not consider this role and responsibility to be limited or ministerial in nature. However, as discussed throughout this final action, based on an alternative interpretation of CAA requirements, Region 6 is now adopting the view that the Texas affirmative defense provisions are not substantially inadequate under the rubric of CAA section 110(k)(5) and, therefore, is withdrawing the SIP call for the Texas affirmative defense provisions issued in the 2015 SSM SIP Action.

2. Comments on the Need for Affirmative Defense Provisions

Comment: The commenter stated that the EPA should not defund the regulation and penalization of emissions related to SSM events. The commenter argued that mechanisms for accountability and financial and criminal liability should remain in place. The commenter believes that polluters should not escape penalties for significant emissions that result from scheduled maintenance, accidents, and/or a catchall class of ''furtive'' emissions.

Response: Region 6 disagrees with the commenter's assertion that this action in any way ''defunds the regulation and penalization'' of SSM events. Rather, our action finds that specific and narrowly tailored affirmative defense provisions in the Texas SIP are not substantially inadequate under the rubric of CAA section 110(k)(5). As discussed in the proposal and in this final action, Region 6 has concluded that the Texas affirmative defense provisions are permissible under the alternative interpretation of the CAA presented here, including that CAA section 110(a)(2) authorizes Texas to establish emission limitations in its SIP that include a narrowly tailored affirmative defense to civil penalties for unavoidable excess emissions in a manner consistent with the penalty assessment criteria set forth in CAA section 113(e), as upheld in the *Luminant* decision. Under the requirements of these provisions, Texas will hold sources accountable for periods of excess emissions, including triggering penalties and corrective action plan requirements, where excessive emission events do not meet the requirements of the state's narrowly tailored affirmative defense. With regards to the comment that sources should be held accountable for significant excess emissions that result during periods of scheduled maintenance, Region 6 notes that planned, scheduled maintenance events do not meet the criteria in the Texas affirmative defense provisions. In addition, there are no ''furtive'' or hidden emissions associated with the affirmative defense provisions that are the subject of this action because all excess emissions are required to be reported to Texas online through the State of Texas Electronic Emissions Reporting System (STEERS) and the affirmative defense may not be asserted for emissions that have not been reported (see 30 TAC Chapter 101, Subchapter F). The commenter also argued that mechanisms for criminal liability should remain in place. The affirmative defense provisions in the Texas SIP do not apply to criminal penalties.

Comment: The commenter stated that most excess emissions can be attributed to accidents that could have been avoided through better maintenance or safety inspections. The commenter cited research that demonstrates that just over 10% of all excess emissions events from 2002–2017 were related to unavoidable natural disasters, and that this finding suggests that many excess emissions events in Texas cannot be considered unavoidable. The commenter stated that the proposal completely misses the distinction between ''unavoidable'' and truly unavoidable excess emissions (from unavoidable natural disasters) and thus fails to account for the deterrent effect that a stricter regulatory environment can have on the incidence of excess emissions.

Response: The commenter appears to be asserting that the only excess emissions that can be considered unavoidable are those that result following natural disasters. The EPA has never taken the position that all emission events are avoidable except from those that result from natural disasters, such as tornadoes or hurricanes. To the extent that the commenter is alleging that the Texas provisions do not adequately incentivize source owners or operators toward responsible behavior and better plant maintenance, Region 6 disagrees that the proposal does not address the distinction between unavoidable excess emissions and excess emissions that could have been avoided by better maintenance in regard to affirmative defenses. First, Region 6 observes that all emissions occurring above any air emission limitation in a permit, rule, or order of the commission are deemed a violation of the emission limitation. 30 TAC 101.1(108). An enforcement action can be brought by the EPA, Texas, or citizens for any such violation. The affirmative defense provision only provides the defendant an opportunity, with regard to which the defendant bears the burden of proof, to demonstrate that the violation in question meets the strict criteria outlined in the Texas SIP. An affirmative defense is only available for non-excessive upset and unplanned events, so source owners and operators are incentivized to keep any emissions that occur over applicable limitations to a minimum to avoid being considered excessive. In addition, in order to successfully assert an affirmative defense in an enforcement action, the responsible party bears the burden to demonstrate that the unauthorized emissions could not have been avoided through better operation and maintenance practices, among a number of other identified criteria. A citizen or government agency has an opportunity to rebut this demonstration in the course of an enforcement action.

Each report of emissions that exceed applicable limitations is evaluated by the corresponding TCEQ field office. In fact, as stated earlier, Texas's regulatory regime has evolved since 1972, with each iteration bringing a tightening of requirements.[23]

3. Comments Concerning Appropriateness of the Regional Scope of This Action

Comment: Commenters argued that Region 6's proposed action is based on an interpretation of the CAA that varies from national policy, and the Region is required by law (specifically 40 CFR 56.5(b)) to obtain concurrence for such actions from the relevant EPA headquarters (HQ) office before taking final action. The commenters alleged that there is no record that the EPA has complied with its consistency

[23] See pages 2–3 of TCEQ's petition for reconsideration, Document ID No. EPA–R06–OAR–2018–0770–0010 at *www.regulations.gov.*

regulations in proposing to exempt Texas from the national SSM policy, although the commenter acknowledged that the docket includes a letter of concurrence signed by the Director of OAQPS. The commenter asserted that governing EPA guidance documents state that where a proposed action would have significant national policy implications, a more complete review, including a steering committee or interagency review, coordination through the appropriate HQ office, and full concurrence by each affected EPA section is necessary. The commenter argued that nothing is in the record to indicate that Region 6 has conducted the required consultations and obtained all requisite concurrences in order for this action to move forward.

Commenters also argued that for an EPA regional office to depart from a national EPA policy on a particular issue, it must articulate a compelling reason that rationally explains why that issue deserves different treatment from other regions, but the EPA has failed to meet this requirement. The commenter contended that the EPA is obligated to correct inconsistencies by standardizing processes and policies rather than using CAA section 301(a)(2) as a license to institutionalize the kind of inconsistencies that have been proposed in EPA Regions 4 and 6, which depart from the nationally applicable policies in the 2015 SSM SIP Action and instead create a patchwork of regionally applicable CAA policies. The commenters alleged that there is no adequate explanation for authorizing an alternative interpretation, including no discussion of why an alternative interpretation is approvable under the regional consistency regulations.

Response: To the extent the commenters are raising concerns with the recent action proposed by EPA Region 4 concerning SSM SIP provisions in North Carolina, that is outside the scope of this action and Region 6 provides no response. With respect to the concerns raised concerning this Region 6 action, which is limited in scope to Texas, Region 6 did follow the procedures outlined in the regional consistency regulations at 40 CFR 56.5(b), as explained in the proposal and acknowledged by commenters. Specifically, before granting Texas's petition for reconsideration and before our proposed action, the Region 6 Regional Administrator sought and received EPA headquarters concurrence to deviate from the national policy announced in the 2015 SSM SIP Action.[24] Before finalization of this action, the Region 6 Regional Administrator again sought and received EPA headquarters concurrence to deviate from national policy in this final action.[25] The substance of the commenters' allegation appears to be directed at Region 6's alleged failure to follow the document titled ''Revisions to State Implementation Plans—Procedures for Approval/Disapproval Actions,'' OAQPS No. 1.2–005A, referenced in 40 CFR 56.5(c). However, the regional consistency regulations only require following this guideline ''in reviewing State Implementation Plans.'' In this action, the Region is not reviewing a SIP submission from a state under section 110(k)(3), but rather is withdrawing a SIP call issued pursuant to section 110(k)(5). Therefore, the provisions of 40 CFR 56.5(c) are not applicable. Even if this action fell under the auspices of 40 CFR 56.5(c), that regulation requires the region to follow ''OAQPS No. 1.2–005A, or revision thereof.'' OAQPS No. 1.2–005A is a guideline from 1975 that has been updated multiple times. EPA Region 6 did follow the most recent iteration of the EPA's internal SIP review process for ensuring national consistency, which is the EPA's 2018 SIP Consistency Issues Guide.

The commenters also argue that Region 6 failed to follow the regional consistency regulations by not providing a ''compelling reason'' for the region to deviate from the national policy outlined in the 2015 SSM SIP Action. Nothing in the EPA's regional consistency regulations or CAA section 301(a)(2) require a ''compelling reason'' to underpin regional deviation from national policy. All that is required is that the region seek EPA headquarters concurrence for the action it intends to take, when such action deviates from national policy, and that has been done here. Moreover, the EPA's Office of Air and Radiation reviewed a draft of this final action and determined that the circumstances and rationale set forth in this action provided a reasonable basis to concur on Region 6's deviation from the national policy outlined in the 2015 SSM SIP Action.

Comment: The commenter stated that, although Region 6 relies heavily on the Fifth Circuit *Luminant* decision in order to apply a new CAA interpretation for all Region 6 states, New Mexico, Oklahoma, and Arkansas are not in the Fifth Circuit. The commenter states that this is arbitrary and capricious since there is no basis for treating the SIPs from these three states differently than the SIPs from states in other EPA regions.

Response: In the April 2019 proposal, Region 6 noted that it was considering adopting a regionwide policy that certain affirmative defense SIP provisions are consistent with CAA requirements, but noted that it would consider whether it would apply any regionwide policy to others states in Region 6 in separate actions. However, after reviewing the public comments received, EPA Region 6 has decided to limit its deviation from national policy regarding affirmative defenses only as to the SSM SIP call for Texas since the Texas provisions were previously upheld by the Fifth Circuit in the *Luminant* decision, and Region 6 is not herein announcing any policy with respect to the remaining Region 6 states. Therefore, at this time in all Region 6 states except Texas, the policy remains unchanged from what was announced in the 2015 SSM SIP Action.

Comment: The commenters noted that, as the EPA recognized in the 2015 SSM SIP Action, the agency's legal interpretation of CAA requirements concerning permissible SIP provisions to address emissions during SSM events was a ''nationally applicable rule.'' The commenters noted that petitions challenging aspects of the SIP call or its SSM policy were required to be filed in the D.C. Circuit. The commenters suggested that Region 6 must acknowledge that the proposal at issue is part of the same nationally applicable regulation under CAA section 307(b)(1) for the following reasons:

(1) The Region 6 proposal adopts a policy that varies from the national policy and announces a substantive change to determining whether affirmative defense provisions in SIPs are approvable. This reversal effectively amends the EPA's national SSM policy and is therefore nationally applicable;

(2) Although the proposal ostensibly only applies to states in Region 6, the EPA is using it to announce a substantial change to the CAA's SIP requirements. Furthermore, the proposal necessarily applies to the 17 states covered by the affirmative defense aspect of the 2015 SSM SIP Action. That the EPA chose to promulgate a new national policy in a **Federal Register** document that only applies to Region 6 does not preclude the courts from examining the underlying substance and applicability of the rule.

Response: Region 6 is not establishing a new national policy; rather, Region 6 is taking action associated with specific

[24] See Document ID No. EPA–R06–OAR–2018–0770–0009.pdf, pages 3–4 at *www.regulations.gov.*

[25] See EPA Docket ID No. EPA–R06–OAR–2018–0770 at *www.regulations.gov.*

SIP provisions within the Texas SIP that are applicable only within a single state, Texas. Region 6 is simply reexamining the effect of the *Luminant* decision and the findings and statements made by that Court as it applies to the exact Texas SIP provisions that were the subject of the EPA's finding of substantial inadequacy in the 2015 SSM SIP Action, as well as the nature and statements made by the *NRDC* court, and concluding that it is not necessary to extend the reach of the *NRDC* decision to the particular affirmative defense provisions at issue in the Texas SIP. As the D.C. Circuit has recently explained, ''[t]he court need look only to the face of the agency action, not its practical effects, to determine whether an action is nationally applicable.'' *Sierra Club* v. *EPA,* 926 F.3d 844, 849 (D.C. Cir. 2019) (citing *Dalton Trucking,* 808 F.3d 875, 881 (D.C. Cir. 2015) and *Am. Road & Transp. Builders Ass'n* v. *EPA,* 705 F.3d 453, 456 (D.C. Cir. 2013)). On its face, this action is locally applicable because it is determining that specific provisions in the Texas SIP that are applicable only in Texas are consistent with CAA requirements and therefore withdrawing a SIP call issued to Texas in 2015. This action has immediate or legal effect only for and within Texas. If the EPA were to rely on the statutory interpretation set forth in this action in another potential future final agency action, the statutory interpretation would be subject to judicial review upon challenge of that later action.

Comment: The commenters claimed that even if the EPA's proposal was not nationally applicable, the EPA must still make and publish a finding that the proposed amendment to the national SSM SIP call and policy established in that rule is based on a determination of nationwide scope and effect, as the proposal is in fact based on several determinations of nationwide scope and effect, the authority for which is given to the Administrator under the CAA. The commenters contended that the proposal is indisputably based on the EPA's determinations about the nationwide validity of the nationally applicable 2015 SSM SIP Action. The commenters remarked that in the proposal, Region 6, by seeking HQ concurrence to propose an action inconsistent with national policy, admits that the proposal is, in fact, based on a determination of nationwide scope and effect. The commenters asserted that a determination of nationwide scope and effect is furthermore appropriate where a regionally applicable action encompasses two or more judicial circuit courts. The commenters noted that since the revised affirmative defense policy would apply throughout Region 6, which spans three judicial circuits, and that the three courts could reach conflicting conclusions regarding the appropriateness of affirmative defenses, the proposal must be reviewed only in the D.C. Circuit. The commenters claimed that a refusal to find the rule is based on determinations of nationwide scope and effect would be inconsistent with the 2015 SSM SIP Action; there the EPA found that venue was appropriate in the D.C. Circuit because the agency was revising its interpretations with respect to certain issues and establishing a national policy applicable to all states. The commenters argued that the EPA's refusal to make and publish a finding of nationwide scope and effect constitutes an arbitrary, capricious, and unexplained departure from the EPA's past practice of directing review of SIP calls to the D.C. Circuit. The commenters concluded that while the EPA is not precluded from adopting a different approach to venue under the CAA, it must display an awareness of its changing position and show there are good reasons for the new policy.

Response: Under the venue provision of the CAA, an EPA action ''which is locally or regionally applicable'' may be filed ''*only* in the United States Court of Appeals'' covering that area, 42 U.S.C. 7607(b)(1) (emphasis added). The only exception to that mandate is where the Administrator expressly finds and publishes that the locally or regionally applicable action is based on a determination of nationwide scope and effect. The requirement that the Administrator find and publish that an otherwise locally or regionally applicable action is based on a determination of nationwide scope and effect is an express statutory requirement for application of this venue exception, and there is no such finding to publish here. Absent an express statement—and publication—that such a finding has been made, thus invoking the venue exception, there can be no application of that exception. See, *e.g., Lion Oil* v. *EPA,* 792 F.3d 978, 984 n.1 (8th Cir. 2015) (even where the EPA, unlike here, made the necessary finding, the court found no need to decide application of the venue exception absent publication of that finding); *Texas* v. *EPA,* 829 F.3d 405, 419 (5th Cir. 2016) (''This finding is an independent, post hoc, conclusion by the agency about the nature of the determinations; the finding is not, itself, the determination.''); *Dalton Trucking,* 808 F.3d 875.

CAA section 307 expressly hands the Agency full discretion to make its own determination whether to exercise an exception to a Congressionally-dictated rule. See *Texas* v. *EPA,* 829 F.3d at 419–20 (the venue exception ''gives the Administrator the *discretion* to move venue to the D.C. Circuit by publishing a finding declaring the *Administrator's belief* that the action is based on a determination of nationwide scope and effect.'') (emphases added).

Even assuming that a court would review Region 6's declination to make a nationwide scope or effect determination under the Administrative Procedure Act arbitrary and capricious standard, the declination is not unreasonable in this case. Commenters assert that Region 6's decision to seek concurrence to propose an action inconsistent with national policy somehow constitutes an admission that such action is based on a determination of nationwide scope and effect. It is not clear how or why this should be so. In any case, as is stated throughout this document, this action and the CAA interpretation it is based upon applies in Texas only and does not alter EPA's national policy, and thus is not based on a determination of nationwide scope or effect. See *American Road & Transportation Builders Ass'n* v. *EPA,* 705 F.3d 453, 456 (D.C. Cir. 2013) (holding that venue for review of the EPA's approval of revisions to California's SIP lay in the Ninth Circuit because the approval only applied to projects within California, even if the SIP could set a precedent for future proceedings).

The commenters argue that it is appropriate for EPA to find and publish that an action is based on a determination of nationwide scope and effect where a regionally applicable action encompasses multiple judicial circuits. The EPA does not take a position on this question here, nor does it need to do so, because as explained earlier in this document, this final action is limited to Texas, and thus only a single judicial circuit. Although Region 6 was initially contemplating a regionwide policy on affirmative defense provisions in SIPs, after reviewing comments received during the public process the region has decided to limit the deviation from national policy to Texas and the only final action being taken herein is to withdraw the SIP call issued to Texas.

The commenters also allege that the EPA has a past practice of directing review of SIP calls to the D.C. Circuit, but this is incorrect. In the 2015 SSM

SIP Action, the Agency did opt to consolidate its action into a single national announcement of policy and issue 36 individual SIP calls through one document. But at other times SIP calls have been issued by individual regions and reviewed in regional circuits. For example, in 2011, EPA Region 8 found that the Utah SIP was substantially inadequate to comply with the requirements of the CAA and therefore issued a SIP call for Utah to revise its SIP to change an unavoidable breakdown rule, which exempted emissions during unavoidable breakdowns from compliance with emission limitations. 76 FR 21639 (April 18, 2011). This SIP call was subsequently reviewed in the U.S. Court of Appeals for the Tenth Circuit. *US Magnesium* v. *EPA,* 690 F.3d 1157 (10th Cir. 2012).

Comment: Commenters stated that the proposed Texas withdrawal from the 2015 SSM SIP Action applies only to the Texas SIP and only has legal effect in the State of Texas; therefore, the action is ''locally or regionally applicable'' under the CAA judicial review provision and EPA Region 6 was correct in not making a finding that this action ''is based on a determination of nationwide scope or effect.'' The commenters noted that while *Luminant* is directly applicable to Texas, the rationale for the action may be applicable elsewhere and it may be more appropriate to address Region 6 states outside the Fifth Circuit in a separate action. Commenters requested that Region 6 should clarify that its policy position on the treatment of SSM affirmative defenses is non-binding guidance that reflects the Region's interpretation of the CAA's requirements. The commenters stated that guidance should make clear that any Region 6 state that seeks approval of SIP provisions containing SSM affirmative defenses would be subject to a separate notice-and-comment rulemaking in which Region 6 would assess the provision and determine whether it complies with the requirements of the CAA. The commenters also stated that the policy guidance here would not constitute the consummation of any decision-making process with regard to those SIPs, nor would it determine any legal rights, obligations, or consequences. The commenters recommended that the policy guidance should make clear that the Region would examine individual SIP affirmative defense provisions for consistency with the CAA on a case-by-case rather than rejecting all such provisions out of hand.

Response: This action only concerns the Texas SIP and only has legal effect in Texas, so it is a locally or regionally (as opposed to nationally) applicable action. As stated in the TCEQ's petition for reconsideration and our proposal, the Texas affirmative defense SIP provisions are narrow and limited in scope. After careful consideration of the facts and circumstances surrounding our approval of the affirmative defense provisions in the Texas SIP, including the fact that the Fifth Circuit previously upheld the EPA's approval of the same provisions that were the subject of the Texas portion of the 2015 SSM SIP Action, Region 6 has concluded that it would be appropriate to withdraw the finding of inadequacy as it applies to the Texas SIP.

This action does not have any immediate or legal effect outside of Texas, and Region 6 is not announcing any policy that would apply outside of Texas. As noted by the commenter, Region 6 will examine any state submittal for a SIP revision, or any potential future petition for reconsideration of a SIP call issued to another Region 6 state, consistent with the EPA's obligations under the CAA. In this document, Region 6 is taking a final action to withdraw the Texas SIP call based on the reasons set forth in the proposal and this document. Apart from the action on the Texas SIP, Region 6 is not altering or changing the Agency's position with respect to affirmative defenses.

4. Other Comments

Comment: The commenter alleged that the EPA's argument that ''removing these affirmative defense provisions from SIPs will not reduce emissions and therefore would not result in an environmental or public health or welfare benefit'' is flawed and inadequate. The commenter stated that, through this action, Region 6 is creating a less stringent regulatory environment, while providing no evidence to support its claim that eliminating affirmative defense provisions will not reduce excess emissions. The commenter contended that the EPA's argument is not based on any analysis and lacks substantive supportive evidence from the peer reviewed literature.

The commenter also cited research documenting the specific and general deterrence effects of enforcement on environmental rules and regulations. The commenter contended this research, which studies the Clean Water Act compliance behavior of paper and pulp facilities, concludes that compliance and enforcement actions reduce incidences and durations of noncompliance.

Response: The commenter, and the cited research, speak of emissions that exceed applicable limitations during routine events. This action concerns the Texas affirmative defense provisions that are only available for upsets and unplanned MSS events. Unplanned MSS events by definition are not routine. The specific affirmative defense provisions at issue herein apply to unavoidable excess emissions by a source that cannot be prevented by an owner or operator through planning and design. Because the covered events, and resulting emissions that exceed applicable emission limitations, are unavoidable, by the very nature of source operations, they would occur regardless of whether the affirmative defense provisions were in the Texas SIP. Therefore, Region 6 disagrees that the affirmative defense provision provide a less stringent regulatory environment as the potential relief is only available for events proved to be unavoidable.

Furthermore, the following provides evidence that the Texas regulatory scheme provides deterrence to emissions events. In response to a similar comment, TCEQ in 2016 wrote [26]:

''In fiscal year 2015, the agency [TCEQ] conducted over 109,000 investigations, which included 4,212 compliance investigations. More than 18,000 Notice of Violations were issued regarding investigations conducted. Enforcement efforts resulted in 1,681 administrative orders issued with over $12.6 million to be paid as penalties and over 3.2 million to be expended for Supplemental Environmental Projects (SEPs). There were an additional 46 civil judicial orders issued by the Texas Office of Attorney General (OAG) that resulted in over $16.1 million to be paid as penalties. The agency also participated in five search warrants and finalized ten criminal cases with convictions against 11 individuals and two corporations during FY 2015. The finalized cases included 19 felony counts and six misdemeanor counts. These cases resulted in total of $16,000 in criminal fines, 30 years of community supervision, 156 months of incarceration, 1,050 hours of community service, and over $23,370,000 in restitution.'' TCEQ also stated, ''It is important to note that the overall number of emission events

[26] October 31, 2016, TCEQ's Interoffice Memorandum, from Richard Hyde, Executive Director to Tucker Royall, General Counsel, titled ''Analysis of Environmental Integrity Project's (EIP) Breakdowns in Air Quality Report, April 27, 2016''.

reported decreased 10% from 4,987 in FY 2014 to 4,512 in FY 2015.''

Moreover, while Region 6 does not dispute the research cited by the commenter concerning the deterrence effect of enforcement, the Texas affirmative defense provisions do not prohibit enforcement. The Texas affirmative defense is only available for monetary penalties; an enforcement action can still be brought for injunctive relief. Region 6 also notes that the research on the regulation and enforcement of the Clean Water Act finds that enforcement reduces the incidence and duration of violations. The affirmative defense provisions in the Texas SIP only apply to excess emissions violations due to unavoidable malfunctions, where the source has proven that it meets specific criteria (including that the frequency and duration of the event was minimized and that all possible steps were taken to minimize the impact of the unauthorized emissions on air quality). This also does not speak in any way to Region 6's alternative CAA interpretation outlined in the proposal and this action and whether the Texas affirmative defense provisions are approvable in CAA SIPs.

Comment: One commenter noted that the EPA failed to conduct a detailed cost benefit analysis on the impacts of excess emissions on human health and the environment.

Response: There is nothing in the statute that requires the Agency to conduct a cost benefit analysis in order to withdraw a SIP call, and the commenter has not provided a compelling reason for why Region 6 should do so. In addition to statutory requirements, regulatory agencies also take direction from the President and the Office of Management and Budget (OMB) within the Executive Office of the President regarding what type of formal regulatory evaluation should be performed during rulemaking. Executive Order 12866, *Regulatory Planning and Review,* requires an assessment of benefits and costs for all significant regulatory actions. As stated in the proposal, this action is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866. 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 reaffirms that the Texas State law meets Federal requirements and does not impose additional requirements beyond those imposed by state law. Therefore, this action is not subject to review by the OMB.

Even if Region 6 were to conduct a cost benefit analysis, there are unlikely to be any impacts of this action. This final action does not involve a revision to the Texas SIP, nor does it result in an amendment to the current federally codified Texas SIP concerning affirmative defense provisions. This final action withdraws a SIP call issued to Texas in 2015 thereby leaving in place a state rule that the EPA incorporated into the Texas SIP in November 2010. Furthermore, the Texas affirmative defense provisions only apply to unauthorized emissions that a defendant proves were unavoidable. Because these emissions were unavoidable, the existence or lack of the affirmative defense provisions should not impact the scope of emissions.

Comment: The commenter noted that, according to STEERS for calendar year 2017, 275 companies reported 4,067 periods of excess emissions that resulted in the release of more than 63 million pounds of air pollution. The commenter stated that according to data provided by TCEQ, affirmative defenses were claimed for 97 percent of those excess emissions events. The commenter concluded that this data indicates that these events are common enough to be considered routine and, therefore, should be regulated.

Response: Region 6 does not disagree with the commenter's citation or their use of the data from STEERS. The fact that affirmative defense provisions were claimed for 97% of periods of excess emissions reported, however, does not suggest that these events are considered routine. Instead, it suggests an operator of an emission unit that violates an applicable limit is doing so because of a malfunction that was, due to the specific circumstances, considered unavoidable, based on the facts available at the time the excess emissions report and claim was required to be filed with Texas. The Texas affirmative defense provisions for an upset is only available for an event where the source owner or operator proves by a preponderance of evidence in an enforcement proceeding that the event in question was indeed due to an unplanned and unavoidable breakdown or excursion of a process or operation. Moreover, the State of Texas has additional provisions for excessive emission events, if, in fact, a facility is routinely and frequently violating applicable standards.[27]

Outside of the criteria outlined in the affirmative defense provisions, which are quite stringent, equipment and process downtime cost business money and serve as incentive to repair and remedy the situation in an expeditious manner. As previously stated, Region 6 takes the position that in the case of the affirmative defense provisions in the Texas SIP, it would be inequitable to penalize a source for occurrences beyond the company's control. Furthermore, evidence of any past upset, unplanned MSS, or excess opacity event to which an owner or operator invoked the affirmative defense provision is admissible in litigation proceedings and can be considered as relevant to demonstrate a frequent or recurring pattern of events, even if all subjects of the criteria are proven.[28]

Comment: The commenters alleged that the EPA fails to rationally confront how the affirmative defense provisions in the Texas SIP harm community enforcement efforts and the efficacy of pollution-control efforts. The commenters stated that the proposal fails to consider the polluters' abuse of the affirmative defense provisions and how that use thwarts enforcement and therefore diminishes sources' incentives for avoiding violations, resulting in higher levels of pollution. Additionally, the commenters alleged that the EPA has failed to rationally explain its departure from its treatment of such issues in the 2015 SSM SIP Action, where the EPA found that affirmative defense provisions do in fact interfere with actions taken to enforce emission limitations brought under the authority provided by CAA section 304. The commenters noted that where it is already difficult to bring citizen suits under the CAA, as demonstrated by the Hecker article [29] as well as *Sierra Club* v. *Energy Future Holding Corp.,* No. 12–cv–108–WSS, 2014 WL 2153913 (W.D. Tex. (Mar. 28, 2014)), affirmative defenses make enforcement even more difficult and expensive. The commenters referenced a case in the Hecker article, which described how the factual complexity inherent in a dispute over whether violations are infrequent and unavoidable, and could have been prevented through acceptable operating and maintenance practices, made it difficult to rebut the defendant's assertion of affirmative defense and bring the suit in a cost-effective manner. The commenters alleged that in *Energy Future Holding,* without denying thousands of exceedances of the permit

[27] See 30 TAC 101.222(a).

[28] See 30 TAC 101.222(g).

[29] Jim Hecker, *The Difficulty of Citizen Enforcement of the Clean Air Act,* 10 Widener L. Rev. 303 (2004). (Referred to as ''Hecker article''. This article describes the author's experience litigating five citizen suits between 1995 and 2004, including one citizen suit case where a Texas refinery claimed SSM defenses.)

limits for opacity, Luminant argued, and the district court found, that TCEQ's determinations did alter the court's authority to find liability for self-reported exceedances of emission limits. The commenters claimed that real world experience shows that defendants have relied upon, and will assuredly continue to rely upon, the Texas affirmative defense provisions to argue that a federal court's authority to find liability or impose penalties under the Act is limited.

Response: In this action, Region 6 is reviewing the regulatory affirmative defense provisions adopted by Texas and previously approved by the EPA into the Texas SIP. Region 6 is not investigating how these provisions have been applied in individual cases by either the State or individual courts. See *Montana Environmental Information Center* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018) (holding that a petitioner's concern raising questions of implementation does not need to be addressed when EPA is approving a SIP, but rather is ''better addressed at a different time''). To the extent the commenters disagree that the affirmative defense provisions were applied correctly in an individual case, they could have made such claims as a plaintiff or intervenor in the State's administrative or judicial enforcement action where the defendant asserted the affirmative defense. In this action, Region 6 is considering whether the affirmative defense provisions as crafted in state regulations, and approved into Texas's SIP, are consistent with CAA requirements.

However, Region 6 notes that the commenters provide insufficient evidence that sources ''abuse'' the Texas affirmative defense provisions. The commenters appear to be claiming that sources are using the affirmative defense provisions in the Texas SIP to bad effect or for bad purpose. This supposition is unsubstantiated, and the commenters have failed to provide actual evidence that the affirmative defense provisions in the Texas SIP are being misused. The EPA does not believe it appropriate to speculate as to the motives or incentives of a source owner or operator generally or with respect to any particular emissions incident.

Comment: The commenter claimed that the proposal fails to explain how the affirmative defense provisions in the Texas SIP will protect public health from air quality that violates the NAAQS. The commenter stated that neither the proposal nor *Luminant* considers how these provisions meet the legal requirements of SIPs to protect the NAAQS and PSD increments. The commenter noted that SSM events are well documented to have adverse human health impacts, especially on neighboring communities; furthermore, excess emissions represent a sizeable share of emissions in Texas. The commenter stated that Region 6 should have performed an analysis specific to sources in Texas, evaluating the potential impacts affirmative defenses would have on air quality throughout Texas, and demonstrating that the NAAQS would continue to be maintained in all areas of Texas notwithstanding the availability of such affirmative defenses. The commenter noted that Region 6 has made no attempt to do so in the proposal, therefore the proposal fails to provide a reasonable basis for approval.

Response: Region 6 disagrees that some type of additional analysis specific to sources in Texas is required that the Texas affirmative defense provisions in the Texas SIP will protect the public health and the environment. At issue is whether the affirmative defense provisions are consistent with CAA requirements. With respect to commenter's concern about NAAQS violations, the provisions in the Texas SIP clearly place the burden of proof on the source owner or operator to demonstrate that the NAAQS and PSD increments were not exceeded in order to make use of the affirmative defense. See 30 TAC 101.222(b)(11) (the owner or operator must demonstrate that ''the unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, or to a condition of air pollution''). Therefore, the existence of these provisions, by their own requirements, will not lead to any further interfere with the attainment of the NAAQS or PSD increments.

Additionally, in an effort to ensure air quality is protected in Texas, TCEQ investigates each reported emission event, and makes a determination of whether the emission event was excessive (30 TAC 101.222(a)). In addition, 30 TAC 101.222(f), titled Obligation, states that meeting the criteria in 30 TAC 101.222(b)–(e) and (h) do not remove any obligations to comply with any other existing permit, rule, or order provisions that are applicable to an emissions event or a maintenance, startup, or shutdown activity. It also states that an affirmative defense cannot apply to violations of federally promulgated performance or technology-based standards, such as those found in 40 CFR parts 60, 61, and 63. The affirmative defense is available only for emissions that have been reported or recorded. Furthermore, the affirmative defense provisions in the Texas SIP are available only for emission events that are proven to be due to malfunctions.

Comment: The commenters asserted that the burden of proof for an affirmative defense requires operators to prove that unauthorized emissions did not cause or contribute to a NAAQS violation or PSD increment exceedance, although in practice TCEQ grants affirmative defense to operators' unsupported representations that they lack sufficient information to indicate that an exceedance has occurred. The commenters claimed that the implementation of this affirmative defense provision is inconsistent with the Fifth Circuit decision and the EPA's reading of the rule. The commenters alleged that this provision has public health damages resulting from periods of excess emissions exceeding $250 million annually and noted that low-income communities and communities of color that are in close-proximity to sources claiming affirmative defenses bear the burden of periods of excess emissions, breathing deadly pollution, being told to stay indoors, being told to shelter in place, experiencing more frequent hospital visits, and facing a higher risk of serious and chronic health harms.

Response: As discussed earlier, the affirmative defense provisions in the Texas SIP are defenses to a civil penalty asserted by a defendant in an enforcement action. Whatever conclusions made by TCEQ in its evaluation of excess emission reports for malfunctions is not binding upon the courts or other parties in a state or Federal enforcement action brought under CAA sections 113(b) or 304(a). See *Environment Texas Citizen Lobby* v. *ExxonMobil,* 84 ERC 1578 (S.D. Tex. 2017) (stating that ''TCEQ's determination of the applicability of an affirmative defense at best rises to the level of prima facie proof'' and ''[r]eliance on the TCEQ's determination is not sufficient to meet Exxon's evidentiary burden at trial to demonstrate all eleven criteria are met''). In addition, the affirmative defense provisions in the Texas SIP are only applicable to upsets and unplanned periods of excess emissions. By definition, these events are unavoidable even when good practices are implemented at facilities. Upsets and unplanned periods of excess emissions are not beneficial operationally or financially to sources. The commenters appear to be asserting that affirmative defenses disincentivize mitigation of emissions due to

malfunctions. However, among the criteria in the Texas affirmative defense provisions is that all possible steps were taken to minimize the impacts of the unauthorized emissions on air quality. As such, sources have incentives to mitigate the adverse air quality impacts from such events as much as possible. While Region 6 acknowledges commenters' concern that emissions from malfunctions may contribute to adverse health impacts on communities around industrial facilities, malfunctions resulting in excess emissions are, subject to scrutiny both by TCEQ and in potential enforcement actions, as to whether the event itself was unavoidable using the narrowly tailored criteria provided in the affirmative defense provisions in the Texas SIP. In this action, Region 6 is reviewing the regulatory affirmative defense provisions adopted by Texas and previously approved by the EPA into the Texas SIP. Region 6 is not reviewing how those provisions are being implemented by TCEQ. In addition, the Texas affirmative defense provisions do not apply to actions seeking injunctive relief.

IV. Final Action

Region 6 is finding that the affirmative defense provisions previously approved into the SIP do not make the Texas SIP substantially inadequate to meet the requirements of the Act. In doing so, EPA Region 6 is withdrawing the SIP call issued to Texas in 2015 SSM SIP Action. As is detailed in the proposal for this final action, in the absence of a SIP call, Texas no longer has an obligation to submit a SIP revision addressing its existing affirmative defense provisions. Texas may withdraw the SIP revision submitted in November 2016 in response to the 2015 SSM SIP Action, on which the EPA has not proposed or taken final action to approve or disapprove.

V. Statutory and Executive Order Reviews

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

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

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), since it alleviates an obligation on the State of Texas to revise its SIP by withdrawing the SIP call issued to Texas in 2015.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. Any agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to this action. This action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. 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. In this action, the EPA is not addressing any tribal implementation plans. This action is limited to the State of Texas. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, 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.

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, 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 the response to comments section of the preamble.

L. Congressional Review Act (CRA)

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). 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).

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 7, 2020. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 7, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–01477 Filed 2–6–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200204–0041]

RIN 0648–BJ58

Fisheries off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Protected Species Hard Caps for the California/Oregon Large-Mesh Drift Gillnet Fishery

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

ACTION: Final rule; request for comments.

SUMMARY: NMFS is publishing regulations under the authority of Section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement an immediate closure of the California/Oregon drift gillnet (DGN) fishery for swordfish and thresher shark (14 inch (36 cm) minimum mesh size) if a hard cap (*i.e.,* limit) on mortality/injury is met or exceeded for certain protected species during a rolling 2-year period. The length of the closure will be dependent on when the hard cap is reached. The implementation of hard caps is intended to manage the fishery under the MSA to protect certain non-target species. The publication of this final rule is necessary to comply with a court order issued January 8, 2020, as further described in **SUPPLEMENTARY INFORMATION** below.

DATES: The final rule is effective March 9, 2020. Comments on the final rule and supporting documents must be submitted in writing by March 23, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0123, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov/docket?D=NOAA-NMFS-2016-0123,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Lyle Enriquez, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2016–0123'' in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are 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.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the final Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and other supporting documents are available via the Federal eRulemaking Portal: *https://www.regulations.gov/docket?D=NOAA-NMFS-2016-0123* or by contacting Lyle Enriquez, NMFS West Coast Region, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or *Lyle.Enriquez@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lyle Enriquez, NMFS, West Coast Region, 562–980–4025, or *Lyle.Enriquez@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The DGN fishery for swordfish and thresher shark (14 inch (36 cm) minimum mesh size) is federally managed under the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) and via regulations of the states of California and Oregon to conserve target and non-target stocks, including protected species that are incidentally captured. The HMS FMP was prepared by the Council and is implemented under the authority of the MSA by regulations at 50 CFR part 660.

The DGN fishery has been subject to a number of seasonal closures. Since 1982, it has been closed inside the entire U.S. West Coast exclusive economic zone (EEZ) from February 1 to April 30. In 1986, a closure was established within 75 miles (121 km) of the California mainland from June 1 through Aug 14 to conserve common thresher sharks; this closure was extended to include May in 1990 and later years. In 2001, NMFS implemented two Pacific sea turtle conservation areas on the U.S. West Coast with seasonal DGN restrictions to protect endangered leatherback and loggerhead sea turtles. The larger of the two closures spans the EEZ north of Point Conception, CA (34°27′ N latitude) to mid-Oregon (45° N latitude) and west to 129° W longitude. DGN fishing is prohibited annually within this conservation area from August 15 to November 15 to protect leatherback sea turtles. A smaller closure was implemented to protect Pacific loggerhead turtles from DGN gear from June 1—August 31 during a forecasted or occurring El Niño event, and is located south of Point Conception, CA, and east of 120° W longitude (72 FR 31756, June 8, 2007). The number of active vessels in the DGN fishery has remained under 50 vessels since 2003, with an average of 20 active vessels per year from 2010 through 2018.

NMFS' fleet-wide observer coverage target has been between 20 and 30 percent since 2013. Since some DGN vessels are unobservable due to safety or accommodations requirements, the observable vessels are observed at a rate higher than 30 percent to attain the fleet-wide 30 percent coverage. Four to six DGN vessels have been unobservable during each fishing season from 2011 to present.

Council Background

In March 2012, the Council tasked NMFS with determining the steps needed to implement protected species hard caps in the DGN fishery. Originally concerned with sea turtle interactions, the Council expanded its scope to include marine mammals at its June 2014 meeting. At that meeting, the Council directed its Highly Migratory Species Management Team (HMSMT) to begin developing a range of alternatives to establish hard caps on high-priority protected species (*i.e.,* sea turtles and marine mammals) incidentally caught in the DGN fishery. In September 2014, the Council selected a Range of Alternatives and Preliminary Preferred Alternative (PPA); however, the HMSMT identified implementation issues with the Council's PPA, and an additional PPA, identified as the California Department of Fish and Wildlife (CDFW) PPA, was selected in March 2015. In June, the Council added a 2-year hard cap sub-option to the Council hard cap PPA and the CDFW hard cap PPA. An additional alternative that modified the CDFW PPA was added in September 2015. This alternative contained 2-year rolling hard caps based on observed mortality/injury; the Council selected this alternative as its Final Preferred Alternative (FPA).

The proposed rule to implement this FPA was published in the **Federal Register** on October 13, 2016, following NMFS' determination that it was consistent with the fishery management plan, plan amendment, the MSA, and other applicable law. Following public comment on the proposed rule, NMFS conducted further analysis of the economic effects of the action. This new analysis identified significant adverse short-term economic effects that were not identified at the proposed rule stage. Citing inconsistency with the purpose and need for the action and MSA National Standard 7 (*i.e.,* conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication), NMFS withdrew the proposed rule on June 12, 2017. On July 12, 2017, an advocacy organization sued to compel publication of the proposed regulations, citing the theory that NMFS' initial determination under MSA § 304(b)(1)(A) could not be reversed by a subsequent negative determination, namely that the proposed regulations did not comport with applicable law. On October 24, 2018, the United States District Court for the Central District of California found that since NMFS had not published the proposed regulations as-is nor consulted with the Council on revisions after making an initial determination under MSA § 304(b)(1)(A) that they were consistent with applicable law, NMFS had exceeded its authority under the MSA and the Administrative Procedure Act, and remanded to NMFS for further action.

On January 8, 2020, the Court ordered NMFS to publish a final rule for hard caps by February 7, 2020. The order also states that NMFS shall consult with the Pacific Fishery Management Council (Council) before making any revisions to the proposed regulations. Because the Council's next meeting is not until March 2020, NMFS does not have an opportunity to consult with the Council on revisions to the regulations before the Court's deadline. Therefore, NMFS is publishing the hard caps regulations as they were originally proposed, without changes to the regulatory text, in accord with the order. After publishing the rule, NMFS intends to review all options for addressing the economic impacts to DGN fishery participants through a separate rulemaking, beginning with engagement of the Council to propose revisions through the Council's normal process. NMFS is soliciting public comment on this final rule to gather information that can be used to develop such a separate rulemaking.

Regulations for Hard Cap Limits

The implementation of hard caps is intended to manage the fishery under the MSA to protect certain non-target species. Its purpose is not to manage marine mammal or endangered species populations, but rather to enhance the provisions of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) under MSA Section 303(b)(12) and National Standard 9. This final rule implements the Council's FPA, which establishes 2-year rolling hard caps on observed mortality and injury to fin, humpback, and sperm whales, leatherback, loggerhead, olive ridley, and green sea turtles, short-fin pilot whales, and bottlenose dolphins in the DGN fishery. The definition of injury is taken from the NMFS West Coast Region Observer Program field manual. Observers record protected species released as Alive, Injured, or Dead. Observer program staff review observer data forms and notes to make a final determination of the condition of entangled protected species. To determine whether a hard cap has been reached, NMFS will count observed mortalities and injuries to these species during the current DGN fishing season (May 1 through January 31) and the previous fishing season. If a cap is reached, the DGN fishery will close until the 2-year (*i.e.,* two fishing seasons) mortality and injury for all species falls below their hard cap value. The DGN fishery will then re-open on May 1 of the subsequent fishing season. The Council recommended hard cap values while DGN observer coverage is less than 75 percent; the Council will revisit hard cap values when observer coverage becomes greater than 75 percent.

TABLE 1—PROTECTED SPECIES HARD CAPS FOR DRIFT GILLNET FISHERY

Species	Rolling 2-year hard cap
Fin Whale	2
Humpback Whale	2
Sperm Whale	2
Leatherback Sea Turtle	2
Loggerhead Sea Turtle	2
Olive Ridley Sea Turtle	2
Green Sea Turtle	2
Short-fin Pilot Whale (CA/OR/WA stock)	4
Bottlenose Dolphin (CA/OR/WA stock)	4

Fishery Closure Procedures

NMFS will report observed protected species mortalities and injuries to help participants in the DGN fishery plan for the possibility of a hard cap being reached. If, as determined by NMFS, the DGN fleet meets or exceeds a hard cap, the fishery will be closed. Hard caps will be assessed over a rolling two-year period, by comparing the total number of mortalities and injuries during the current and previous fishing seasons to the hard caps. If a hard cap is reached or exceeded, the fishery will be closed until the two-year total of mortalities and injuries falls below the hard cap values for all species. Once the two-year total falls below the hard cap value for all species, the fishery will reopen on May 1 of the following fishing season. NMFS will publish a document in the **Federal Register** announcing the specified beginning and end dates of the closure. Upon the effective date identified in the **Federal Register** document, a DGN vessel may not be used to target, retain on board, transship, or land any additional fish

using DGN gear in the U.S. West Coast EEZ during the period specified in the announcement. Any fish already on board a DGN fishing vessel on the effective date may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, if they are landed within 4 days of the effective date. NMFS will notify vessel owners/operators of the closure by Vessel Monitoring System communication to the fleet stating when large-mesh drift gillnet fishing is closed. Notification will also be made by mail and a posting on the NMFS regional website.

Public Comments and Responses

NMFS received 20 comments, some of which included attachments and lists of signatories, during the comment period on the proposed rule. Of these, five comments supported the proposed rule as-is, nine supported the proposed rule and recommended additional or more stringent measures, five opposed the proposed rule entirely, and one opposed the proposed rule but recommended alternative approaches to regulating takes of non-target species by the DGN fishery. Major themes of the summarized comments and NMFS' responses are below.

Theme 1: The Proposed Rule Would Cause Significant Economic Impacts to DGN Fishery Participants

All six of the comments in opposition to the proposed rule, and one comment in support of the proposed rule, stated concerns that fishery closures resulting from hard caps on protected species takes would cause significant economic harm to DGN fishery participants, many of whom are dependent on the fishery for a significant portion of their annual income. Commenters expressed a desire for more detailed economic analysis of the potential effects of fishery closures under the proposed rule. One comment stated that closures resulting from the proposed rule would force seafood processors to increase their imports of foreign-caught swordfish, due to reductions in domestic supply. One comment which generally supported the proposed rule recommended NMFS establish a compensation program to remunerate fishers for lost income during a potential closure.

Response: Following public comment on the proposed rule and associated analyses, NMFS conducted further economic analysis that found significant short-term economic effects not identified at the proposed rule stage. While the DGN fishery is not expected to close often under the regulations, the adverse economic effects to DGN participants in the event of a closure would be significant. The final EA, FRFA, and RIR demonstrate that DGN participants are highly dependent on the fishery for their annual landings and revenue, and they have little opportunity to offset economic losses by participating in other existing fisheries during a DGN closure.

Theme 2: Desire for More Stringent Hard Caps Than Those in the Proposed Rule

Seven comments in support of the proposed rule expressed a desire for lower caps and/or a shorter management time horizon than the 2-year rolling hard caps outlined in the proposed rule. Of these comments, five recommended NMFS adopt Alternative 5 from the EA, which would establish one-year hard caps based on entanglements, rather than 2-year rolling hard caps based on mortality and serious injury (M&SI).

Response: The Council considered several other alternatives for this action. Descriptions of each of the alternatives are included in the EA and RIR. A rationale for why the other action alternatives were rejected is provided below.

Alternatives 1 through 4 presented significant challenges to implementation compared to the preferred alternative because they would use estimated M&SI based on observer coverage levels to evaluate the fishery against hard caps. The preferred alternative uses observed mortality and injury without the need to determine serious injury or to extrapolate data based on observer coverage in-season The current NMFS process under the MMPA for making M&SI determinations is an extensive and multi-step process that takes months to complete and occurs at the end of each calendar year. It was deemed that this process, therefore, would not be responsive enough to inseason interactions with protected species. NMFS would have to create an expedited M&SI assessment process to make a more timely determination, which would further delay this action. Additionally, observer coverage rates for the DGN fishery vary between and within fishing seasons. This makes it difficult to determine the coverage rate at the time an interaction occurs, thus influencing the hard cap limits. Similarly, using a generalized observer coverage rate is problematic because DGN vessels often participate in multiple fisheries based on environmental factors and the presence of different species. This adds to the variance in observer coverage levels over the course of a fishing season.

In response to the identified implementation issues, Council members developed Alternative 5 with two sub-Alternatives. Under Alternative 5 sub-option 1, the DGN fishery would be expected to meet or exceed a hard cap 7out of 13 fishing seasons, using historical observations (there is, however, less fishing effort in recent years, so the fishery is expected to close fewer than 7 times under this Alternative). Under Alternative 5 sub-option 2, the fishery would be expected to close in 14.6 percent of simulated seasons, with the possibility of closing for more than one full fishing season. The economic analysis showed that Alternative 5 would not be conducive to supporting an economically viable swordfish fishery.

Due to implementation issues identified with Alternatives 1 through 4, and the large decreases in effort, landings, revenue, and profits associated with Alternatives 5a and 5b, Alternative 6 was chosen as the preferred alternative. Alternative 6 was considered the least cost action alternative of those that did not present significant implementation issues.

Theme 3: Need for Increased Observer Coverage

Eight comments in support of the proposed rule expressed a desire to increase observer coverage in the DGN fishery, ideally to 100 percent. Commenters voiced concern that a hard caps regime with incomplete observer coverage may not adequately prevent takes of protected species. One comment in opposition to the proposed rule shared a similar concern, and recommended NMFS avoid the use of ratio estimates in determining total takes for the fishery under incomplete observer coverage.

Response: The Council developed the hard cap values based on less than 100 percent coverage, and indicated that they would revisit the values when observer coverage reaches 75 percent or greater in the DGN fishery. In 2015, the Council recommended increasing DGN monitoring to 100 percent using on-board observers or electronic monitoring. That action would be undertaken separately, and increased observer coverage was not a part of the proposed rule.

Theme 4: The Proposed Rule Is Inconsistent With MSA National Standards

Five comments opposed the proposed rule on the grounds that it is not consistent with the legal requirements outlined in the MSA National Standards. MSA National Standard 8 states that conservation and management measures shall ''provide

for the sustained participation of [fishing] communities,'' and ''minimize adverse economic impacts on such communities.'' Commenters expressed concern that fishery closures under the proposed rule would cause economic harm to fishery participants to a degree which could compromise the economic viability of the DGN fishery and preclude continued participation. Two commenters expressed additional concerns that the hard caps in the proposed rule are arbitrary, poorly defined, and not based on the best available science, therefore making them inconsistent with MSA National Standard 2.

Response: NMFS initially found the proposed rule consistent with MSA, its National Standards, and other applicable laws. Following public comment on the proposed rule, NMFS conducted additional economic analysis and found the regulations to be inconsistent with MSA National Standard 7 (*i.e.,* conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication). NMFS intends to review all options for addressing the economic impacts to DGN fishery participants through a separate rulemaking, beginning with engagement of the Council to propose revisions through the Council's normal process. Such a rulemaking would need to be consistent with the other MSA National Standards, including 2 and 8.

Theme 5: The Proposed Rule is Unnecessary and Would Not Provide a Significant Benefit to Protected Species

Two commenters opposed the proposed rule on the grounds that the recent levels of bycatch impacts by the DGN fishery do not warrant additional regulation under MSA. One commenter questioned why additional regulation under MSA is needed, given that management schemes for endangered species and marine mammals already exist under ESA and MMPA. This commenter expressed concern that the proposed rule would diminish the effectiveness of the existing take reduction team (TRT) process under MMPA, and recommended that NMFS instead consult with the Pacific Ocean Cetacean TRT on processes to improve performance of the DGN fishery.

Response: Take of ESA-listed species in the DGN fishery is currently within the values authorized by an Incidental Take Statement issued as part of a 2013 ESA Biological Opinion on DGN fishing activities. Take of all marine mammals in the DGN fishery is currently below their Potential Biological Removal levels under the MMPA. The Council recommended protected species hard caps for the DGN fishery to address MSA National Standard 9 and Section 303 of the MSA (*i.e.,* to minimize bycatch and bycatch mortality and conserve non-target species to the extent practicable).

Theme 6: The Proposed Rule May or May Not Cause a ''Transfer Effect'' of Protected Species Bycatch

Two comments in opposition to the proposed rule expressed a concern that closing the DGN fishery due to hard caps violations would result in increased effort by foreign fisheries with different management regimes and potentially greater bycatch impacts, a theory known as the ''transfer effect.'' One commenter in support of the proposed rule acknowledged and challenged this notion, claiming there is no evidence to suggest such a response by foreign fisheries to the level of effort by U.S. domestic fisheries.

Response: There may be a market substitute if fewer swordfish are caught by DGN gear. For example, the Hawaii longline fishery lands swordfish on the U.S. West Coast and the U.S. imports swordfish from foreign fisheries. If swordfish buyers on the U.S. West Coast increase their purchases of swordfish from sources with less bycatch, then there could be a minor beneficial impact to the environment. If buyers increase purchases of swordfish from sources with higher bycatch, increased negative effects to the environment would be expected. However, NMFS' analysis did not predict which source or sources would fill the market demand in order to attempt to quantify these effects.

Classification

NMFS' initial determination of consistency with National Standard 7 of the Magnuson-Stevens Fishery Conservation and Management Act, and related concerns arising after the publication of the proposed rule, are discussed above. The Administrator, West Coast Region, NMFS, determined that the rule is consistent with all other applicable laws.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and existing collection-of-information requirements still apply under the following Control Number: 0648–0593. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number.

NMFS prepared a final EA for this rule and concluded that there will be no significant impact on biological resources as a result of this action, based on the analysis contained in the EA. The action may result in significant adverse socioeconomic impacts in the event of a fishery closure. The action will have minor beneficial environmental impacts on target, not-target, and protected species and negative economic impacts to the DGN fleet. All of the proposed alternatives would result in a negative economic impact; however, the Council's final preferred alternative would result in a limited economic impact when compared to the other action alternatives (a more detailed explanation can be found in the FRFA). A copy of the final EA is available from NMFS (see **ADDRESSES**).

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

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016.

An initial regulatory flexibility analysis (IRFA) was prepared at the proposed rule stage, as required by section 603 of the RFA. This IRFA was finalized as an FRFA, recognizing significant adverse short-term economic effects that were not identified in the IRFA, on January 24, 2020. The FRFA describes the economic impact this final rule is expected to have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see).

There are currently 60 individual permit holders with valid Federal limited entry drift gillnet permits; however, many permits remain inactive. On average, 20 vessels participated in the fishery each year from 2010 through 2018. In 2018, 21 vessels participated in the fishery with total landings equaling 201 metric tons (mt) (round weight), about 10.1 mt on average per vessel. Total landings included 26 mt of common thresher shark, 11 mt of shortfin mako shark, 145 mt of swordfish, and 19 mt of tunas. All participants in the fishery are considered small businesses since average annual per vessel revenues persist well below the $11 million threshold.

The Council considered six alternatives for protected species hard caps for the DGN fishery before selecting Alternative 6 as their final preferred alternative. Compared to the baseline, the regulatory action (*i.e.,* based on Alternative 6) is expected to result in an ongoing $4,596 annual loss per vessel, based on a DGN fleet size of 20 vessels. These potential long-term adverse economic effects of the regulations appear to be limited. While the DGN fishery would not be expected to close often under the regulations, the short-term adverse economic effects to DGN participants in the event of any closure would be significant. The final EA, FRFA, and RIR demonstrate that DGN participants are highly dependent on the fishery for their annual landings and revenue and they have little opportunity to offset economic losses by participating in other fisheries during a DGN closure. If vessel operators are successful in reducing the frequency of hard cap species catch in the future, the DGN fishery would close less often. However, given the many existing regulatory measures to reduce protected species interactions in the DGN fishery to minimal levels, the degree to which further take reductions can be realized through fishermen's deliberate effort to avoid reaching caps cannot be determined. Alternative 6 is the least costly alternative that did not present significant implementation issues.

Action Alternatives 1 through 4 were estimated to produce fewer costs to the fleet than the FPA; however, these alternatives presented significant implementation challenges. The evaluation of the fishery against hard caps in each of these Alternatives was based on an estimated M&SI calculation derived from observer coverage levels. The current NMFS process under the MMPA for making M&SI determinations is an extensive and multi-step process that takes months to complete and occurs at the end of each calendar year. It was deemed that this process, therefore, would not be responsive enough to inseason interactions with protected species. NMFS would have to create an expedited M&SI assessment process to make a more timely determination, which would have further delayed this action. Additionally, observer coverage rates for the DGN fishery vary between and within fishing seasons. This makes it difficult to determine the coverage rate at the time an interaction occurs and then extrapolate observed M&SI for comparison to the hard caps. Similarly, using a generalized observer coverage rate is problematic because DGN vessels often participate in multiple fisheries based on environmental factors and the presence of different species. This adds to the variation in observer coverage levels over the course of a fishing season. Lastly, because fishing effort has been low compared to historical levels, a small change in observed fishing effort can have a significant effect on the observer coverage rate if unobserved effort does not change commensurately.

In response to the identified implementation issues with Alternatives 1 through 4, the CDFW proposed Alternative 5 with two sub-Alternatives. Based on Alternative 5 sub-option 1, the DGN fishery would be expected to meet or exceed a hard cap 7 out of 13 fishing seasons, using historical observations (there is, however, less fishing effort in recent years, so the fishery would be expected to close fewer than 7 times under this Alternative). Using Alternative 5 sub-option 2, the fishery would be expected to close in 14.6 percent of simulated seasons, with the possibility of closing for more than one full fishing season. The results of the economic analysis indicate that Alternative 5 would have greater economic impacts and not be conducive to supporting an economically viable swordfish fishery.

NMFS considers all entities subject to this action to be small entities as defined NMFS' size standards. The small entities that would be affected by the action are all U.S. commercial DGN vessels that may be used in the California/Oregon large-mesh DGN fishery. Because each affected vessel is a small business, the rule has an equal effect on all of these small entities. Therefore, the action will impact all these small entities in the same manner. This rule is anticipated to have a significant economic impact on a substantial number of small entities, or place small entities at a disadvantage to large entities.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting, and recordkeeping requirements.

Dated: February 4, 2020.

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 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.702, add the definition for ''Injury'' in alphabetical order to read as follows:

§ 660.702 Definitions.

* * * * *

Injury, when referring to marine mammals and sea turtles, means the animal has been released with obvious physical injury or with attached fishing gear.

* * * * *

■ 3. In § 660.705, add paragraphs (tt) and (uu) to read as follows:

§ 660.705 Prohibitions.

* * * * *

(tt) Fish with a large-mesh drift gillnet (mesh size ≥ 14 inches) in the U.S. West Coast Exclusive Economic Zone during the time the fishery is closed pursuant to § 660.713(h)(2)(ii).

(uu) Retain on board, transship, or land any fish caught with a large-mesh drift gillnet (mesh size ≥ 14 inches) later than 4 days after the effective date of a drift gillnet fishery closure and before the drift gillnet fishery re-opens pursuant to § 660.713(h)(2)(ii).

■ 4. In § 660.713, add paragraph (h) to read as follows:

§ 660.713 Drift gillnet fishery.

* * * * *

(h) *Limits on protected species mortalities and injuries.* (1) Maximum 2-year hard caps are established on the number of sea turtle and marine mammal mortalities and injuries that occur as a result of observed interactions with large-mesh drift gillnets (mesh size ≥ 14 inches) deployed by vessels registered for use under HMS permits. Mortalities and injuries during the current fishing season (May 1 through January 31) and the previous fishing season are counted towards the hard caps. The mortality and injury hard caps are as follows:

TABLE 1 TO PARAGRAPH (h)

Species	Rolling 2-year hard cap
Fin Whale	2
Humpback Whale	2
Sperm Whale	2
Leatherback Sea Turtle	2
Loggerhead Sea Turtle	2
Olive Ridley Sea Turtle	2
Green Sea Turtle	2
Short-fin Pilot Whale (CA/OR/WA stock)	4
Bottlenose Dolphin (CA/OR/WA stock)	4

(2) Upon determination by the Regional Administrator that, based on data from NMFS observers or a NMFS Electronic Monitoring program, the fishery has reached any of the protected species hard caps during a given 2-year period:

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification that the fishery has reached a protected species hard cap. The notification will include an advisement that the large-mesh drift gillnet (mesh size ≥ 14 inches) fishery shall be closed, and that drift gillnet fishing in the U.S. West Coast Exclusive Economic Zone by vessels registered for use under HMS permits will be prohibited beginning at a specified date and ending at a specified date. Drift gillnet fishing will then be allowed beginning May 1 of the year when observed mortality and injury of each species during the previous two May 1 through January 31 fishing seasons is below its hard cap value. Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the large-mesh drift gillnet (mesh size ≥ 14 inches) fishery shall be closed, and that drift gillnet fishing in the U.S. West Coast Exclusive Economic Zone by vessels registered for use under HMS permits will be prohibited beginning at a specified date, to all holders of HMS permits with a drift gillnet endorsement via VMS communication, postal mail, and a posting on the NMFS regional website.

(ii) Beginning on the fishery closure date published in the **Federal Register** and indicated by the Regional Administrator in the notification provided to vessel operators and permit holders under paragraph (h)(2)(i) of this section, and until the specified ending date, the large-mesh drift gillnet (mesh size ≥ 14 inches) fishery shall be closed. During the closure period commercial fishing vessels registered for use under HMS permits may not be used to target, retain on board, transship, or land fish captured with a large-mesh drift gillnet (mesh size ≥ 14 inches), with the exception that any fish already on board a fishing vessel on the effective date of the document may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided such fish are landed within 4 days after the effective date published in the fishing closure document.

[FR Doc. 2020–02458 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 26
Friday, February 7, 2020

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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA44

Post-Employment Conflict of Interest Restrictions; Departmental Component Designations

AGENCY: Office of Government Ethics.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing a proposed rule to revise the component designations of three agencies for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, based on the recommendations of the agencies concerned, OGE is proposing to designate two new components in appendix B to 5 CFR part 2641, and to correct an inadvertent error in the current appendix B listing of a previously-designated component.

DATES: Written comments are invited and must be received on or before March 9, 2020.

ADDRESSES: You may submit comments, in writing, to OGE on this proposed rule, identified by RIN 3209–AA44, by any of the following methods:

Email: usoge@oge.gov. Include the reference ''Proposed Rule Revising Departmental Component Designations'' in the subject line of the message.

Fax: (202) 482–9237.

Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917, Attention: ''Proposed Rule Revising Departmental Component Designations.''

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209–AA44, for this proposed rulemaking. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Comments may be posted on OGE's website, *www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Associate Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917; Telephone: (202) 482–9300; TTY: (800) 877–8339; FAX: (202) 482–9237.

SUPPLEMENTARY INFORMATION:

I. Substantive Discussion; Correction to Existing Component Designation and Addition of Two New Departmental Components

The Director of OGE (Director) is authorized to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment conflict of interest restriction for senior employees. 18 U.S.C. 207(h). Component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). 18 U.S.C. 207(h)(2). Component designations are listed in appendix B to 5 CFR part 2641.

The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency. As a result, a former senior employee who served in a ''parent'' department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employees of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been separately designated. Likewise, a former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent, of another designated component, or of any other agency or bureau of the parent that has not been designated.

The Director regularly reviews the component designations listed in appendix B to part 2641, and in consultation with the department or agency concerned makes such additions and deletions as are necessary. Specifically, the Director ''shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official.'' 5 CFR 2641.302(e)(3). Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau within a parent agency that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent. 5 CFR 2641.302(c).

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), three agencies have forwarded written requests to OGE to amend their listings in appendix B to part 2641. After carefully reviewing the requested changes in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.302(c), OGE is proposing to grant these requests and amend appendix B as explained below.

Department of the Treasury

The Department of the Treasury (Treasury) informed OGE that appendix B to part 2641 misstates the name of one of its long-designated agency components. Specifically, appendix B lists ''Financial Crimes Enforcement *Center* (FinCEN)'' as a Treasury component, but the name of the component that goes by the acronym FinCEN is, and always has been, Financial Crimes Enforcement *Network.* Although the full name of FinCEN was stated properly when the component was first designated and added to

appendix B, see 68 FR 4681 (Jan. 30, 2003), it appears that through an inadvertent error subsequent **Federal Register** notices (and accordingly, CFR publications) listed the name of the component incorrectly in appendix B as ''Financial Crimes Enforcement Center''—see, *e.g.,* 68 FR 7884 (Feb. 18, 2003), 73 FR 36168 (June 25, 2008), 79 FR 71955 (Dec. 4, 2014). To appropriately resolve this situation, OGE proposes to make a technical correction to the Department of the Treasury listing in appendix B to part 2641 by deleting the word ''Center'' from the component listed as ''Financial Crimes Enforcement Center (FinCEN) (effective January 30, 2003)'' and replacing it with the word ''Network''.

Department of Labor

The Department of Labor has requested that OGE designate Veterans' Employment and Training Service in appendix B to part 2641 as a distinct and separate component of the Department of Labor for purposes of 18 U.S.C. 207(c). The Veterans' Education and Employment Assistance Act of 1976, Public Law 94–502, established within the Department of Labor a Deputy Assistant Secretary of Labor for Veterans' Employment, whose role was to be the principal advisor to the Secretary of Labor with respect to the formulation and implementation of all departmental policies and procedures to carry out employment, unemployment, and training programs at the Department of Labor relating to veterans. In October 1980, Public Law 96–466 elevated the Deputy Assistant Secretary of Labor for Veterans' Employment to an Assistant Secretary position, and Secretary of Labor's Order No. 5–81, issued in December 1981, established the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET). In March 1983, Secretary of Labor's Order No. 4–83 redesignated OASVET as the Veterans' Employment and Training Service (VETS) and updated the Assistant Secretary title to be Assistant Secretary of Labor for Veterans' Employment and Training.

VETS was created to give policy-level considerations to the unique needs and challenges of veterans. The office works to improve employment, training, and other workforce scenarios for veterans through a variety of avenues, including job counseling service programs, employment placement service programs, and job training placement service programs. In addition, VETS safeguards the employment rights of veterans and US service members and protects them from employment discrimination or retaliation on the basis of military service by enforcing the Uniform Services Employment and Reemployment Rights Act, 38 U.S.C. 4301–4335. According to the Department of Labor, the functions of VETS are distinct and separate from every other agency within the Department. The office was created by a discrete authority that is separate from the organic statute for the Department of Labor; has been explicitly delegated distinct responsibilities relating to veterans' training and employment; exercises distinct and separate functions to implement and enforce distinct and separate laws and programs related to veterans; is headed by an Assistant Secretary who reports directly to the Secretary of Labor; and is relatively the same size as other components designated by the Department of Labor in appendix B to part 2641. Given the manner in which VETS works independently from other component agencies and the general management of the Department of Labor, there exists no potential for the use of undue influence or unfair advantage based on past Government service.

Accordingly, OGE is proposing to grant the request of the Department of Labor and amend the agency's listing in appendix B to part 2641 to add VETS as a new component for purposes of 18 U.S.C. 207(c).

Department of Commerce

The Department of Commerce has requested that OGE designate the Bureau of Economic Analysis (BEA) as a distinct and separate component of the Department of Commerce for purposes of 18 U.S.C. 207(c). The mission of BEA is to promote a better understanding of the U.S. economy by providing timely, relevant, and accurate economic accounts data, including reports about gross domestic product, and data concerning personal income, corporate profits, and Government spending. Statistical measures produced by BEA are used by Federal, state, and local governments for budget development and projections; by the Federal Reserve for monetary policy; by the business sector for planning and investment; and by the public to understand the performance of the American economy. BEA is under the supervision of the Department of Commerce's Under Secretary for Economic Affairs; the Bureau of the Census, which is already designated as a separate component in appendix B to part 2641, is the other bureau supervised by the Under Secretary for Economic Affairs.

According to the Department of Commerce, BEA is responsible for exercising functions that are distinct and separate from the Department of Commerce and the function of other designated components within the agency. The office operates as a statistical agency, and the subject matter and activities of the office are distinct from that of every other component within the Department; other offices and components do not generate similar economic data. BEA is further insulated from other components of the Department of Commerce because much of the economic data collected by BEA is ''embargoed'' or closely-held until it is released at specified times. BEA is also comparable in size to other components that have been designated by the Department of Commerce in appendix B to part 2641. In light of the distinct and separate functions of BEA, there is no potential for the use of undue influence or unfair advantage based on based on past Government service.

Accordingly, OGE is proposing to grant the request of the Department of Commerce and amend the listing in appendix B to part 2641 to designate the Bureau of Economic Analysis as a new component for purposes of 18 U.S.C. 207(c).

As indicated in 5 CFR 2641.302(f), a designation ''shall be effective on the date the rule creating the designation is published in the **Federal Register** and shall be effective as to individuals who terminated senior service either before, on or after that date.'' Initial designations in appendix B to part 2641 were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made in this proposed rule—for VETS and BEA—would be effective on the date the final rule is published in the **Federal Register**; the component designation of FinCEN remains in effect as of the original designation date, January 30, 2003.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not

contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The proposed rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including 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. In promulgating this rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. This proposed rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 because it is not a ''significant'' regulatory action for the purposes of that order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this proposed rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: February 3, 2020.

Emory Rounds,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend 5 CFR part 2641, as set forth below:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Appendix B to part 2641 is amended by revising the listings for the Department of Commerce, the Department of Labor, and the Department of the Treasury to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Commerce

Components:

Bureau of the Census.

Bureau of Economic Analysis (effective upon publication of the final rule in the **Federal Register**).

Bureau of Industry and Security (formerly Bureau of Export Administration) (effective January 28, 1992).

Economic Development Administration.

International Trade Administration.

Minority Business Development Agency (formerly listed as Minority Business Development Administration).

National Institute of Standards and Technology (effective March 6, 2008).

National Oceanic and Atmospheric Administration.

National Technical Information Service (effective March 6, 2008).

National Telecommunications and Information Administration.

United States Patent and Trademark Office (formerly Patent and Trademark Office).

* * * * *

Parent: Department of Labor

Components:

Bureau of Labor Statistics.

Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997).

Employment and Training Administration.

Mine Safety and Health Administration.

Occupational Safety and Health Administration.

Office of Disability Employment Policy (effective January 30, 2003).

Office of Federal Contract Compliance Programs (effective December 29, 2016).

Office of Labor Management Standards (effective December 29, 2016).

Office of Workers' Compensation Programs (effective December 29, 2016).

Pension Benefit Guaranty Corporation (effective May 25, 2011).

Veterans' Employment and Training Service (effective upon publication of the final rule in the **Federal Register**).

Wage and Hour Division (effective December 29, 2016).

* * * * *

Parent: Department of the Treasury

Components:

Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004).

Bureau of Engraving and Printing.

Bureau of the Fiscal Service (effective December 4, 2014).

Comptroller of the Currency.

Financial Crimes Enforcement Network (FinCEN) (effective January 30, 2003).

Internal Revenue Service.

United States Mint (formerly listed as Bureau of the Mint).

[FR Doc. 2020–02395 Filed 2–6–20; 8:45 am]

BILLING CODE 6345–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 119

RIN 3245–AH11

Regulatory Reform Initiative: Program for Investment in Microentrepreneurs (PRIME)

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to revise one regulation and remove 19 regulations from the Code of Federal Regulations (CFR) related to the Program for Investment in Microentrepreneurs (PRIME) that are repetitive and unnecessary because they duplicate identical guidance and requirements already stipulated in other legal sources and/or provided to grant applicant and recipients in the annual PRIME funding opportunity announcement. The removal of these regulations will assist the public by simplifying SBA's regulations in the CFR and reducing the amount of time grant applicants and recipients must spend reviewing programmatic guidance.

DATES: Comments must be received on or before April 7, 2020.

ADDRESSES: You may submit comments, identified by RIN: 3245–AH11 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Daniel Upham, Chief, Microenterprise Development Division, Office of Capital Access, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI), as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Daniel Upham, Chief, Microenterprise Development Division, Office of Capital Access, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, or send an email to *daniel.upham@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Daniel Upham, Chief, Microenterprise Development Division, Office of Capital Access, at 202–205–7001 or *daniel.upham@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Part 119—Program for Investment in Microentrepreneurs (''PRIME'' or ''The Act'')

Under the PRIME program, SBA is authorized by 15 U.S.C. 6902 to make grants to qualified organizations for the purpose of funding: (i) Training and technical assistance to disadvantaged microentrepreneurs; (ii) training and capacity-building services for microenterprise development organizations; (iii) research and development of the best practices in the fields of microenterprise development and technical assistance for disadvantaged microentrepreneurs; and (iv) other related activities as the Agency deems appropriate.

In this rule, SBA is proposing to modify one regulation and remove 19 regulations from the CFR related to the Program for Investment in Microentrepreneurs (PRIME) that are no longer necessary because they duplicate identical guidance and requirements already stipulated in the enabling legislation (15 U.S.C. 6901 *et seq.*), the governmentwide grant regulations (2 CFR part 200), and/or provided to grant applicant and recipients in the PRIME funding opportunity announcements published annually by SBA at *www.grants.gov.* The removal of these regulations will assist the public by simplifying SBA's regulations in the CFR and reducing the amount of time grant applicants and recipients must spend reviewing programmatic guidance.

B. Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive Order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation.

C. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: Eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified.

II. Section by Section Analysis

A. Section 119

This rule currently summarizes the purpose of the PRIME program. SBA intends to retain this statement of programmatic purpose and proposes to add further subsections addressing how qualified organizations may apply for grant awards under the PRIME program.

B. Sections 119.2 Through 119.20

These rules provide guidance to PRIME program applicants regarding the application and selection process, as well as inform grant recipients of certain restrictions and requirements related to the conduct of PRIME grant projects. They are no longer necessary because the guidance, restrictions, and requirements they reiterate are also covered in other sources that are more authoritative, informative, and/or frequently updated. As such, they are duplicative of, and of less utility, than these other sources. SBA therefore proposes removing these sections and instead relying upon the content contained in other Federal guidance, such as the enabling legislation (15 U.S.C. 6901 *et seq.*), the government-wide grant regulations (2 CFR part 200), and the PRIME program annual funding opportunity announcements and award terms and conditions issued by SBA. Program information will be published annually at *www.grants.gov.*

III. Compliance With Executive Orders 12866, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

B. Executive Order 13771

This proposed rule is expected to be an Executive Order 13771 deregulatory action with an annualized net savings of $10,188 and a net present value of $145,543 in savings, both in 2016 dollars. This rule will remove redundant information which will save grant applicants from reading the same information from multiple sources. The reduced burden assumes 130 grant applicants read the regulation per year, which is the average number of applicants per year, and that they would save 2 hours each from not reading the removed information. This time is valued at $40.83 per hour—the wage of a community service manager based on 2018 U.S. Bureau of Labor Statistics (BLS) data—and adding 30 percent more for benefits for a total savings per year of $10,616 in current dollars.

It is assumed that there will be no costs to this rule as it removes duplicative information.

C. Executive Order 12988

This action meets applicable standards set forth in Section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce

burden. The action does not have retroactive or preemptive effect.

D. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. 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, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The SBA has determined that this proposed rule does not affect any existing collection of information.

F. Regulatory Flexibility Act

When an agency issues a proposed rule, the Regulatory Flexibility Act (RFA) requires the agency to prepare an initial regulatory flexibility analysis (IRFA), which describes whether the rule will have a significant economic impact on a substantial number of small entities. However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

There are approximately 130 PRIME grant applications per year. This rule would remove regulations that are no longer necessary because they contain information that exists in multiple sources which could affect all PRIME grant applicants. The total annual savings to applicants is estimated at $10,616 in 2018 dollars, or about $82 per PRIME grant applicant. More information on this estimate can be found in the Executive Order 13771 discussion above.

Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The SBA invites comments from the public on this certification.

List of Subjects in 13 CFR Part 119

Grant programs—business, small businesses.

■ Accordingly, for the reasons stated in the preamble, SBA proposes to revise 13 CFR part 119 to read as follows:

PART 119—PROGRAM FOR INVESTMENT IN MICROENTREPRENEURS (“PRIME” or “The Act”)

Sec

Authority: 15 U.S.C. 634(b)(6), 6901–6910.

§ 119.1 What is the Program for Investment in Microentrepreneurs (PRIME)?

(a) The PRIME program authorizes SBA to award grants to qualified organizations to fund training and technical assistance for disadvantaged microentrepreneurs; training and capacity-building services for microenterprise development organizations; research and development of the best practices in the fields of microenterprise development and the provision of technical assistance to disadvantaged microentrepreneurs; and such other activities as the Agency deems appropriate.

(b) Dependent upon the availability of funds and continuing program authority, SBA will issue, via *Grants.gov* or any successor platform, funding announcements specifying the terms, conditions, and evaluation criteria for each potential round of PRIME awards. These funding announcements will identify who is eligible to apply for PRIME awards; summarize the purposes for which the available funds may be used; advise potential applicants regarding the process for obtaining, completing, and submitting an application packet; and provide information regarding application deadlines and any additional limitations, special rules, procedures, and restrictions which SBA may deem advisable.

(c) SBA will evaluate applications for PRIME awards in accordance with the stated statutory goals of the program and the specific criteria described in the relevant funding announcement.

(d) In administering the PRIME program, SBA will require recipients to provide reports in accordance with the subject matter areas and schedule identified in the terms and conditions of their awards. In addition, SBA may, as it deems appropriate, make site visits to recipients’ premises and review all applicable documentation and records.

§§ 119.2 through 119.20 [Reserved]

Jovita Carranza,

Administrator.

[FR Doc. 2020–02366 Filed 2–6–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0064; Product Identifier 2019–SW–096–AD]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters Inc., Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for MD Helicopters Inc., (MDHI) Model 369D, 369E, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters. This proposed AD was prompted by a report of non-conforming main rotor (M/R) hub lead-lag bolts (bolts). This proposed AD would require removing certain bolts from service. 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 March 23, 2020.

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 *https://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 MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *https://www.mdhelicopters.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–

0064; 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: Payman Soltani, Aerospace Engineer, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone 562–627–5313; email *payman.soltani@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–2020–0064; Product Identifier 2019–SW–096–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 received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The FAA proposes to adopt a new airworthiness directive (AD) for MDHI Model 369D, 369E, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters with certain serial-numbered bolts part number (P/N) 369D21220 installed. This proposed AD was prompted by a report of non-conforming bolts. Certain serial-numbered bolts had an unauthorized repair of their cadmium plating performed between April 2004 and October 2018. Analysis has shown that these bolts have a lower fatigue life compared to bolts used during manufacturing batch testing. This proposed AD would require removing the affected bolts from service.

This condition, if not addressed, could result in loss of an M/R blade and subsequent loss of control of the helicopter. The FAA is proposing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

The FAA reviewed MD Helicopters Service Bulletin No. SB369D–223 for Model 369D helicopters, No. SB369E–122 for Model 369E helicopters, No. SB369F–110 for Model 369FF helicopters, No. SB369H–259 for Model 369H, 369HE, 369HS, and 369HM helicopters, No. SB500N–060 for Model 500N helicopters, and No. SB600N–073 for Model 600N helicopters, each dated April 19, 2019. These service bulletins are co-published as one document. This service information specifies determining the serial number of bolt P/N 369D21220, and if certain serial-numbered bolts are installed on a helicopter, contacting MDHI to schedule replacement of each affected bolt and reporting information. This service information also specifies returning removed parts to MDHI along with a completed Service Operation Report.

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

The FAA is proposing this AD after evaluating all of the relevant information and determining the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require removing each affected bolt P/N 369D21220 from service at the next overhaul of the M/R assembly or within 3 months, whichever occurs first. This proposed AD would also prohibit installing an affected bolt on any helicopter after the effective date of the proposed AD.

Differences Between This Proposed AD and the Service Information

The service information specifies reporting information and returning removed parts to MDHI, whereas this proposed AD would not require either of those actions. The service information specifies replacing the affected bolts within 12 months, whereas this proposed AD would require replacing the affected bolts within three months of the effective date of this AD.

Costs of Compliance

The FAA estimates that this proposed AD would affect 767 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Replacing a bolt would take about 0.25 work-hour and parts would cost about $178 for an estimated cost of $199 per bolt.

According to MDHI, some of the costs of this proposed 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 costs in this 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.

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):

MD Helicopters Inc. (MDHI): Docket No. FAA–2020–0064; Product Identifier 2019–SW–096–AD.

(a) Comments Due Date

The FAA must receive comments by March 23, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MDHI Model 369D, 369E, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters, certificated in any category, with a main rotor (M/R) hub lead-lag bolt (bolt) part number (P/N) 369D21220 with a serial number (S/N) listed in paragraph 1.B. of MD Helicopters Service Bulletin No. SB369D–223, SB369E–122, SB369F–110, SB369H–259, SB500N–060, or SB600N–073, each dated April 19, 2019, installed.

(d) Subject

Joint Aircraft System Component (JASC): 6200, Main Rotor System.

(e) Unsafe Condition

This AD was prompted by a report of non-conforming bolts. The FAA is issuing this AD to prevent failure of a bolt. The unsafe condition, if not addressed, could result in loss of an M/R blade and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) At the next overhaul of the M/R assembly or within 3 months, whichever occurs first, remove from service each bolt with a P/N and S/N listed in paragraph (c) of this AD.

(2) After the effective date of this AD, do not install on any helicopter a bolt with a P/N and S/N listed in paragraph (c) of this AD.

(h) Special Flight Permit

A special flight permit may be permitted for a one-time ferry flight to an authorized repair facility.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Payman Soltani, Aerospace Engineer, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone 562–627–5313; email *payman.soltani@faa.gov.*

(2) For service information identified in this AD, contact MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *https://www.mdhelicopters.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Issued in Fort Worth, Texas, on January 29, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02450 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institutes of Standards and Technology

15 CFR Part 287

[Docket No.: 191210–0104]

RIN 0693–AB65

Guidance on Federal Conformity Assessment Activities

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institute of Standards and Technology (NIST) requests comments on proposed revisions to regulations updating policy guidance on Federal agency use of conformity assessment that reflects advancement in conformity assessment concepts, and the evolution in Federal agency strategies and coordination in using and relying on conformity assessment.

The provisions are solely intended to be used as guidance for agencies in their use and reliance on conformity assessment to meet agency requirements and do not preempt the agency authority and responsibility to make decisions authorized by statute or required in establishing regulatory, procurement, or programmatic activities.

DATES: *For Comments:* Send comments on or before April 7, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number: 191210–0104, through the *Federal e-Rulemaking Portal: http://www.regulations.gov* (search using the docket number). Follow the online instructions for submitting comments. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish relevant comments publicly, unedited and in their entirety. Personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Do not submit confidential business information, or otherwise proprietary, sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be posted or considered.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Gillerman via email at *15CFR287@nist.gov,* or by phone at (301) 975–4000.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Guidance

The guidance outlines Federal agencies' responsibilities for using conformity assessment to meet respective agency requirements in an efficient and cost-effective manner for the agency and its stakeholders. To reduce unnecessary burden and make productive use of federal resources, this guidance emphasizes that agencies should consider coordinating conformity assessment activities with those of other appropriate government agencies (Federal, State, and local) and

with those in the private sector. This guidance does not preempt agency authority and responsibility to make decisions authorized by statute or required in establishing regulatory, procurement, or program activities. This guidance also does not preempt agency authority and responsibility in determining or implementing procurement, regulatory, or programmatic requirements.

II. Background

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 directs NIST to ''coordinate technical standards activities and conformity assessment activities of Federal, State, and local governments with private sector technical standards activities and conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures'' (15 U.S.C. 272(b)(13)). NIST originally issued the guidance found in 15 CFR 287 (this Guidance) on August 10, 2000, in response to Office of Management and Budget (OMB) Circular A–119 (February 10, 1998) directing the Secretary of Commerce to issue guidance to Federal agencies to ensure effective coordination of Federal conformity assessment activities (65 FR 48894). The January 2016 revision to OMB Circular A–119 re-emphasizes NIST's role in issuing guidance to agencies as well as Federal agencies responsibilities with respect to conformity assessment. NIST is revising this guidance to reflect progression in conformity assessment concepts and evolution in Federal agency strategies and coordination in using and relying on conformity assessment.

The proposed revision to this guidance is one of several activities undertaken by the NIST Standards Coordination Office to update its guidance, training, and other artifacts that help agencies develop and use conformity assessment. As a first activity, NIST provided significant input to the conformity assessment related policies of OMB Circular A–119. NIST released two NIST Special Publications (SPs) in September 2018. NIST SP 2000–01, *ABCs of Conformity Assessment,* serves as a primer for the topic of conformity assessment, and NIST SP 2000–02, *Conformity Assessment Considerations for Federal Agencies* provides agencies with a path to follow in considering the development, use or improvement of conformity assessment to meet their requirements. This proposed revision to 15 CFR 287 represents NIST's most recent effort to provide Federal agencies with up-to-date tools for effective use of conformity assessment.

In developing this revision to 15 CFR 287 the NIST Standards Coordination Office (SCO) leveraged the expertise and experience of the members of the Interagency Committee on Standards Policy (ICSP) and the ICSP Conformity Assessment Work Group (CAWG). NIST met with the ICSP and CAWG for input on the revision and received comments from eight agencies on an early draft version. NIST seeks public comment on this proposed revision; see Section IV. Request for Comment.

Summary of Significant Proposed Changes

NIST is seeking public comments on the proposed changes. Brief explanations of significant proposed changes are included below. The full text of 15 CFR part 287 is available at *https://www.govinfo.gov/content/pkg/CFR-2015-title15-vol1/pdf/CFR-2015-title15-vol1-part287.pdf.* The proposed changes in full text appear at the end of this notice. A table showing each clause of 15 CFR 287 and the related changes can be found at *https://www.nist.gov/document/15CFR287_NPRM_ChangesTable.pdf.* Significant proposed changes are to:

1. Revise sections throughout part 287 to clarify that agencies use conformity assessment in meeting agency programmatic needs in addition to the currently stated regulatory and procurement needs. Using conformity assessment for agency programmatic needs emphasizes the voluntary nature of many conformity assessment programs. This emphasis aligns with OMB Circular A–119.

2. Revise throughout part 287 to reflect direction to agencies in the NTTAA and related guidance in OMB Circular A–119 regarding the use of and participation in the development of voluntary consensus standards related to conformity assessment topics. See OMB Circular A–119 for a discussion of voluntary consensus standards.

3. Revise the definition of *conformity assessment* (§ 287.2) by adding the term persons to the list of possible focus of conformity assessment. Some concepts discussed in the definition are removed; the reader is directed to NIST Special Publication 2000–01, *ABCs of Conformity Assessment,* found at *https://doi.org/10.6028/NIST.SP.2000-01* for these concepts.

4. Remove the following terms because the they are no longer used in part 287: Accreditation, certification, inspection, recognition, registration, supplier's declaration of conformity, and testing (§ 287.2).

5. Add new responsibilities for NIST (§ 287.3) to (1) issue guidance, training material and other material that assist Federal agencies in understanding and applying conformity assessment; and (2) participate in the development of conformity assessment related standards. Both of these roles reflect NIST leadership and conformity assessment expertise.

6. Remove the responsibility for NIST to collect and disseminate information on Federal, State and private sector conformity assessment activities in § 287.3 (a-penultimate clause) and state conformity assessment practices (§ 287.3(c)). Information about Federal, State and private sector conformity assessment activities is electronically discoverable and available from many sources. NIST uses exemplar Federal conformity assessment programs and private sector activities as resource material on *https://standards.gov.*

7. Extend the timeframe for NIST to review the effectiveness of part 287 from three to five years (§ 287.3).

8. Add the responsibility for Federal agencies to develop and implement conformity assessment in a manner that meets objectives, reduces unnecessary burden on stakeholders, makes productive use of resources, and meets international trade obligations (§ 287.4).

9. Remove the responsibility for Federal agencies to harmonize requirements for quality and environmental management systems for procurement and regulation purposes (§ 287.4(k)). This responsibility is no longer necessary due to the widespread adoption among agencies of the same voluntary consensus standards related to management systems resulting in reliance on the same requirements.

10. Remove the examples of how an agency may implement a specific part of the guidance (§ 287.4). The examples in the current guidance served, in part, as tutorial in nature. The experience of Federal agencies in applying conformity assessment concepts makes examples unnecessary.

11. Expand the Federal agency responsibility to consider using the activities and results of other conformity assessment programs to enhance the effectiveness of existing or proposed new programs. The current responsibility was scoped to enhancing the safety and efficacy of proposed requirements and measures (§ 287.4(c)).

12. Remove the standards and conformity assessment related organizational names as examples (§ 287.4). The inclusion or exclusion of

names may be perceived as endorsement or criticism.

13. Reflect that U.S. access to international markets is achievable through many mechanisms. The current language is specific to recognition agreements and infrastructure (§ 287.4(i),(l),(m)). The revised language recognizes that other mechanisms (not just recognition) can facilitate acceptance of standards and conformity assessment results to increase market access for U.S. products and services.

14. Add additional guidance to Federal agencies for their selection, role, and responsibilities of the Agency Standards Executive (§ 287.5(n)). The expansion of guidance is consistent with the roles and responsibilities assigned to the Agency Standards Executive in the revision of OMB Circular A–119.

15. Add new responsibilities for the Agency Standards Executive that (1) encourages the Agency Standards Executive's participation in the Interagency Committee on Standards Participation (ICSP) and (2) encourages the Executive to promote agency participation in ICSP working groups. These responsibilities reflect the value of ICSP participation and interaction with other ICSP members.

16. Modify the responsibilities of the Agency Standards Executive by removing the three goals listed and adding specific responsibilities based on the goals (§ 287.5(a)). The three goals were transferred to the revision of OMB Circular A–119. The new resultant responsibilities in this part are to encourage effective use of conformity assessment and resources; assist the agency in developing policy positions and help resolve issues related to conformity assessment; and promote Federal agency participation in conformity assessment related standards development and coordination activities.

17. Remove the responsibilities for the Agency Standards Executive to consult with NIST, as necessary, in the development and issuance of policies for meeting the guidance in this part (§ 287.5(d)) and coordinate with NIST in carrying out the responsibilities in this part (§ 287.5(c)). The removal reflects the evolution of the role of an Agency Standards Executive and lack of need, for the most part, for consultation. The ICSP is used as the mechanism for coordination among the Agency Standards Executives and NIST.

III. Applicability of This Guidance

This guidance applies to all agencies, which set policy for, manage, operate, or use conformity assessment activities and results. 'Agency' means any Executive Department, independent commission, board, bureau, office, government-owned or controlled corporation, or other establishment of the Federal government. It also includes any regulatory commission or board, except for independent regulatory commissions insofar as they are subject to separate statutory requirements regarding policy setting, management, operation, and use of conformity assessment activities. It does not include the legislative or judicial branches of the Federal government although those branches may use this guidance to inform their own use of conformity assessment.

IV. Request for Comments

NIST is requesting comments about 15 CFR part 287. When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. The following file formats are encouraged: PDF, MS Word, txt.

3. Please organize your comments by referencing the relevant section number in the proposed regulatory text.

4. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

5. Provide specific examples to illustrate your concerns and suggest alternatives.

6. Explain your views as clearly as possible.

7. All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish relevant comments publicly, unedited and in their entirety. Personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Do not submit confidential business information, or otherwise proprietary, sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language will not be posted or considered.

8. Make sure to submit your comments by the comment period deadline identified.

V. Classification

Executive Order 12866

This rulemaking is not a significant regulatory action under Executive Order 12866.

Executive Order 13771

This rule is not subject to the requirements of Executive Order 13771, because its likely impact is *de minimis.*

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires the preparation and availability for public comment of ''an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows: A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The statutory basis for this proposed rule is provided by 15 U.S.C. 272, which requires NIST to coordinate Federal, State, and local standards activities and conformity assessment activities with private sector standards activities and conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures. To ensure effective coordination, the Secretary of Commerce must issue guidance to the agencies. The proposed rule would provide policy guidance on Federal agency use of conformity assessment activities. These provisions are solely intended to be used as guidance for agencies in their conformity assessment activities. It is not anticipated that external entities, including any small businesses, small organizations, or small governments, will experience significant or adverse economic impacts from this rule.

The information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this rulemaking, if implemented, is not expected to have a

significant economic impact on any small entities, an initial regulatory flexibility analysis is not required.

Paperwork Reduction Act

This proposed rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This proposed rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 287

Conformity assessment, Procurement, Trade agreements, Voluntary standards.

■ For the reasons stated in the preamble, the National Institute of Standards and Technology proposes to revise 15 CFR part 287 to read as follows:

PART 287—GUIDANCE ON FEDERAL CONFORMITY ASSESSMENT

Sec.

Authority: 15 U.S.C. 272.

§ 287.1 Purpose and scope of this guidance.

(a) The guidance outlines Federal agencies' responsibilities for using conformity assessment to meet respective agency requirements in an efficient and cost-effective manner for the agency and its stakeholders. To reduce unnecessary burden and make productive use of Federal resources, this guidance emphasizes that agencies should consider coordinating conformity assessment activities with those of other appropriate government agencies (Federal, State and local) and with those in the private sector.

(b) Using conformity assessment in a manner consistent with this guidance supports U.S. Government efforts to pursue conformity assessment activities in a manner that reduces unnecessary burden on international trade and increases market access for U.S. products and services.

(c) This guidance applies to all agencies, which set policy for, manage, operate, or use conformity assessment. This guidance does not preempt the agencies' authority and responsibility to make decisions authorized by statute or required to meet programmatic objectives and requirements. These decision-making activities include: Determining the level of acceptable regulatory or procurement risk; setting the level of protection; balancing risk, cost and availability of technology (where statutes permit) in establishing regulatory, procurement, and program requirements.

(d) Each agency retains broad discretion in its selection and use of conformity assessment activities and may elect not to use or recognize alternative conformity assessment approaches if the agency deems the alternatives to be inappropriate, inadequate, or inconsistent with statutory criteria or programmatic objectives and requirements. Nothing contained herein shall give any party any claim or cause of action against the Federal government or any agency thereof. Each agency remains responsible for representation of the agency's views on conformity assessment in matters under its jurisdiction. Each agency also remains the primary point of contact for information on the agency's regulatory, procurement or programmatic conformity assessment actions.

§ 287.2 Definitions.

For the purposes of this part:

Agency means any Executive Department, independent commission, board, bureau, office, government-owned or controlled corporation, or other establishment of the Federal government. It also includes any regulatory commission or board, except for independent regulatory commissions insofar as they are subject to separate statutory requirements regarding policy setting, management, operation, and use of conformity assessment. It does not include the legislative or judicial branches of the Federal government.

Agency Standards Executive means an official designated by an agency as its representative on the Interagency Committee for Standards Policy (ICSP) and delegated the responsibility for agency implementation of OMB Circular A–119 and the guidance in this part.

Conformity assessment means any activity concerned with determining directly or indirectly that requirements are fulfilled. Requirements for products, services, systems, persons, and organizations are those defined by law or regulation, by an agency in regulatory or procurement actions, or an agency programmatic policy. Conformity assessment does not include mandatory administrative procedures (such as registration notification) for granting permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions. Conformity assessment terminology is contained in NIST Special Publication 2000–01, *ABCs of Conformity Assessment* (2018) found free of charge at: *https://doi.org/10.6028/NIST.SP.2000-01.* The definitions included in NIST Special Publication 2000–01 are based on voluntary consensus standards. See OMB Circular A–119 for a description of voluntary consensus standards and recommendations for their development and use by Federal agencies.

NIST means the National Institute of Standards and Technology, an agency within the United States Department of Commerce.

§ 287.3 Responsibilities of the National Institute of Standards and Technology.

(a) Issue guidance, training material, and other material to assist Federal agencies in understanding and applying conformity assessment to meet their requirements. Material is available at *https://www.standards.gov.*

(b) Chair the Interagency Committee on Standards Policy (ICSP); encourage the ICSP to address issues related to agency conformity assessment program development, use, and implementation; and provide resource support to the ICSP and its working groups related to conformity assessment issues, as needed.

(c) Work with agencies through the ICSP to coordinate Federal, State and local conformity assessment activities with private sector conformity assessment activities.

(d) Participate in the development of voluntary consensus standards, recommendations and guidelines related to conformity assessment to ensure that Federal viewpoints are represented.

(e) Increase awareness in the importance of conformity assessment through development and publication of conformity assessment resources. Material is available at *https://www.standards.gov.*

(f) To the extent that resources are available and upon request by a state government agency, work with that state agency to reduce duplication and complexity in state conformity assessment activities.

(g) Review, within five years from the issuance date of this part, the effectiveness of this guidance and recommend modifications to the Secretary as needed.

§ 287.4 Responsibilities of Federal agencies.

Each agency should:

(a) Implement the policies contained in the guidance in this part. Agencies may rely on NIST Special Publication 2000–02 *Conformity Assessment Considerations for Federal Agencies* found free of charge at *https://doi.org/10.6028/NIST.SP.2000-02.*

(b) Develop and implement conformity assessment in a manner that meets regulatory, procurement, and programmatic objectives; reduces unnecessary burden on stakeholders; makes productive use of Federal resources; and meets international trade agreements and obligations.

(c) Provide a rationale for its use of specified conformity assessment in rulemaking, procurement actions and agency programs to the extent feasible. Further, when notice and comment rulemaking is otherwise required, each agency should provide the opportunity for public comment on the rationale for the agency's conformity assessment decision.

(d) Work with other Federal agencies to avoid unnecessary duplication and complexity in Federal conformity assessment activities.

(e) Consider leveraging the activities and results of other governmental agency and private sector programs in lieu of creating government-unique programs or to enhance the effectiveness of proposed new and existing conformity assessment.

(f) Give a preference for using voluntary consensus conformity assessment related standards, guides and recommendations in their operations. Each agency retains responsibility for determining which, if any, of these documents are relevant to its needs. See OMB Circular A–119 for a description of voluntary consensus standards and recommendations for their development and use by Federal agencies.

(g) Participate, as needed, representing agency and Federal viewpoints in efforts designed to improve coordination among governmental and private sector conformity assessment activities such as those to develop voluntary consensus conformity assessment related standards, guidelines and recommendations.

(h) Work with NIST, other Federal agencies, ICSP members, and the private sector to coordinate U.S. conformity assessment needs, practices and requirements in support of the efforts of the U.S. Government and U.S. industry to increase international market access for U.S. products and services.

(i) Assign an Agency Standards Executive the responsibility for coordinating agency-wide implementation of the guidance in this part who is situated in the agency's organizational structure such that the Agency Standards Executive is kept regularly apprised of the agency's regulatory, procurement, and other mission-related activities, and has sufficient authority within the agency to ensure implementation with this part.

§ 287.5 Responsibilities of Agency Standards Executives.

Each Agency Standards Executive should:

(a) Carry out the duties in OMB Circular A–119 related to conformity assessment activities.

(b) Encourage effective use of agency conformity assessment related resources.

(c) Provide ongoing assistance and policy guidance to the agency on significant issues in conformity assessment.

(d) Contribute to the development and dissemination of (1) internal agency policies related to conformity assessment issues and (2) agency positions on conformity assessment related issues that are in the public interest.

(e) Work with other parts of the agency to develop and implement improvements in agency conformity assessment activities.

(f) Participate in the Interagency Committee on Standards Policy (ICSP) as the agency representative and member.

(g) Promote agency participation in ICSP working groups related to conformity assessment issues, as needed.

(h) Encourage agency participation in efforts related to the development of conformity assessment related standards, recommendations and guidelines consistent with agency missions, authorities, priorities, and resources.

(i) Establish an ongoing process for reviewing the agency's conformity assessment programs and use and identify areas where efficiencies can be achieved through coordination within the agency and among other agencies and private sector conformity assessment activities.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–01714 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0640, FRL–10004–29–Region 10]

Air Plan Approval; OR; Emission Standard Definition Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Oregon State Implementation Plan (SIP) submitted on September 5, 2019. The submission revises the SIP to incorporate by reference a more recent update to the emission standards for specific industries by defining the specific Code of Federal Regulations (CFR) edition referenced throughout the revised rule. The EPA is also proposing to make non-substantive revisions to the SIP to correct typographical errors. The EPA reviewed the submitted revision and proposes to find it consistent with Clean Air Act (CAA) requirements.

DATES: Comments must be received on or before March 9, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0640, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Christi Duboiski, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (360) 753–9081, or *duboiski.christi@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it means the EPA.

I. Background

Each state has a State Implementation Plan (SIP) containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established by the Environmental Protection Agency (EPA) for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms. Section 110 of the Clean Air Act (CAA) requires each state to periodically revise its SIP. As a result, the SIP is a living compilation of regulatory and non-regulatory elements that are updated to address Federal requirements and changing air quality issues in the state.

Air quality regulations for the State of Oregon (''Oregon'' or ''the State'') are found in Chapter 340 of the Oregon Administrative Rules (OAR) and are generally implemented by the Oregon Department of Environmental Quality (ODEQ). On July 18, 2019, the State adopted new and revised air quality regulations that became effective July 19, 2019. Most of the adopted regulations implement Oregon's air quality regulations concerning municipal solid waste landfills established in OAR Chapter 340, Division 236. One of the regulations adopted in the State rulemaking package (OAR 340–236–0010 *Definitions*) made changes to the Federally approved rules in the Oregon SIP.

II. Evaluation of Submission

A. Division 236: Emission Standards for Specific Industries

Division 236 contains emission standards for specific industries and the definitions that apply to this division. On September 5, 2019, Oregon submitted to the EPA OAR 340–236–0010 *Definitions* as a rule amendment related to the adopted new landfill emission rules. Specifically OAR 340–236–0010(1) was added to clarify the definitions used in Division 236 by defining the specific Code of Federal Regulations (CFR) edition (July 1, 2018) referenced throughout the Division. This definition incorporates the specific CFR containing the EPA's most recent changes to the NSPS for municipal solid waste landfills and the emissions guidelines for existing landfills codified in 40 CFR part 60 (August 29, 2016, 81 FR 59276 and 81 FR 59332). In addition, we note the change renumbers the definitions section of Division 236.

The remainder of the State's revision has limited impact on the Federally-approved Oregon SIP because the revision primarily relates to municipal solid waste landfill emissions guidelines, which are not part of the Federally-approved SIP under CAA section 110 and were not submitted to the EPA for approval. Rather, the municipal solid waste landfill guidelines are related to section 111(d) of the CAA. For more details, please see the September 5, 2019 submission in the docket for this action.

We reviewed the submitted change to OAR 340–236–0010 *Definitions* and propose to approve and incorporate it by reference into the Oregon SIP.

III. Corrections to Typographical Errors

The EPA is proposing to correct minor typographical errors to provisions previously approved into the Oregon SIP. Specifically, we are correcting several undesignated center headings and a table heading in 40 CFR 52.1970(c) to accurately reflect the title of the State provisions. In addition, we are correcting entry OAR 340–256–0330 in section 52.1970(c) to reflect the correct EPA approval date. We are also correcting a footnote in section 52.1970(c) table 4, approved in our October 31, 2019 action, to cite to the correct table (84 FR 58327). We note in section 52.1970(e), table 2, entry 011–0010, the state effective date and approval date are corrected; as well as the EPA approval date for the Motor Vehicle Inspection and Maintenance entry in table 5, section 5; and the EPA approval date for the entry of the PM_{10} Attainment Plan, La Grande.

IV. Proposed Action

The EPA proposes to approve, and incorporate by reference into the Oregon SIP, the submitted change to the following section of the OAR Chapter 340, Division 236 Emission Standards for Specific Industries, Section 0010 *Definitions,* State effective July 19, 2019. The EPA also proposes to approve the corrected typographical errors as a ''housekeeping'' exercise and proposes that these changes be accurately reflected in 40 CFR part 52, subpart MM for the State of Oregon.

V. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in Section IV of this preamble. The EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and in hard copy at the EPA Region X Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

The proposed SIP would not be 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 proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 6, 2020.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–00779 Filed 2–6–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 85, No. 26
Friday, February 7, 2020

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a public meeting of the Board for International Food and Agricultural Development (BIFAD), *Agricultural Growth, Structural Transformation, and the Journey to Self-Reliance: Implications for USAID Programming.* The meeting will be held on March 25, 2020 from 9:00 a.m. to 4:00 p.m. EDT in Washington, DC at the National Press Club, Holeman Lounge, 529 14th St. NW, Washington, DC 20045. A public comment period is scheduled from 3:15 to 3:45 p.m., EDT: The meeting will be livestreamed and accessible at *http://www.aplu.org/projects-and-initiatives/international-programs/bifad/bifad-meetings.html.*

The U.S. Agency for International Development (USAID) is reorienting its strategies, partnership models, and program practices to achieve greater development outcomes and strive toward a future where foreign assistance is no longer necessary. The approach, outlined in the Agency's new Policy Framework, emphasizes the concept of ''self-reliance''—defined as the capacity and commitment of a country to plan, finance, and implement solutions to solve its own development challenges in an effective, inclusive, and accountable way. Empowering host country governments and partners to achieve locally sustainable results, helping countries mobilize public and private resources, strengthening local capacities, and accelerating enterprise-driven development are part of a strategy that prioritizes enduring partnerships and fosters stable, resilient, and prosperous countries.

In the food and agricultural sectors, accelerating productivity growth is understood to be a central factor underpinning inclusive development, poverty reduction, and the structural transformation of economies—how underdeveloped and agrarian-based countries shift from subsistence agriculture to a commercially oriented economy with diverse agricultural, manufacturing, and service sectors. Recent evidence shows that growth in the agriculture sector is more effective at reducing poverty than growth in other sectors, especially in low-income countries where USAID works.

The Board for International Food and Agricultural Development (BIFAD), an advisory committee to USAID, will convene a public meeting seeking to better understand the concept of structural transformation, how raising the total productivity of resources in agriculture stimulates this transformation, and how this in turn contributes to countries' progression toward self-reliance. The meeting will hear from experts on some emerging success stories in agricultural and structural transformation, distill lessons and identify knowledge gaps from these experiences, and identify implications of this evidence for USAID's priorities for development and social safety net programming investments for agriculture and food security.

On the basis of testimony, including public comments, shared at the meeting, BIFAD will provide formal findings, conclusions, and recommendations to the Agency on best-bet operational and programmatic investments for catalyzing agricultural productivity and structural transformation.

BIFAD is a seven-member, presidentially appointed advisory board to USAID established in 1975 under Title XII of the Foreign Assistance Act, as amended. The provisions of Title XII concern bringing assets of U.S. universities to bear on development challenges in agriculture and food security, and the BIFAD's role is to help carry out this function.

For questions about registration, please contact Susan Johnson at (202) 478–6023. For questions about BIFAD, please contact Clara Cohen, Designated Federal Officer for BIFAD in the Bureau for Food Security at USAID. Interested persons may write to her in care of the U.S. Agency for International Development, Ronald Reagan Building, Bureau for Food Security, 1300 Pennsylvania Avenue NW, Washington, DC 20523–2110, email her at *ccohen@usaid.gov,* or telephone her at (202) 712–0119.

Clara Cohen,

Designated Federal Officer.

[FR Doc. 2020–02423 Filed 2–6–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0003]

Notice of Request for Extension of Approval of an Information Collection; Federally Recognized State Managed Phytosanitary Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with Federal recognition of a State's plant pest containment, eradication, or exclusion program as a Federally Recognized State Managed Phytosanitary Program.

DATES: We will consider all comments that we receive on or before April 7, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0003.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0003, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0003* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room

hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Federally Recognized State Managed Phytosanitary Program, contact Ms. Erin M. Otto, National Policy Manager for Pest Detection and Emergency Programs, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737; (301) 851–3881. For more detailed information on the information collection process, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Federally Recognized State Managed Phytosanitary Program.

OMB Control Number: 0579–0365.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, or interstate movement of plant pests, plants, plant products, or other articles if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS).

As part of this mission, APHIS' Plant Protection and Quarantine program responds to introductions of plant pests to eradicate, suppress, or contain them through various programs to prevent their interstate spread. APHIS' plant pest containment and eradication programs qualify as ''official control programs,'' as defined by the International Plant Protection Convention (IPPC), recognized by the World Trade Organization as the standard-setting body for international plant quarantine issues. Official control is defined as the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of containment or eradication of quarantine pests or for the management of regulated non-quarantine pests. As a contracting party to the IPPC, the United States has agreed to observe IPPC principles as they relate to international trade.

APHIS is aware that individual States enforce phytosanitary regulations and procedures within their borders to address pests of concern, and that those pests are not always also the subject of an APHIS response program or activity. To strengthen APHIS' safeguarding system to protect agriculture and to facilitate agriculture trade through effective management of phytosanitary measures, APHIS initiated the Federally Recognized State Managed Phytosanitary (FRSMP) Program, which establishes an administrative process for granting Federal recognition to certain State-managed official control programs for plant pest eradication or containment and State-managed pest exclusion programs. (The FRSMP Program was previously referred to as the Official Control Program.) Federal recognition of a State's pest control activities will justify actions by Federal inspectors at ports of entry to help exclude pests that are under a phytosanitary program in a destination State. This process involves the use of information collection activities, including the submission of a petition for protocol for quarantine pests of concern, a petition for regulated non-quarantine pests, State cooperative agreements, and audit review annual accomplishment reports.

We are asking the Office of Management and Budget (OMB) to approve these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 34.7 hours per response.

Respondents: State plant health regulatory officials.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 7.

Estimated annual number of responses: 7.

Estimated total annual burden on respondents: 243 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 3rd day of February 2020.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–02453 Filed 2–6–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Turnip the Beet! High Quality Summer Meals Award Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for recognizing program sponsors' nutrition efforts in the Summer Food Service Program (SFSP) or the National School Lunch Program (NSLP) Seamless Summer Option (SSO).

DATES: Written comments must be received on or before April 7, 2020.

ADDRESSES: Comments may be sent to: Andrea Farmer, Community Meals Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Andrea Farmer at 703–305–2590.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Turnip the Beet! High Quality Summer Meals Award Program.

OMB Number: 0584–NEW.

Expiration Date: To be determined.

Type of Request: New collection.

Abstract: The Summer Food Service Program (SFSP) and National School Lunch Program (NSLP) Seamless Summer Option (SSO) were established to ensure that children and teens continue to receive nutritious meals when school is not in session. Turnip the Beet is a voluntary award program to recognize participating program sponsors that work hard to offer high quality, nutritious meals during the summer months.

The purpose of this voluntary reconition program is to encourage Summer Meal Programs' sponsors to offer higher quality, nutritious meals that make an impact on children's healthy development. The program allows the Food and Nutrition Service (FNS) to more accurately assess the quality of meal service in order to determine whether the individual sponsor qualifies for recognition, and at what level.

The Turnip the Beet award is presented at three levels (bronze, silver and gold) to sponsors providing meals that are appetizing, appealing, and nutritious. The award is open to all program sponsors across the nation who are in good standing, including SFSP sponsors and NSLP/SSO sponsors. All nominated sponsors must be in compliance with SFSP or NSLP/SSO regulations, as applicable.

Sponsors may submit a self-nomination or be nominated by another party. The sponsor or other party must complete and submit a nomination packet, which includes the short Turnip the Beet Nomination Form and a one-month menu, to their Summer Meals State agency contact. Menus should provide sufficient detail to judge whether it meets award criteria; for example, a menu should describe whether fruits and vegetables are fresh, frozen, canned or dried, as well as identify whole grain-rich and local food items. Sponsors may choose to submit other supporting documents to further demonstrate the quality of their meals, such as news clips about the program, photos, testimonials, or invoices of local food purchases.

The nominations will be submitted to State agencies, which have the discretion to choose their submission due dates. The State agency contacts will ensure the sponsor: (1) Participated in SFSP or SSO in the award year; (2) is in good standing with no major findings or all corrective actions are complete and implemented; (3) was not found seriously deficient in the past two years, at the time of the application, and has never been terminated from the Summer Meal Programs; and (4) submitted an application that meets meal pattern requirements. The State agency can also provide an optional statement of support for the nominee.

All nominations must be forwarded by the State agency contact to their Regional Office at a set November date following the program year. FNS will notify the winners in writing early the following calendar year. Depending on the award level attained, sponsors will receive a certificate from FNS, will be featured on the USDA blog, or will be featured on the online Capacity Builder tool as a Turnip the Beet winner.

Affected Public: Sponsors (businesses); and State agencies (State governments).

Estimated Number of Respondents: For program year 2020, FNS expects nominations from 150 sponsors in 36 States, for a total of 186 respondents.

Estimated Number of Responses per Respondent: Sponsors will voluntarily complete one nomination packet for the program year. State agencies will review each nomination received from sponsors in their respective states one time; State agencies are expected to receive an average of 4.167 nominations each.

Estimated Total Annual Responses: FNS expects 150 nominations from sponsors, which will then be reviewed by State agencies. The total annual responses is 300.

Estimated Time per Response: The estimated time of response varies from 30 to 60 minutes per nomination, depending on respondent group. FNS estimates it will take each sponsor approximately 1 hour to complete the nomination form, compile other supplemental information, and submit the nomination packet to the State agency. FNS estimates it will take each reviewing State agency approximately 30 minutes to review each nomination packet and complete a one-page checklist to verify that the nominees are eligible for the award. The table below illustrates the burden on both sponsors and State agencies, with an average total estimated time of 1.21 hours.

Estimated Total Annual Burden on Respondents: 225 hours. See the table below for estimated total annual burden for each type of respondent.

Respondent	Estimated number of respondents	Responses annually per respondent	Total Annual responses	Estimated avg. number of hours per response	Estimated total hours
Reporting Burden					
Program Sponsors (Businesses)	150	1.00	150	1.00	150.00
State Agency Employees	36	4.1666667	150	0.50	75.00
Total Reporting Burden	186	.....	300	.....	225.00

Dated: January 24, 2020.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–02449 Filed 2–6–20; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oregon Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act

(FACA) that the meeting of the Oregon Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Pacific Time) Friday, February 21, 2020. The purpose of this meeting is for the Committee to brainstorm civil rights topic ideas and narrow down topics.

DATES: The meeting will be held on Friday, February 21, 2020 at 12:00 p.m. PT.

Public Call Information:
Dial: 800–367–2403.
Conference ID: 9552618.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 9552618. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzlwAAA.* Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Approve minutes from December 20, 2019 meeting
III. Discuss Civil Rights Topics
IV. Public Comment
V. Vote to Narrow Topics
  a. Presentation? Combine topics?
VI. Good of the Order
VII. Adjournment

Dated: February 3, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–02414 Filed 2–6–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable February 7, 2020.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Joshua Tucker, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–2044, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2019, based on timely filed requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on welded line pipe from Korea.[1] The period of review is December 1, 2017 through November 30, 2018. In September 2019, we extended the preliminary results of this review to no later than January 31, 2020.[2] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3]

Scope of the Order

The merchandise subject to the order is welded line pipe.[4] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. 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 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 electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019).

[2] *See* Memorandum, ''December Order Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated August 7, 2019; *see also* Memorandum, ''Welded Line Pipe from the Republic of Korea: Extension of Deadline for Preliminary Results of 2017–2018 Antidumping Duty Administrative Review,'' dated September 6, 2019.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

Decision Memorandum is attached as an appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period December 1, 2017 through November 30, 2018:

Exporter/producer	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd	4.81
SeAH Steel Corporation	3.45

Review-Specific Average Rate Applicable to the Following Companies: [5]

Exporter/producer	Dumping margin (percent)
AJU Besteel Co., Ltd	3.99
BDP International, Inc	3.99
Daewoo International Corporation	3.99
Dongbu Incheon Steel Co	3.99
Dongbu Steel Co., Ltd	3.99
Dongkuk Steel Mill	3.99
Dong Yang Steel Pipe	3.99
EEW Korea Co., Ltd	3.99
HISTEEL Co., Ltd	3.99
Husteel Co., Ltd	3.99
Hyundai RB Co. Ltd	3.99
Hyundai Steel Company/Hyundai HYSCO	3.99
Kelly Pipe Co., LLC	3.99
Keonwoo Metals Co., Ltd	3.99
Kolon Global Corp	3.99
Korea Cast Iron Pipe Ind. Co., Ltd	3.99
Kurvers Piping Italy S.R.L	3.99
MSTEEL Co., Ltd	3.99
Miju Steel MFG Co., Ltd	3.99
Poongsan Valinox (Valtimet Division)	3.99
POSCO	3.99
POSCO Daewoo	3.99
R&R Trading Co. Ltd	3.99
Sam Kang M&T Co., Ltd	3.99
Sin Sung Metal Co., Ltd	3.99
SK Networks	3.99
Soon-Hong Trading Company	3.99
Steel Flower Co., Ltd	3.99
TGS Pipe	3.99
Tokyo Engineering Korea Ltd	3.99

[5] This rate is based on the weighted-average of the margins calculated for those companies selected for individual review using the publicly-ranged U.S. quantities. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Calculation of the Review-Specific Average Rate for the Preliminary Results,'' dated concurrently with this notice.

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), where NEXTEEL Co., Ltd. (NEXTEEL) reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. SeAH Steel Corporation (SeAH) did not report actual entered value for all of its U.S. sales; in such instances, we calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the weighted-average [6] of the cash deposit rates calculated for NEXTEEL and SeAH. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[7]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.38 percent, the all-others rate established in the LTFV investigation.[8] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[9] Interested parties may submit case briefs not later than seven days after the date on which the last verification report is issued in this proceeding.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[11] 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.[12] Case and rebuttal briefs should be filed using ACCESS.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5 p.m. Eastern Time within 30 days after the

[6] This rate was calculated as discussed in footnote 5, above.

[7] *See* section 751(a)(2)(C) of the Act.

[8] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056, 75057 (December 1, 2015).

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See* 19 CFR 351.309(d)(1).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

date of publication of this notice.[14] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[15]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.[16]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2020.

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. Discussion of the Methodology
V. Recommendation

[FR Doc. 2020–02468 Filed 2–6–20; 8:45 am]

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[14] *See* 19 CFR 351.310(c).

[15] *Id.*

[16] *See* section 751(a)(3)(A) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–051]

Certain Hardwood Plywood Products From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain producers and exporters of certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China) made sales of subject merchandise at prices below normal value (NV) during the period of review (POR) June 23, 2017 through December 31, 2018. We invite interested parties to comment on these preliminary results.

DATES: Applicable February 7, 2020.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, 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.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2018, Commerce issued an antidumping duty (AD) order on hardwood plywood from China.[1] Several interested parties requested that Commerce conduct an administrative review of the *AD Order,* and on April 1, 2019, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the *AD Order* for 58 producers/exporters for the POR.[2] Subsequent to the initiation of the administrative review, several interested parties timely withdrew their request for 29 companies, and on November 15, 2019, we published a partial rescission of this administrative review.[3] On September 20, 2019, Commerce extended the time limit for completing the preliminary results of this review.[4] The current extended deadline for completing the preliminary results of this review is January 31, 2020.[5]

Scope of the Order

The product covered by the order is hardwood plywood from China. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Commerce preliminarily determines that the reported U.S. sales of Linyi Chengen Import and Export Co., Ltd. (Chengen) were export price (EP) sales.[7] We calculated EP sales in accordance with section 772 of the Act. Given that China is a non-market economy (NME) country, within the meaning of section 771(18) of the Act, Commerce calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum, which is incorporated by, and hereby adopted by, this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content. A list of topics included in the Preliminary Decision Memorandum is provided in Appendix I to this notice.

Separate Rates

Commerce preliminarily determines that the information placed on the record by Chengen, as well as by the

[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018) (*AD Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200 (April 1, 2019) (*Initiation Notice*).

[3] *See Certain Hardwood Plywood Products from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 62509 (November 15, 2019).

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated September 20, 2019.

[5] *Id.*

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Hardwood Plywood Products from the People's Republic of China; 2017–2018,'' dated January 31, 2020 (Preliminary Decision Memorandum).

[7] *See, e.g.,* Chengen's July 23, 2019, Section C Questionnaire Response, at 31.

other companies listed in the rate table in the ''Preliminary Results of Review'' section below, demonstrates that these companies are entitled to separate rate status. Neither the Act nor Commerce's regulations address the establishment of the rate applied to individual companies not selected for examination where Commerce limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in a market economy investigation. Section 735(c)(5)(A) of the Act instructs Commerce to use rates established for individually investigated producers and exporters, excluding any rates that are zero, *de minimis,* or based entirely on facts available in investigations. In this administrative review, Chengen is the only reviewed respondent that received a calculated weighted-average margin. Therefore, for the preliminary results, Commerce has preliminarily determined to assign Chengen's margin to the non-selected separate-rate companies.

In addition, Commerce preliminarily determines that certain companies have not demonstrated their entitlement to separate rate status because they did not timely file their separate rate application and/or certification and, consequently, did not rebut the presumption of *de jure* or *de facto* government control of their operations. *See* Appendix II of this notice for a complete list of companies not receiving a separate rate.

Commerce is treating the companies that were not granted separate rate status as part of the China-wide entity. Because no party requested a review of the China-wide entity,[8] the entity is not under review, and the entity's rate (*i.e.,* 183.36 percent) [9] is not subject to change.[10]

Adjustments for Export Subsidies

Commerce has preliminarily adjusted Chengen's U.S. price for export subsidies, pursuant to section 772(c)(1)(C) of the Act.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period June 23, 2017 through December 31, 2018:

Exporter	Weighted-average dumping margin (percent)
Linyi Chengen Import and Export Co., Ltd	0.93
Anhui Hoda Wood Co., Ltd	0.93
Cosco Star International Co., Ltd	0.93
Happy Wood Industrial Group Co., Ltd	0.93
Jiangsu High Hope Arser Co., Ltd	0.93
Jiaxing Hengtong Wood Co., Ltd	0.93
Linyi Evergreen Wood Co., Ltd	0.93
Linyi Glary Plywood Co., Ltd	0.93
Linyi Huasheng Yongbin Wood Co., Ltd	0.93
Linyi Jiahe Wood Industry Co., Ltd	0.93
Linyi Sanfortune Wood Co., Ltd	0.93
Qingdao Top P&Q International Corp	0.93
Shanghai Brightwood Trading Co., Ltd	0.93
Shanghai Futuwood Trading Co., Ltd	0.93
Shanghai Luli Trading Co., Ltd	0.93
Suqian Hopeway International Trade Co., Ltd	0.93
Suzhou Oriental Dragon Import and Export Co., Ltd	0.93
Xuzhou Jiangheng Wood Products Co., Ltd	0.93
Xuzhou Jiangyang Wood Industries Co., Ltd	0.93
Xuzhou Timber International Trade Co., Ltd	0.93
Zhejiang Dehua TB Import & Export Co., Ltd	0.93

Verification

As provided in section 782(i)(3)(B) of the Act, provided that the conditions in China allow, Commerce intends to verify certain information relied upon in making its final results because we find that good cause exists to verify the questionnaire responses of Chengen.[11]

Disclosure and Public Comment

Commerce intends to disclose to parties the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Commerce will establish a deadline for interested parties to submit case briefs and rebuttal briefs at a later date.[12] 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. Case and rebuttal briefs should be filed using ACCESS.

Interested parties who wish to request a hearing 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.[13] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. 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 date

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[9] *See AD Order,* 83 FR at 512.

[10] For additional information regarding Commerce's separate rate determinations, *see* the Preliminary Decision Memorandum.

[11] *See* Preliminary Decision Memorandum.

[12] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[13] *See* 19 CFR 351.310(c).

and time to be determined.[14] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[15] 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 (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5:00 p.m. ET on the due date.[16]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, AD duties on all appropriate entries covered by this review.[17] Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Where the individually examined respondent's weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce intends to calculate importer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[18] For Chengen, Commerce intends to calculate an importer-specific per-unit assessment rate by dividing the amount of dumping for reviewed sales to the importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* or per-unit assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* or per-unit assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to AD duties.[19] We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

Pursuant to Commerce's practice, for entries that were not reported in the U.S. sales database submitted by Chengen during this review, Commerce will instruct CBP to liquidate such entries at the rate for the China-wide entity.[20]

For the respondents that were not selected for individual examination in this administrative review and that qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin determined for Chengen in the final results of this administrative review. We will also instruct CBP to take into account the ''provisional measures deposit cap'' in accordance with 19 CFR 351.212(d).

For the final results, if we continue to treat the seven exporters preliminarily found not to qualify for separate rates as part of the China-wide entity, we will instruct CBP to apply an *ad valorem* assessment rate of 183.36 percent, the current rate established for the China-wide entity, to all entries of subject merchandise during the POR which were exported by those companies.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of AD duties on POR entries, and for future deposits of estimated AD duties, where applicable.

Cash Deposit Requirements

Commerce will instruct CBP to require a cash deposit for AD duties equal to the weighted-average amount by which NV exceeds U.S. price. The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except that, if the rate is *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed China and non-China exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 183.36 percent);[21] and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of AD duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of AD duties and/or countervailing duties has occurred, and the subsequent assessment of double AD duties and/or an increase in the amount of AD duties by the amount of the countervailing duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: January 31, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Recommendation

Appendix II

List of Companies Not Receiving Separate Rate Status

1. Jiangsu Sunwell Cabinetry Co., Ltd.
2. Linyi Bomei Furniture Co., Ltd.
3. Linyi Dahua Wood Co., Ltd.

[14] *See* 19 CFR 351.310(d).

[15] *See generally* 19 CFR 351.303.

[16] *Id.* (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[17] *See* 19 CFR 351.212(b)(1).

[18] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[19] *See Final Modification,* 77 FR at 8103.

[20] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

[21] *See AD Order,* 83 FR at 512.

4. Pingyi Jinniu Wood Co., Ltd.
5. SAICG International Trading Co., Ltd.
6. Shandong Jinhua International Trading Co., Ltd.
7. Xuzhou Amish Import & Export Co., Ltd.

[FR Doc. 2020–02469 Filed 2–6–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Preliminary Results and Partial Rescission of the 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 countervailable subsidies are being provided to producers and exporters of certain softwood lumber products (softwood lumber) from Canada. The period of review is April 28, 2017 through December 31, 2018. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 7, 2020.

FOR FURTHER INFORMATION CONTACT: Peter Zukowski (Canfor), Nicholas Czajkowski (JDIL), Kristen Johnson (Resolute), and George McMahon (West Fraser), AD/CVD Operations, Offices I and III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0189, (202) 482–1395, (202) 482–4793, and (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2018, Commerce published in the **Federal Register** a countervailing duty (CVD) order on softwood lumber from Canada.[1] Several interested parties requested that Commerce conduct an administrative review of the *CVD Order,* and, on April 1, 2019, Commerce published in the **Federal Register** a notice of initiation of the first administrative review of the *CVD Order.*[2] On May 17, 2019, Commerce selected the following producers and exporters as the mandatory respondents in the administrative review: Canfor Corporation, Resolute FP Canada Inc., and West Fraser Mills Ltd.[3] On July 18, 2019, Commerce selected J.D. Irving, Limited as a voluntary respondent in the administrative review.[4] On September 6, 2019, Commerce postponed the preliminary results of this review extending the deadline until January 31, 2020.[5]

Scope of the Order

The product covered by this order is certain softwood lumber products from Canada. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.[6]

Methodology

Commerce is conducting this CVD 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, Commerce preliminarily determines 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.[7]

For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document that 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 electronic versions of the Preliminary Decision Memorandum are identical in content. The list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the review. On June 19, 2019, the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (COALITION) withdrew its request for several of the companies for which Commerce initiated an administrative review.[8] On July 1, 2019, Fontaine, Inc. and Mobilier Rustique withdrew their respective requests for administrative review.[9] All withdrawal of review requests were timely submitted within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order with respect to these entities for which the requests for review were withdrawn.

On January 15, 2020, Commerce issued a memorandum regarding its intent to rescind the administrative review for those companies for which a withdrawal of review request was received and invited interested parties to comment.[10] On January 21, 2020, Brink Forest Products Ltd. and Vanderhoof Specialty Wood Products Ltd. (Brink Forest/Vanderhoof) submitted a comment on the companies' exclusion from the review and stated that they should remain subject to the review.[11] On January 22, 2020, Tolko

[1] *See Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 347 (January 3, 2018) (*CVD Order*).

[2] *See Certain Softwood Lumber Products from Canada: Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12209 (April 1, 2019).

[3] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Respondent Selection,'' dated May 17, 2019.

[4] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Selection of JD Irving, Ltd. as a Voluntary Respondent,'' dated July 18, 2019.

[5] *See* Memorandum, ''Certain Softwood Lumber Products from Canada: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review—2017–2018,'' dated September 6, 2019.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *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.

[8] *See* COALITION's Letters, ''Certain Softwood Lumber Products from Canada: Withdrawal of Request for Administrative Review,'' dated June 19, 2019; and ''Certain Softwood Lumber Products from Canada: Clarification of Petitioner's Withdrawal of Request for Administrative Review,'' dated July 26, 2019.

[9] *See* Fontaine, Inc.'s Letter, ''Softwood Lumber from Canada: Withdrawal of Request for Countervailing Duty Administrative Review (4/28/2017–12/31/2018),'' dated July 1, 2019; *see also* Mobilier Rustique's Letter, ''Certain Softwood Lumber Products from Canada—Mobilier Rustique Withdrawal of Request for Administrative Review,'' dated July 1, 2019.

[10] *See* Memorandum, ''Intent to Rescind the 2017/2018 Administrative Review, in Part,'' dated January 15, 2020 (Intent to Rescind Memorandum).

[11] *See* Brink Forest Products Ltd. and Vanderhoof Specialty Wood Products Ltd.'s Letter, ''Administrative Review of the Countervailing Duty

Continued

Marketing and Sales Ltd. and Tolko Industries Ltd. (Tolko) submitted a comment requesting Commerce retain Tolko Industries Ltd. in the administrative review.[12] Commerce replied to the comments filed by Brink Forest/Vanderhoof and Tolko.[13] Brink Forest/Vanderhoof are not included in the administrative review because the petitioner withdrew its request for review of the companies [14] and Brink Forest/Vanderhoof did not request a review of themselves.[15] The review of Tolko Industries Ltd. is not being rescinded. In the investigation,[16] Commerce found Tolko Marketing and Sales Ltd. to be cross-owned with Tolko Industries Ltd. and Meadow Lake OSB Limited Partnership and, therefore, all three companies are subject to the administrative review.[17]

No other party submitted comments on the Intent to Rescind Memorandum. In accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this administrative review of the *CVD Order* with respect to the entities for which a withdrawal of review request was received.

Additionally, as a result of the final results of the CVD expedited review covering the *CVD Order,* subject merchandise produced and exported by certain companies is excluded from the order.[18] We therefore are also rescinding the administrative review with respect to the excluded companies for which there was a request for review.

For more information on the companies for which a review was rescinded, *see* the Intent to Rescind Memorandum.

Rate for Non-Selected Companies Under Review

There are 247 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents. The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and/or producers individually examined, excluding any zero, *de minimis,* or rates based entirely on facts available. In this review, none of the rates for the respondents were zero, *de minimis,* or based entirely on facts available. Therefore, for 2017 and 2018, we are assigning to the non-selected companies an average of the subsidy rates calculated for the companies that were selected as respondents in the administrative review. For further information on the calculation of the non-selected rate, *see* ''Preliminary *Ad Valorem* Rate for Non-Selected Companies under Review'' in the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine that, for 2017 and 2018, the following estimated countervailable subsidy rates exist:

Companies	Subsidy rate 2017 *ad valorem* (percent)	Subsidy rate 2018 *ad valorem* (percent)
Canfor Corporation and its cross-owned affiliates [19]	2.93	2.61
J.D. Irving, Limited and its cross-owned affiliates [20]	3.47	2.66
Resolute FP Canada Inc. and its cross-owned affiliates [21]	15.16	14.66
West Fraser Mills Ltd. and its cross-owned affiliates [22]	7.07	7.51
1074712 BC Ltd	6.71	6.55
5214875 Manitoba Ltd	6.71	6.55
752615 B.C Ltd, Fraserview Remanufacturing Inc, DBA Fraserview Cedar Products	6.71	6.55
9224–5737 Québec inc. (aka, A.G. Bois)	6.71	6.55
A.B. Cedar Shingle Inc	6.71	6.55
Absolute Lumber Products, Ltd	6.71	6.55
AJ Forest Products Ltd	6.71	6.55
Alberta Spruce Industries Ltd	6.71	6.55
Aler Forest Products, Ltd	6.71	6.55
Alpa Lumber Mills Inc	6.71	6.55
American Pacific Wood Products	6.71	6.55
Anbrook Industries Ltd	6.71	6.55
Andersen Pacific Forest Products Ltd	6.71	6.55

Order on Certain Softwood Lumber Products from Canada,'' dated January 21, 2020.

[12] *See* Tolko Marketing and Sales Ltd. and Tolko Industries Ltd.'s Letter, ''Certain Softwood Lumber Products from Canada: Comments on Notice of Intent to Rescind Memorandum,'' dated January 22, 2020.

[13] *See* Memorandum, ''Reply to Comments Regarding Notice of Intent to Rescind Review, In Part,'' dated concurrently with this notice (Reply to Comments Memorandum).

[14] *See* COALITION's Letters, ''Certain Softwood Lumber Products from Canada: Withdrawal of Request for Administrative Review,'' dated June 19, 2019; and ''Certain Softwood Lumber Products from Canada: Clarification of Petitioner's Withdrawal of Request for Administrative Review,'' dated July 26, 2019.

[15] *See* Reply to Comments Memorandum.

[16] *See Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances,* 82 FR 51814, 51815–16 (November 8, 2017); *see also Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 347, 349 (January 3, 2018).

[17] *See* Reply to Comments Memorandum.

[18] *See Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review,* 84 FR 32121 (July 5, 2019). The excluded companies are: Les Produits Forestiers D&G Ltee (D&G), Marcel Lauzon Inc. (MLI), North American Forest Products Ltd. (NAFP) (located in Saint-Quentin, New Brunswick), Roland Boulanger & Cie Ltee (Roland), and Scierie Alexandre Lemay & Fils Inc. (Lemay).

[19] Commerce preliminarily finds the following companies to be cross-owned with Canfor Corporation: Canadian Forest Products, Ltd., and Canfor Wood Products Marketing, Ltd.

[20] Commerce preliminarily finds the following companies to be cross-owned with J.D. Irving, Limited: Miramichi Timber Holdings Limited, The New Brunswick Railway Company, Rothesay Paper Holdings Ltd., and St. George Pulp & Paper Limited.

[21] Commerce preliminarily finds the following companies to be cross-owned with Resolute: Resolute Growth Canada Inc., Produits Forestiers Maurice S.E.C., Abitibi-Bowater Canada Inc., Bowater Canadian Ltd., and Resolute Forest Products Inc.

[22] Commerce preliminarily finds the following companies to be cross-owned with West Fraser: West Fraser Timber Co. Ltd., West Fraser Alberta Holdings, Ltd., Blue Ridge Lumber Inc., Manning Forest Products, Ltd., Sunpine Inc., and Sundre Forest Products Inc.

Companies	Subsidy rate 2017 *ad valorem* (percent)	Subsidy rate 2018 *ad valorem* (percent)
Anglo American Cedar Products Ltd	6.71	6.55
Anglo-American Cedar Products, LTD	6.71	6.55
Antrim Cedar Corporation	6.71	6.55
Aquila Cedar Products, Ltd	6.71	6.55
Arbec Lumber Inc	6.71	6.55
Aspen Planers Ltd	6.71	6.55
B&L Forest Products Ltd	6.71	6.55
B.B. Pallets Inc	6.71	6.55
Babine Forest Products Limited	6.71	6.55
Bakerview Forest Products Inc	6.71	6.55
Bardobec Inc	6.71	6.55
BarretteWood Inc	6.71	6.55
Barrette-Chapais Ltee	6.71	6.55
Benoît & Dionne Produits Forestiers Ltée	6.71	6.55
Best Quality Cedar Products Ltd	6.71	6.55
Blanchet Multi Concept Inc	6.71	6.55
Blanchette & Blanchette Inc	6.71	6.55
Bois Aisé de Montréal inc	6.71	6.55
Bois Bonsaï inc	6.71	6.55
Bois Daaquam inc	6.71	6.55
Bois D'oeuvre Cedrico Inc. (aka, Cedrico Lumber Inc.)	6.71	6.55
Bois et Solutions Marketing SPEC, Inc	6.71	6.55
Boisaco	6.71	6.55
Boscus Canada Inc	6.71	6.55
BPWood Ltd	6.71	6.55
Bramwood Forest Inc	6.71	6.55
Brunswick Valley Lumber Inc	6.71	6.55
Busque & Laflamme Inc	6.71	6.55
C&C Wood Products Ltd	6.71	6.55
Caledonia Forest Products Inc	6.71	6.55
Campbell River Shake & Shingle Co., Ltd	6.71	6.55
Canadian American Forest Products Ltd	6.71	6.55
Canadian Wood Products Inc	6.71	6.55
Canusa cedar inc	6.71	6.55
Canyon Lumber Company, Ltd	6.71	6.55
Careau Bois inc	6.71	6.55
Carrier & Begin Inc	6.71	6.55
Carrier Forest Products Ltd	6.71	6.55
Carrier Lumber Ltd	6.71	6.55
Cedar Valley Holdings Ltd	6.71	6.55
Cedarline Industries, Ltd	6.71	6.55
Central Cedar Ltd	6.71	6.55
Centurion Lumber, Ltd	6.71	6.55
Clair Industrial Development Corp. Ltd	6.71	6.55
Chaleur Sawmills LP	6.71	6.55
Channel-ex Trading Corporation	6.71	6.55
Clermond Hamel Ltée	6.71	6.55
Coast Clear Wood Ltd	6.71	6.55
Coast Mountain Cedar Products Ltd	6.71	6.55
Commonwealth Plywood Co. Ltd	6.71	6.55
Comox Valley Shakes Ltd	6.71	6.55
Conifex Fibre Marketing Inc	6.71	6.55
Cowichan Lumber Ltd	6.71	6.55
CS Manufacturing Inc., dba Cedarshed	6.71	6.55
CWP—Industriel inc	6.71	6.55
CWP—Montréal inc	6.71	6.55
D & D Pallets, Ltd	6.71	6.55
Dakeryn Industries Ltd	6.71	6.55
Decker Lake Forest Products Ltd	6.71	6.55
Delco Forest Products Ltd	6.71	6.55
Delta Cedar Specialties Ltd	6.71	6.55
Devon Lumber Co. Ltd	6.71	6.55
DH Manufacturing Inc	6.71	6.55
Direct Cedar Supplies Ltd	6.71	6.55
Doubletree Forest Products Ltd	6.71	6.55
Downie Timber Ltd	6.71	6.55
Dunkley Lumber Ltd	6.71	6.55
EACOM Timber Corporation	6.71	6.55
East Fraser Fiber Co. Ltd	6.71	6.55
Edgewood Forest Products Inc	6.71	6.55
ER Probyn Export Ltd	6.71	6.55

Companies	Subsidy rate 2017 *ad valorem* (percent)	Subsidy rate 2018 *ad valorem* (percent)
Eric Goguen & Sons Ltd	6.71	6.55
Falcon Lumber Ltd	6.71	6.55
Foothills Forest Products Inc	6.71	6.55
Fornebu Lumber Co. Ltd	6.71	6.55
Fraser Specialty Products Ltd	6.71	6.55
Fraserview Cedar Products	6.71	6.55
Furtado Forest Products Ltd	6.71	6.55
G & R Cedar Ltd	6.71	6.55
Galloway Lumber Company Ltd	6.71	6.55
Gilbert Smith Forest Products Ltd	6.71	6.55
Glandell Enterprises Inc	6.71	6.55
Goat Lake Forest Products Ltd	6.71	6.55
Goldband Shake & Shingle Ltd	6.71	6.55
Golden Ears Shingle Ltd	6.71	6.55
Goldwood Industries Ltd	6.71	6.55
Goodfellow Inc	6.71	6.55
Gorman Bros. Lumber Ltd	6.71	6.55
Groupe Crête Chertsey	6.71	6.55
Groupe Crête division St-Faustin	6.71	6.55
Groupe Lebel inc	6.71	6.55
Groupe Lignarex inc	6.71	6.55
H.J. Crabbe & Sons Ltd	6.71	6.55
Haida Forest Products Ltd	6.71	6.55
Harry Freeman & Son Ltd	6.71	6.55
Hornepayne Lumber LP	6.71	6.55
Imperial Cedar Products, Ltd	6.71	6.55
Imperial Shake Co. Ltd	6.71	6.55
Independent Building Materials Dist	6.71	6.55
Interfor Corporation	6.71	6.55
Island Cedar Products Ltd	6.71	6.55
Ivor Forest Products Ltd	6.71	6.55
J&G Log Works Ltd	6.71	6.55
J.H. Huscroft Ltd	6.71	6.55
Jan Woodland (2001) inc	6.71	6.55
Jhajj Lumber Corporation	6.71	6.55
Kalesnikoff Lumber Co. Ltd	6.71	6.55
Kan Wood, Ltd	6.71	6.55
Kebois Ltée/Ltd	6.71	6.55
Keystone Timber Ltd	6.71	6.55
Kootenay Innovative Wood Ltd	6.71	6.55
L'Atelier de Réadaptation au travil de Beauce Inc	6.71	6.55
Lafontaine Lumber Inc	6.71	6.55
Langevin Forest Products Inc	6.71	6.55
Lecours Lumber Co. Limited	6.71	6.55
Ledwidge Lumber Co. Ltd	6.71	6.55
Leisure Lumber Ltd	6.71	6.55
Les Bois d'oeuvre Beaudoin Gauthier inc	6.71	6.55
Les Bois Martek Lumber	6.71	6.55
Les Bois Traités M.G. Inc	6.71	6.55
Les Chantiers de Chibougamau ltd	6.71	6.55
Leslie Forest Products Ltd	6.71	6.55
Lignum Forest Products LLP	6.71	6.55
Linwood Homes Ltd	6.71	6.55
Longlac Lumber Inc	6.71	6.55
Lulumco inc	6.71	6.55
Magnum Forest Products, Ltd	6.71	6.55
Maibec inc	6.71	6.55
Manitou Forest Products Ltd	6.71	6.55
Marwood Ltd	6.71	6.55
Materiaux Blanchet Inc	6.71	6.55
Matsqui Management and Consulting Services Ltd., dba Canadian Cedar Roofing Depot	6.71	6.55
Metrie Canada Ltd	6.71	6.55
Mid Valley Lumber Specialties, Ltd	6.71	6.55
Midway Lumber Mills Ltd	6.71	6.55
Mill & Timber Products Ltd	6.71	6.55
Millar Western Forest Products Ltd	6.71	6.55
MP Atlantic Wood Ltd	6.71	6.55
Multicedre Itee	6.71	6.55
Nakina Lumber Inc	6.71	6.55
National Forest Products Ltd	6.71	6.55
New Future Lumber Ltd	6.71	6.55

Companies	Subsidy rate 2017 *ad valorem* (percent)	Subsidy rate 2018 *ad valorem* (percent)
Nicholson and Cates Ltd	6.71	6.55
Norsask Forest Products Limited Partnership	6.71	6.55
North American Forest Products Ltd. (located in Abbotsford, British Columbia)	6.71	6.55
North Enderby Timber Ltd	6.71	6.55
Olympic Industries, Inc	6.71	6.55
Olympic Industries Inc-Reman Code	6.71	6.55
Olympic Industries ULC	6.71	6.55
Olympic Industries ULC-Reman	6.71	6.55
Olympic Industries ULC-Reman Code	6.71	6.55
Pacific Coast Cedar Products Ltd	6.71	6.55
Pacific Pallet, Ltd	6.71	6.55
Pacific Western Wood Works Ltd	6.71	6.55
Parallel Wood Products Ltd	6.71	6.55
Pat Power Forest Products Corporation	6.71	6.55
Phoenix Forest Products Inc	6.71	6.55
Pine Ideas Ltd	6.71	6.55
Pioneer Pallet & Lumber Ltd	6.71	6.55
Porcupine Wood Products Ltd	6.71	6.55
Power Wood Corp	6.71	6.55
Precision Cedar Products Corp	6.71	6.55
Prendiville Industries Ltd. (aka, Kenora Forest Products)	6.71	6.55
Produits Forestiers Mauricie	6.71	6.55
Produits Forestiers Petit Paris	6.71	6.55
Produits forestiers Temrex, s.e.c	6.71	6.55
Produits Matra Inc	6.71	6.55
Promobois G.D.S. inc	6.71	6.55
Rayonier A.M. Canada GP	6.71	6.55
Rembos Inc	6.71	6.55
Rene Bernard Inc	6.71	6.55
Richard Lutes Cedar Inc	6.71	6.55
Rielly Industrial Lumber Inc	6.71	6.55
S & K Cedar Products Ltd	6.71	6.55
S&R Sawmills Ltd	6.71	6.55
S&W Forest Products Ltd	6.71	6.55
San Industries Ltd	6.71	6.55
Sawarne Lumber Co. Ltd	6.71	6.55
Scierie St-Michel inc	6.71	6.55
Scierie West Brome Inc	6.71	6.55
Scotsburn Lumber Co. Ltd	6.71	6.55
Sechoirs de Beauce Inc	6.71	6.55
Serpentine Cedar Ltd	6.71	6.55
Serpentine Cedar Roofing Ltd	6.71	6.55
Sexton Lumber Co. Ltd	6.71	6.55
Sigurdson Forest Products Ltd	6.71	6.55
Silvaris Corporation	6.71	6.55
Silver Creek Premium Products Ltd	6.71	6.55
Sinclar Group Forest Products Ltd	6.71	6.55
Skana Forest Products Ltd	6.71	6.55
Skeena Sawmills Ltd	6.71	6.55
Sound Spars Enterprise Ltd	6.71	6.55
South Beach Trading Inc	6.71	6.55
Specialiste du Bardeau de Cedre Inc	6.71	6.55
Spruceland Millworks Inc	6.71	6.55
Surrey Cedar Ltd	6.71	6.55
T.G. Wood Products, Ltd	6.71	6.55
Taan Forest Products	6.71	6.55
Taiga Building Products Ltd	6.71	6.55
Tall Tree Lumber Company	6.71	6.55
Teal Cedar Products Ltd	6.71	6.55
Tembec Inc	6.71	6.55
Terminal Forest Products Ltd	6.71	6.55
The Teal-Jones Group	6.71	6.55
The Wood Source Inc	6.71	6.55
Tolko Marketing and Sales Ltd., Tolko Industries Ltd., and Meadow Lake OSB Limited Partnership	6.71	6.55
Trans-Pacific Trading Ltd	6.71	6.55
Triad Forest Products Ltd	6.71	6.55
Twin Rivers Paper Co. Inc	6.71	6.55
Tyee Timber Products Ltd	6.71	6.55
Universal Lumber Sales Ltd	6.71	6.55
Usine Sartigan Inc	6.71	6.55
Vaagen Fibre Canada, ULC	6.71	6.55

Companies	Subsidy rate 2017 *ad valorem* (percent)	Subsidy rate 2018 *ad valorem* (percent)
Valley Cedar 2 ULC	6.71	6.55
Vancouver Island Shingle, Ltd	6.71	6.55
Vancouver Specialty Cedar Products Ltd	6.71	6.55
Visscher Lumber Inc	6.71	6.55
W.I. Woodtone Industries Inc	6.71	6.55
Waldun Forest Product Sales Ltd	6.71	6.55
Watkins Sawmills Ltd	6.71	6.55
West Bay Forest Products Ltd	6.71	6.55
West Wind Hardwood Inc	6.71	6.55
Western Forest Products Inc	6.71	6.55
Western Lumber Sales Limited	6.71	6.55
Western Wood Preservers Ltd	6.71	6.55
Weston Forest Products Inc	6.71	6.55
Westrend Exteriors Inc	6.71	6.55
Weyerhaeuser Co	6.71	6.55
White River Forest Products L.P	6.71	6.55
Winton Homes Ltd	6.71	6.55
Woodline Forest Products Ltd	6.71	6.55
Woodstock Forest Products	6.71	6.55
Woodtone Specialties Inc	6.71	6.55
Yarrow Wood Ltd	6.71	6.55

Disclosure and Public Comment

Commerce intends to disclose to the parties to this proceeding the calculations performed in reaching these preliminary results within five days of publication of this notice in the **Federal Register**.[23] Commerce also intends to issue post-preliminary decision memoranda subsequent to the publication of this notice. Commerce will notify the parties to this proceeding of the deadlines for the submission of case and rebuttal briefs after the issuance of the last post-preliminary decision memorandum via a memorandum to the file of the proceeding.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to the 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 and 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 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

[23] *See* 19 CFR 351.224(b).

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, within 120 days after the date of publication of this notice.

Assessment Rates and Cash Deposit Requirement

In accordance with 19 CFR 351.221(b)(4)(i), Commerce has preliminarily assigned subsidy rates as indicated above. Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount calculated for the year 2018 from the companies identified above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed companies, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Assessment for Companies With Rescinded Reviews

Commerce will instruct CBP to assess countervailing duties on all entries of subject merchandise during the period April 28, 2017 through December 31, 2018, at the rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice.

With regard to D&G, MLI, NAFP (located in Saint-Quentin, New Brunswick), Roland, and Lemay, only subject merchandise that is produced and exported by D&G, MLI, NAFP, Roland, and Lemay are excluded from the *CVD Order.* Subject merchandise from either a producer or exporter identified in the producer/exporter combinations above, where the other entity in the transaction does not match the excluded producer/exporter combinations, remains subject to the *CVD Order.*

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: January 31, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Rescission of Review
IV. Period of Review
V. Scope of the Order
VI. Subsidies Valuation
VII. Analysis of Programs
VIII. Preliminary *Ad Valorem* Rate for Non-Selected Companies Under Review
IX. Programs To Be Addressed After the Preliminary Results
X. Recommendation

[FR Doc. 2020–02470 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–807]

Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of circular welded carbon-quality steel pipe (CWP) from the United Arab Emirates (UAE) have been made below normal value. We invite interested parties to comment on these preliminary results.

DATES: Applicable February 7, 2020.

FOR FURTHER INFORMATION CONTACT: Manuel Rey or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5518 or (202) 482–6274, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on CWP from the UAE. The notice of initiation of this administrative review was published on March 14, 2019.[1] This review covers 20 producers and exporters of the subject merchandise. The period of review is December 1, 2017 through November 30, 2018. On September 9, 2019, Commerce extended the deadline for the preliminary results of this administrative review until January 31, 2020.[2]

Commerce selected two mandatory respondents for individual examination: Conares Metal Supply Ltd. (Conares) and Universal Tube and Plastic Industries, Ltd./THL Tube and Pipe Industries LLC/KHK Scaffolding and Framework LLC (collectively, Universal).[3]

Scope of the Order

The merchandise subject to the order is welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter not more than nominal 16 inches (406.4 mm), regardless of wall thickness, surface finish, end finish, or industry specification, and generally known as standard pipe, fence pipe and tube, sprinkler pipe, or structural pipe (although subject product may also be referred to as mechanical tubing). The products subject to this order are currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5030, 7306.50.5050, and 7306.50.5070. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.[4]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. 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 electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Preliminary Results of the Review

We preliminarily determine that, for the period December 1, 2017 through November 30, 2018, the following weighted-average dumping margins exist:

Exporter/producer	Weighted-average dumping margin (percent)
Conares Metal Supply Ltd	2.49

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019), as amended in *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200, 12201 (April 1, 2019).

[2] *See* Memorandum, ''December Order Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated August 7, 2019; *see also* ''Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated September 9, 2019.

[3] Commerce previously determined that Universal is a collapsed entity consisting of the following three producers/exporters of subject merchandise: Universal Tube and Plastic Industries, Ltd., KHK Scaffolding and Framework LLC, and Universal Tube and Pipe Industries LLC (UTP). *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 36882 (June 8, 2016), and accompanying Preliminary Decision Memorandum, unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value,* 81 FR 75030 (October 28, 2016), and accompanying Issues and Decision Memorandum. Because there is no information on the record of this administrative review that would lead us to revisit this determination, we are continuing to treat these companies as part of a single entity for purposes of this administrative review. Additionally, we previously determined that THL Tube and Pipe Industries LLC is the successor-in-interest to Universal Tube and Pipe Industries LLC. *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 44845 (August 27, 2019) (*CWP from UAE 2016–2017 Final Results*).

[4] For a complete description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Exporter/producer	Weighted-average dumping margin (percent)
Universal Tube and Plastic Industries, Ltd./THL Tube and Pipe Industries LLC/KHK Scaffolding and Framework LLC ...	9.11

Review-Specific Average Rate Applicable to the Following Companies: [5]

Exporter/producer	Weighted-average dumping margin (percent)
Abu Dhabi Metal Pipes and Profiles Industries Complex	5.80
Ajmal Steel Tubes & Pipes Ind. L.L.C./Noble Steel Industries L.L.C [6]	5.80
Al Mansoori Industrial Supply	5.80
Baker Hughes EHO Ltd	5.80
BioAir Solutions LLC	5.80
Bridgeway Shipping & Clearing Services, LLC	5.80
Ferrofab FTZ	5.80
Ferrolab LLC	5.80
Global Steel Industries	5.80
Halima Pipe Co., Ltd	5.80
K.D. Industries Inc	5.80
Lamprell	5.80
Link Middle East Ltd	5.80
Noble Marine Metals Co., W.L.L	5.80
PSL FZE	5.80
Reyah Metal Trading FZE	5.80
Three Star Metal Ind LLC	5.80
Tiger Steel Industries LLC	5.80

Verification

The petitioners [7] timely requested verification of Conares and cited good cause for verification. Accordingly, as provided in section 782(i) of the Act, we intend to verify information relied upon for the final results.[8]

[5] This rate is based on the simple average of the margins calculated for those companies selected for individual review. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[6] We collapsed Ajmal Steel Tubes and Pipes Ind. L.L.C. and Noble Steel Industries L.L.C. together in the final results of the 2016–2017 administrative review. *See CWP from UAE 2016–2017 Final Results.*

[7] Bull Moose Tube Company and Wheatland Tube Company (collectively, the petitioners).

[8] *See* Petitioners' Letter, ''Circular Welded Carbon Quality Steel Pipe from the United Arab Emirates: Request for Verification of Conares Metal Supply Ltd.,'' dated June 12, 2019.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[9] Interested parties may submit case briefs to Commerce no later than seven days after the date of the final verification report issued in this review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[10] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] Case and rebuttal briefs should be filed using ACCESS.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[13] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[14]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication date of this notice, pursuant to section 751(a)(3)(A) of the Act, unless otherwise extended.[15]

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[16]

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(d).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] *See* 19 CFR 351.303.

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310(d).

[15] *See* section 751(a)(3)(A) of the Act.

[16] *See* 19 CFR 351.212(b).

Pursuant to 19 CFR 351.212(b)(1), because Conares and Universal reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average of the cash deposit rates calculated for Conares and Universal, excluding any which are *de minimis* or determined entirely based on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[17]

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[18]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and,

[17] *See* section 751(a)(2)(C) of the Act.

[18] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.95 percent, the all-others rate made effective by the LTFV investigation.[19] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 31, 2020.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[19] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 81 FR 91906 (December 19, 2016).

[FR Doc. 2020–02467 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness Solicitation of Nominations for Membership

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an opportunity to apply for membership on the Advisory Committee on Supply Chain Competitiveness.

SUMMARY: The Department of Commerce, International Trade Administration (ITA), requests nominations for the Advisory Committee on Supply Chain Competitiveness (''The Committee''). The Committee was established under the Federal Advisory Committee Act. The Committee was first chartered on November 21, 2011, and subsequently renewed on November 20, 2013, November 17, 2015, and November 16, 2017. The Department of Commerce most recently renewed the Committee for another two-year term beginning on November 14, 2019. The Committee has functioned effectively, and the Department has an on-going need for consensus advice regarding U.S. supply chain competitiveness. The Committee advises the Secretary on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and provides advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. The Department is seeking nominations for the rechartered Committee.

DATES: Applications for immediate consideration for appointment must be received on or before 5:00 p.m. EDT on February 28, 2020. After that date, the Department of Commerce will continue to accept applications to fill any vacancies that may arise during the charter period.

ADDRESSES: Richard Boll, Office of Supply Chain, Professional & Business Services, Room 11004, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; phone 202–482–1135; email: *richard.boll@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services, Room 11004, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; phone 202–482–1135; email: *richard.boll@trade.gov.* Please visit the Advisory Committee on Supply Chain Competitiveness website at: *https://www.trade.gov/meeting-summaries.*

SUPPLEMENTARY INFORMATION: The Committee has a maximum of 45 members. The Department of Commerce seeks nominations for immediate consideration to fill positions on the Committee for the 2019–2021 charter term, and will continue to accept nominations under this notice on an on-going basis for two-years for consideration to fill vacancies that may arise during the charter term. Member appointment terms run for two-years concurrently with the Committee charter. Members will be selected based upon their ability to advise the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and to provide advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. The Committee provides detailed policy and technical advice, information, and recommendations to the Secretary regarding:

(1) National, state, or local factors in trade programs and policies that affect the efficient domestic and international operation and competitiveness of U.S. global supply chains from point of origin to destination;

(2) elements of national policies affecting the movement of goods, infrastructure, investment, and regulatory factors that affect supply chain competitiveness and sustainability; and

(3) information and data systems to generate metrics that can be used to quantify and improve supply chain performance.

Members shall be selected in a manner that ensures that the Committee remains balanced in terms of product and service lines and reflects the

diversity of the supply chain sector, including with regard to geographic location and company size.

Members of the Committee shall represent companies, organizations, and stakeholders involved in the U.S. supply chain, with at least one individual representing each of the following: Supply chain firms or their associations; users of supply chains (*e.g.,* retailers, distributors, manufacturers or other sectors); freight transportation providers; ports; and academia. Based on the balance of viewpoints currently represented on the Committee, representatives from the trucking, air transport, energy, logistics, supply chain financing, warehousing, terminal operators, retailers, and supply chain compliance sectors are encouraged to apply.

Other than the experts from academia, all members shall serve in a representative capacity, expressing the views and interests of a U.S. company or U.S. organization, as well as its particular sector. Members serving in such a representative capacity are not Special Government Employees. The members from academia serve as experts and therefore are Special Government Employees (SGEs) and shall be subject to the ethical standards applicable to SGEs. Members who serve as SGEs must certify that they are not Federally registered lobbyists.

Each member of the Committee must be a U.S. citizen and not registered as a foreign agent under the Foreign Agents Registration Act. All appointments are made without regard to political affiliation. Self-nominations will be accepted.

Members of the Committee will not be compensated for their services or reimbursed for their travel expenses. The Committee shall meet approximately quarterly, or as determined by the DFO.

Members shall serve at the pleasure of the Secretary.

All nominations for membership on the Committee should provide the following information:

(1) Name, title, and relevant contact information (including phone, fax, and email address) of the individual requesting consideration; and

(2) An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938.

In addition to the above requirements for all nominations, nominations for representatives of companies, organizations, and stakeholders involved in the U.S. supply chain, including supply chain firms or their associations; users of supply chains (*e.g.,* retailers, distributors, manufacturers, or other sectors); freight transportation providers; and ports, should also provide the following information:

(1) A sponsor letter on the letterhead of the sponsoring U.S. company or U.S. organization to be represented, containing a brief description why the nominee should be considered for membership;

(2) Short biography of nominee including credentials;

(3) Brief description of the U.S. company or U.S. organization to be represented and its activities and size (number of employees or members and annual sales, if applicable); and

(4) An affirmative statement that the applicant meets all Committee eligibility requirements for representative members, including that the applicant represents a U.S. company or U.S. organization.

a. For purposes of Committee eligibility, a U.S. company is at least 51 percent owned by U.S. persons.

b. For purposes of Committee eligibility, a U.S. organization is controlled by U.S. persons, as determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable.

In addition to the above requirements for all nominations, nominations for experts from academia should also provide the following information:

(1) A description of the nominee's area(s) of expertise;

(2) A concise Curriculum Vitae (CV) or resume that covers education, experience, and relevant publications and summarizes how this expertise addresses supply chain competitiveness;

(3) An affirmative statement that the applicant meets all Committee eligibility requirements.

Please do not send company or organization brochures.

Nominations may be emailed to *richard.boll@trade.gov,* faxed to the attention of Richard Boll at 202–482–2669, or mailed to Richard Boll, Office of Supply Chain, Professional & Business Services, Room 11004, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and must be received on or before February 28, 2020. Nominees selected for appointment to the Committee will be notified.

Dated: February 4, 2020.

Maureen Smith,

Director, Office of Supply Chain and Professional & Business Services.

[FR Doc. 2020–02455 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857]

Certain Softwood Lumber Products From Canada: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review, in Part; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain softwood lumber products (softwood lumber) from Canada. The period of review (POR) is June 30, 2017 through December 31, 2018. Commerce preliminarily determines that the producers/exporters subject to this review made sales of subject merchandise at less than normal value. We invite interested parties to comment on these preliminary results.

DATES: Applicable February 7, 2020.

FOR FURTHER INFORMATION: Jeff Pederson (Canfor), Stephen Bailey (Resolute), and Thomas Martin (West Fraser), AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769, (202) 482–0193, and (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2019, Commerce published in the **Federal Register** the notice of initiation of an antidumping duty administrative review on softwood lumber from Canada.[1] On April 1, 2019, based on timely requests for administrative reviews, Commerce initiated an AD administrative review covering 1,224 companies.[2] As discussed below, we have rescinded on all but 257 companies. Thus, the review covers 257 producers/exporters of the subject merchandise, including mandatory respondents Canfor,[3]

[1] *See Certain Softwood Lumber Products from Canada: Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12209 (April 1, 2019) (*Initiation Notice*).

[2] *Id.*

[3] As described in the Preliminary Decision Memorandum, we have treated Canfor Corporation, Canadian Forest Products Ltd., and Canfor Wood Products Marketing Ltd. (collectively, Canfor) as a single entity. *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada; 2017–

Resolute,[4] and West Fraser.[5] The remaining companies were not selected for individual examination and remain subject to this administrative review. The POR is June 30, 2017 through December 31, 2018. On September 6, 2019, we extended the preliminary results until January 31, 2020.[6]

Scope of the Order

The product covered by this review is softwood lumber from Canada. For a full description of the scope, *see* the Preliminary Decision Memorandum.[7]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 is available 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 is available at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. All requests for administrative review were timely withdrawn for certain companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to certain companies named in the *Initiation Notice*.[8] For a list of the remaining companies in this review, *see* Appendix II.

Preliminary Results of the Administrative Review

We preliminarily determine that the following weighted-average dumping margin exists for the period June 30, 2017 through December 31, 2018:

Exporter/producer	Weighted-average margin (percent)
Canfor Corporation/Canadian Forest Products Ltd./Canfor Wood Products Marketing Ltd	2.02
Resolute Growth Canada Inc./Forest Products Mauricie LP, Société en commandite Scierie Opitciwan/Resolute-LP Engineered Wood Larouche Inc./Resolute-LP Engineered Wood St-Prime Limited Partnership/Resolute FP Canada Inc	1.18
West Fraser Mills Ltd., Blue Ridge Lumber Inc./Manning Forest Products Ltd./and Sundre Forest Products Inc	1.57
All Others	1.66

Rate for Companies Not Individually Examined

Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others margin in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others margin, Commerce will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, Commerce's usual practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis,* or based entirely on facts available.

In this review, we calculated a weighted-average dumping margin of 2.02 percent for Canfor, 1.18 percent for Resolute, and 1.57 percent for West Fraser. In accordance with section 735(c)(5)(A) of the Act, Commerce assigned the weighted-average of these three calculated weighted-average dumping margins, 1.66 percent, to the non-selected companies in these preliminary results. The rate calculated for the non-selected companies is a weighted-average percentage margin which is calculated based on the U.S. values of the three reviewed companies with an affirmative antidumping duty margin.[9] Accordingly, we have applied a rate of 1.66 percent to the non-selected companies.[10]

Disclosure

We intend to disclose the calculations performed for these preliminary results to the interested parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b).

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to the Assistant Secretary for Enforcement and Compliance not later than 30 days after the date of publication of this notice, unless Commerce alters the time limit. 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.[11] Parties who submit case briefs or rebuttal briefs in this administrative

2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum), at 5.

[4] As described in the Preliminary Decision Memorandum, we have treated Resolute Growth Canada Inc., Forest Products Mauricie LP, Société en commandite Scierie Opitciwan, Resolute-LP Engineered Wood Larouche Inc., Resolute-LP Engineered Wood St-Prime Limited Partnership, and Resolute FP Canada Inc. (collectively, Resolute) as a single entity. *See* Preliminary Decision Memorandum at 6.

[5] As described in the Preliminary Decision Memorandum, we have treated West Fraser Mills Ltd., Blue Ridge Lumber Inc., Manning Forest Products Ltd., and Sundre Forest Products Inc. (collectively, West Fraser) as a single entity. *See* Preliminary Decision Memorandum at 6–7.

[6] *See* Memorandum, ''Certain Softwood Lumber Products from Canada: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review—2017–2018,'' dated September 6, 2019.

[7] *See* Preliminary Decision Memorandum at 3–5.

[8] *See Initiation Notice,* 84 FR at 12209.

[9] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[10] *See* Memorandum, ''Calculation of the Rate for Non-Selected Respondents,'' dated January 31, 2020.

[11] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

review are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[13] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of these preliminary results in the **Federal Register,** pursuant to section 751(a)(3)(A) of the Act, unless extended.

Assessment Rate

For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) for those companies 15 days after publication of this notice.

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14] If a respondent's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[15] If a respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with the *Final Modification for Reviews.*[16] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable. We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of softwood lumber from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be equal to the dumping margin established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.58 percent, the all-others rate established in the LTFV investigation.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 31, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Affiliation and Collapsing of Affiliates
V. Rescission of Administrative Review, In Part
VI. Particular Market Situation Allegation
VII. Unexamined Respondents
VIII. Discussion of the Methodology
IX. Recommendation

Appendix II

Companies for Which This Administrative Review Is Not Being Rescinded

1. 1074712 BC Ltd.
2. 5214875 Manitoba Ltd.
3. 752615 B.C Ltd, Fraserview Remanufacturing Inc, DBA Fraserview Cedar Products.
4. 9224–5737 Québec inc. (aka, A.G. Bois)
5. A.B. Cedar Shingle Inc.
6. Absolute Lumber Products, Ltd.
7. AJ Forest Products Ltd.
8. Alberta Spruce Industries Ltd.
9. Aler Forest Products, Ltd.
10. Alpa Lumber Mills Inc.
11. American Pacific Wood Products
12. Anbrook Industries Ltd.
13. Andersen Pacific Forest Products Ltd.
14. Anglo American Cedar Products Ltd.
15. Anglo-American Cedar Products, LTD.
16. Antrim Cedar Corporation
17. Aquila Cedar Products, Ltd.
18. Arbec Lumber Inc.
19. Aspen Planers Ltd.
20. B&L Forest Products Ltd
21. B.B. Pallets Inc.
22. Babine Forest Products Limited
23. Bakerview Forest Products Inc.
24. Bardobec Inc.
25. Barrette-Chapais Ltee
26. BarretteWood Inc.
27. Benoît & Dionne Produits Forestiers Ltée
28. Best Quality Cedar Products Ltd.
29. Blanchet Multi Concept Inc.
30. Blanchette & Blanchette Inc.
31. Bois Aisé de Montréal inc.
32. Bois Bonsaï inc.
33. Bois D'oeuvre Cedrico Inc. (aka, Cedrico Lumber Inc.)
34. Bois Daaquam inc.
35. Bois et Solutions Marketing SPEC, Inc.
36. Boisaco
37. Boscus Canada Inc.
38. Boucher Bros. Lumber Ltd.

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.212(b).

[15] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[16] *See Final Modification for Reviews,* 77 FR at 8103; *see also* 19 CFR 351.106(c)(2).

[17] *See Certain Softwood Lumber Products From Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 82 FR 51806 (November 8, 2017).

39. BPWood Ltd.
40. Bramwood Forest Inc.
41. Brunswick Valley Lumber Inc.
42. Busque & Laflamme Inc.
43. C&C Wood Products Ltd.
44. Caledonia Forest Products Inc.
45. Campbell River Shake & Shingle Co., Ltd.
46. Canadian American Forest Products Ltd.
47. Canadian Wood Products Inc.
48. Canfor Corporation/Canadian Forest Products, Ltd./Canfor Wood Products Marketing, Ltd.
49. Canusa cedar inc.
50. Canyon Lumber Company, Ltd.
51. Careau Bois inc.
52. Carrier & Begin Inc.
53. Carrier Forest Products Ltd.
54. Carrier Lumber Ltd.
55. Cedar Valley Holdings Ltd.
56. Cedarline Industries, Ltd.
57. Central Cedar Ltd.
58. Centurion Lumber, Ltd.
59. Chaleur Sawmills LP
60. Channel-ex Trading Corporation
61. Clair Industrial Development Corp. Ltd.
62. Clermond Hamel Ltée
63. Coast Clear Wood Ltd.
64. Coast Mountain Cedar Products Ltd.
65. Commonwealth Plywood Co. Ltd.
66. Comox Valley Shakes Ltd.
67. Conifex Fibre Marketing Inc.
68. Cowichan Lumber Ltd.
69. CS Manufacturing Inc., dba Cedarshed
70. CWP—Industriel inc.
71. CWP—Montréal inc.
72. D & D Pallets, Ltd.
73. Dakeryn Industries Ltd.
74. Decker Lake Forest Products Ltd.
75. Delco Forest Products Ltd.
76. Delta Cedar Specialties Ltd.
77. Devon Lumber Co. Ltd.
78. DH Manufacturing Inc.
79. Direct Cedar Supplies Ltd.
80. Doubletree Forest Products Ltd.
81. Downie Timber Ltd.
82. Dunkley Lumber Ltd.
83. EACOM Timber Corporation
84. East Fraser Fiber Co. Ltd.
85. Edgewood Forest Products Inc.
86. ER Probyn Export Ltd.
87. Eric Goguen & Sons Ltd.
88. Falcon Lumber Ltd.
89. Fontaine Inc
90. Foothills Forest Products Inc.
91. Fornebu Lumber Co. Ltd.
92. Fraser Specialty Products Ltd.
93. Fraserview Cedar Products
94. Furtado Forest Products Ltd.
95. G & R Cedar Ltd.
96. Galloway Lumber Company Ltd.
97. Glandell Enterprises Inc.
98. Goat Lake Forest Products Ltd.
99. Goldband Shake & Shingle Ltd.
100. Golden Ears Shingle Ltd.
101. Goldwood Industries Ltd.
102. Goodfellow Inc.
103. Gorman Bros. Lumber Ltd.
104. Groupe Crête Chertsey
105. Groupe Crête division St-Faustin
106. Groupe Lebel inc.
107. Groupe Lignarex inc.
108. H.J. Crabbe & Sons Ltd.
109. Haida Forest Products Ltd.
110. Harry Freeman & Son Ltd.
111. Hornepayne Lumber LP
112. Imperial Cedar Products, Ltd.
113. Imperial Shake Co. Ltd.
114. Independent Building Materials Dist.
115. Interfor Corporation
116. Island Cedar Products Ltd
117. Ivor Forest Products Ltd.
118. J&G Log Works Ltd.
119. J.D. Irving, Limited
120. J.H. Huscroft Ltd.
121. Jan Woodland (2001) inc.
122. Jhajj Lumber Corporation
123. Kalesnikoff Lumber Co. Ltd.
124. Kan Wood, Ltd.
125. Kebois Ltée/Ltd
126. Keystone Timber Ltd.
127. Kootenay Innovative Wood Ltd.
128. Lafontaine Lumber Inc.
129. Langevin Forest Products Inc.
130. Lecours Lumber Co. Limited
131. Ledwidge Lumber Co. Ltd.
132. Leisure Lumber Ltd.
133. Les Bois d'oeuvre Beaudoin Gauthier inc.
134. Les Bois Martek Lumber
135. Les Bois Traités M.G. Inc.
136. Les Chantiers de Chibougamau ltd.
137. Les Produits Forestiers D&G Ltée
138. Leslie Forest Products Ltd.
139. Lignum Forest Products LLP
140. Linwood Homes Ltd.
141. Longlac Lumber Inc.
142. Lulumco inc.
143. Magnum Forest Products, Ltd.
144. Maibec inc.
145. Manitou Forest Products Ltd.
146. Marcel Lauzon Inc.
147. Marwood Ltd.
148. Materiaux Blanchet Inc.
149. Matsqui Management and Consulting Services Ltd., dba Canadian Cedar Roofing Depot
150. Metrie Canada Ltd.
151. Mid Valley Lumber Specialties, Ltd.
152. Midway Lumber Mills Ltd.
153. Mill & Timber Products Ltd.
154. Millar Western Forest Products Ltd.
155. Mobilier Rustique (Beauce) Inc.
156. MP Atlantic Wood Ltd.
157. Multicedre Itee
158. Nakina Lumber Inc.
159. National Forest Products Ltd.
160. New Future Lumber Ltd.
161. Nicholson and Cates Ltd
162. Norsask Forest Products Limited Partnership
163. North American Forest Products, Ltd. (located in Abbotsford, British Columbia)
164. North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick)
165. North Enderby Timber Ltd.
166. Olympic Industries Inc-Reman Codes
167. Olympic Industries ULC
168. Olympic Industries ULC-Reman
169. Olympic Industries ULC-Reman Code
170. Olympic Industries, Inc.
171. Pacific Coast Cedar Products Ltd.
172. Pacific Pallet, Ltd.
173. Pacific Western Wood Works Ltd.
174. Parallel Wood Products Ltd.
175. Pat Power Forest Products Corporation
176. Phoenix Forest Products Inc.
177. Pine Ideas Ltd.
178. Pioneer Pallet & Lumber Ltd
179. Porcupine Wood Products Ltd.
180. Power Wood Corp.
181. Precision Cedar Products Corp.
182. Prendiville Industries Ltd. (aka, Kenora Forest Products)
183. Produits Forestiers Petit Paris
184. Produits forestiers Temrex, s.e.c.
185. Produits Matra Inc.
186. Promobois G.D.S. inc.
187. Rayonier A.M. Canada GP
188. Rembos Inc.
189. Rene Bernard Inc.
190. Resolute FP Canada Inc./Resolute Forest Products Inc./Produits Forestiers Mauricie
191. Richard Lutes Cedar Inc.
192. Rielly Industrial Lumber Inc.
193. Roland Boulanger & Cie Ltee
194. S & K Cedar Products Ltd.
195. S&R Sawmills Ltd
196. S&W Forest Products Ltd.
197. San Industries Ltd.
198. Sawarne Lumber Co. Ltd.
199. Scierie Alexandre Lemay & Fils Inc.
200. Scierie St-Michel inc.
201. Scierie West Brome Inc.
202. Scotsburn Lumber Co. Ltd.
203. Sechoirs de Beauce Inc.
204. Serpentine Cedar Ltd.
205. Serpentine Cedar Roofing Ltd.
206. Sexton Lumber Co. Ltd.
207. Sigurdson Forest Products Ltd.
208. Silvaris Corporation
209. Silver Creek Premium Products Ltd.
210. Sinclar Group Forest Products Ltd.
211. Skana Forest Products Ltd.
212. Skeena Sawmills Ltd
213. Sound Spars Enterprise Ltd.
214. South Beach Trading Inc.
215. Specialiste du Bardeau de Cedre Inc
216. Spruceland Millworks Inc.
217. Surrey Cedar Ltd.
218. T.G. Wood Products, Ltd
219. Taan Forest Products
220. Taiga Building Products Ltd.
221. Tall Tree Lumber Company
222. Teal Cedar Products Ltd.
223. Tembec Inc.
224. Terminal Forest Products Ltd.
225. The Teal-Jones Group
226. The Wood Source Inc.
227. Tolko Industries Ltd./Tolko Marketing and Sales Ltd./Gilbert Smith Forest Products Ltd.
228. Trans-Pacific Trading Ltd.
229. Triad Forest Products Ltd.
230. Twin Rivers Paper Co. Inc.
231. Tyee Timber Products Ltd.
232. Universal Lumber Sales Ltd.
233. Usine Sartigan Inc.
234. Vaagen Fibre Canada, ULC
235. Valley Cedar 2 ULC
236. Vancouver Island Shingle, Ltd.
237. Vancouver Specialty Cedar Products Ltd.
238. Visscher Lumber Inc
239. W.I. Woodtone Industries Inc.
240. Waldun Forest Product Sales Ltd.
241. Watkins Sawmills Ltd.
242. West Bay Forest Products Ltd.
243. West Fraser Mills Ltd.
244. West Fraser Timber Co. Ltd.
245. West Wind Hardwood Inc.
246. Western Forest Products Inc.
247. Western Lumber Sales Limited
248. Western Wood Preservers Ltd.
249. Weston Forest Products Inc.
250. Westrend Exteriors Inc.
251. Weyerhaeuser Co.

252. White River Forest Products L.P.
253. Winton Homes Ltd.
254. Woodline Forest Products Ltd.
255. Woodstock Forest Products
256. Woodtone Specialties Inc.
257. Yarrow Wood Ltd.

[FR Doc. 2020–02471 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 200113–0014]

National Cybersecurity Center of Excellence (NCCoE) Protecting Information and System Integrity in Industrial Control System Environments for the Manufacturing Sector

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for *Protecting Information and System Integrity in Industrial Control System Environments* for the Manufacturing sector. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Manufacturing sector program. Participation in the use case is open to all interested organizations.

DATES: Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than March 9, 2020.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *Manufacturing_nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a consortium Cooperative Research and Development Agreement (CRADA) with NIST. An NCCoE consortium CRADA template can be found at: *https://www.nccoe.nist.gov/library/nccoe-consortium-crada-example.*

FOR FURTHER INFORMATION CONTACT: Michael Powell via email at *michael.powell@nist.gov;* by telephone 301–975–0310; or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the Manufacturing sector program are available at *https://www.nccoe.nist.gov/projects/use-cases/Manufacturing.*

SUPPLEMENTARY INFORMATION: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. When the use case has been completed, NIST will post a notice on the NCCoE Manufacturing sector program website at *https://www.nccoe.nist.gov/projects/use-cases/manufacturing/integrity-ics* announcing the completion of the use case and informing the public that it will no longer accept letters of interest for this use case.

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a CRADA to provide products and technical expertise to support and demonstrate security platforms for the *Protecting Information and System Integrity in Industrial Control System Environments* project for the Manufacturing sector. The full use case can be viewed at: *https://www.nccoe.nist.gov/projects/use-cases/manufacturing/integrity-ics.*

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the use case objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this use case. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

In March 2016, NIST issued a similar call for collaboration for a Securing Manufacturing Industrial Control Systems: Behavioral Anomaly Detection use case which can be found here: *https://www.nccoe.nist.gov/projects/use-cases/manufacturing/integrity-ics.* This collaborative project was originally intended to yield a NIST Cybersecurity Practice Guide, but instead resulted in the publication of NISTIR 8219, Securing Manufacturing Industrial Control Systems: Behavioral Anomaly Detection, *https://www.nccoe.nist.gov/sites/default/files/library/mf-ics-nistir-8219.pdf.* NIST anticipates that the collaborators who contributed to development of NISTIR 8219 will also participate in this use case.

Use Case Objective: The objectives of this project are to provide a proposed approach to prevent, mitigate, and detect threats from cyber attacks or insider threats within a Manufacturing industrial control system (ICS) environment, and demonstrate how the commercially available technologies deployed in this build provide cybersecurity capabilities that Manufacturing organizations can use to secure their operational technology (OT) systems.

A detailed description of the *Protecting Information and System Integrity in Industrial Control System Environments* is available at: *https://www.nccoe.nist.gov/projects/use-cases/manufacturing/integrity-ics.*

Requirements: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not

include company proprietary information, and all components and capabilities must be commercially available. Components are listed in Section 6 of the *Protecting Information and System Integrity in Industrial Control System Environments* for the Manufacturing use case (for reference, please see the link in the Process section above) and include, but are not limited to:

- ICS application white-listing tools
- ICS behavioral anomaly detection tools
- security incident and event monitoring
- malware detection and mitigation
- change control management
- access control
- file-integrity-checking mechanisms
- user authentication and authorization

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in section 6 of the *Protecting Information and System Integrity in Industrial Control System Environments* for the Manufacturing use case (for reference, please see the link in the Process section above):

1. Tracking of approved software applications that are permitted to be present and active on the network

2. continuous monitoring of a network for unusual events or data packet trends process of identifying, monitoring, recording, and analyzing security events or incidents within a real-time OT environment

3. detection of malicious software designed to cause damage to a computer, server, or computer network

4. monitoring for unapproved changes, that all changes are documented, and that services are not unnecessarily disrupted

5. validation of access to the ICS network by authenticated users

6. validation of operating system and application software file integrity

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components

2. Support for development and demonstration of the *Protecting Information and System Integrity in Industrial Control System Environments* for the Manufacturing sector use case in NCCoE facilities which will be conducted in a manner consistent with the following standards and guidance: FIPS 200, FIPS 201, and SP 800–53.

Additional details about the *Protecting Information and System Integrity in Industrial Control System Environments* for the Manufacturing sector use case are available at: *https://www.nccoe.nist.gov/projects/use-cases/manufacturing/integrity-ics.*

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the *Protecting Information and System Integrity in Industrial Control System Environments* for the Manufacturing sector capability. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations to the Manufacturing community. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the *Protecting Information and System Integrity in Industrial Control System Environments* for the Manufacturing sector use case. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the *Protecting Information and System Integrity in Industrial Control System Environments* for the Manufacturing sector capability will be announced on the NCCoE website at least two weeks in advance at *https://nccoe.nist.gov/.* The expected outcome of the demonstration is to improve security to Manufacturing environments by demonstrating how Manufacturing organizations can take a comprehensive approach to protecting the data integrity of their industrial control systems. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *https://nccoe.nist.gov/.*

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–02436 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA029]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) will hold a webinar, which is open to the public.

DATES: The webinar will be held Tuesday, February 25, 2020, from 1:30 p.m. to 4:30 p.m. Pacific Standard Time, or when business for the day has been completed.

ADDRESSES: A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the meeting by using this link: *https://meetings.ringcentral.com/join,* (2) enter the Meeting ID provided in the meeting announcement (see *http://www.pcouncil.org*) and click JOIN, (3) you will be prompted to either download the RingCentral meetings application or join the meeting without a download via your web browser, and (4) enter your name and click JOIN. NOTE: We require all participants to use a telephone or cell phone to participate. (1) You must use your telephone for the audio portion of the meeting by dialing the TOLL number provided on your screen followed by the meeting ID and participant ID, also provided on the screen. (2) Once connected, you will be in the meeting, seeing other participants and a shared screen, if applicable. Technical Information and System Requirements: PC-based attendees are required to use Windows® 10, 8; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®,

Android™ phone or Android tablet (See the RingCentral mobile apps in your app store). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of this webinar is for the EWG to discuss revisions to the Fishery Ecosystem Plan, Chapters 3 through 6, as part of the five-year review. An electronic version of the Fishery Ecosystem Plan is available on the Pacific Council website, *http://www.pcouncil.org.* The EWG will present an annotated outline of proposed revisions to these chapters at the Pacific Council's March 2020 meeting in Rohnert Park, California. The EWG may also discuss the 2020 California Current Ecosystem Status Report and any report from the January Climate and Communities Initiative workshop, if those reports are available for review before February 25, 2020. This webinar is also an opportunity for other Pacific Council advisory bodies to receive information so that they may prepare their reports on ecosystem topics for the March Pacific Council meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–02431 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU007

Meeting of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee's (MAFAC's) Columbia Basin Partnership Task Force (CBP Task Force). The CBP Task Force will discuss the issues outlined in the **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held on February 25, 2020 from 9 a.m. to 5 p.m. PT and February 26, 2019 from 9 a.m. to 4 p.m. PT.

ADDRESSES: The meeting will be held at the Boise Centre, 850 West Front Street, Room 420, Boise, ID 83702; 208–336–8900.

FOR FURTHER INFORMATION CONTACT: Katherine Cheney; NFMS West Coast Region; 503–231–6730; email: *Katherine.Cheney@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC's CBP Task Force. The MAFAC was established by the Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter and meeting information are located online at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee-.* The CBP Task Force reports to MAFAC and is being convened to develop recommendations for long-term goals to meet Columbia Basin salmon recovery, conservation needs, and harvest opportunities, in the context of habitat capacity and other factors that affect salmon mortality. More information is available at the CBP Task Force web page: *http://www.westcoast.fisheries.noaa.gov/columbia_river/index.html.*

Matters To Be Considered

The meeting time and agenda are subject to change. Meeting topics include discussion of scenarios and regional impacts for conserving and recovering Columbia Basin salmon and steelhead; social, cultural, economic, and ecological considerations; and options for future governance.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Katherine Cheney, 503–231–6730, by February 14, 2020.

Dated: February 3, 2020.

Jennifer L. Lukens,

Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2020–02426 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA032]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Cook Inlet Salmon Committee will meet on February 25, 2020 through February 26, 2020.

DATES: The meeting will be held on Tuesday, February 25, 2020 through Wednesday, February 26, 2020, from 9 a.m. to 5 p.m. Alaska Standard Time.

ADDRESSES: The meeting will be held in the Birch/Willow room at the Anchorage Hilton Hotel, 500 W 3rd Ave, Anchorage, AK 99501. Teleconference number is (907) 271–2896.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Jim Armstrong, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, February 25, 2020 Through Wednesday, February 26, 2020

The agenda for the meeting will include a general overview of the process for considering impacts to Cook Inlet beluga whales, Committee review of draft background information for ongoing analyses of alternatives, Committee review of draft management measures under existing Alternatives 2 and 3, Committee member proposals for additional management measures, and other issues, as necessary. The Agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1289* prior to the meeting, along with meeting materials.

Public Comment

Public comment letters will be accepted and should be submitted either electronically at: *meetings.npfmc.org* or through the mail: North Pacific Fishery Management Council, 1007 West Third, Suite 400, Anchorage, AK 99501–2252.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–02434 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA030]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Salmon Technical Team (STT) and Scientific and Statistical Committee salmon subcommittee (SSCSC) will hold a joint one-day methodology review meeting. This meeting will be held via webinar and is open to the public.

DATES: The webinar will be held Wednesday, February 26, 2020, from 12 p.m. until 4 p.m., or when business for the day has been completed.

ADDRESSES: A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the meeting by using this link: *https://meetings.ringcentral.com/join,* (2) enter the Meeting ID provided in the meeting announcement (see *http://www.pcouncil.org*) and click JOIN, (3) you will be prompted to either download the RingCentral meetings application or join the meeting without a download via your web browser, and (4) enter your name and click JOIN. NOTE: We require all participants to use a telephone or cell phone to participate. (1) You must use your telephone for the audio portion of the meeting by dialing the TOLL number provided on your screen followed by the meeting ID and participant ID, also provided on the screen. (2) Once connected, you will be in the meeting, seeing other participants and a shared screen, if applicable. Technical Information and System Requirements: PC-based attendees are required to use Windows® 10, 8; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the RingCentral mobile apps in your app store). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Robin Ehlke, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: The purpose of the methodology review meeting is to continue discussing and review any new or previously provided documentation of the abundance forecast approach used for Willapa Bay natural coho. This meeting is a continuation of the January 22, 2020 STT/SSCSC joint webinar.

Results and recommendations from this methodology review meeting will be presented at the March 2020 Pacific Council meeting in Rohnert Park, California. If time and interest allow, additional topics may be discussed, including but not limited to future Pacific Council agenda items. Public comments during the webinar will be received from attendees at the discretion of the STT and SSCSC Chairs.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–02432 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR083

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to City and Borough of Juneau Downtown Waterfront Improvement Project

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

ACTION: Notice; proposed modification of an Incidental Harassment Authorization; request for comments.

SUMMARY: On December 19, 2019, NMFS received a request from the City and Borough of Juneau (CBJ) to modify an incidental harassment authorization (IHA) that was issued to CBJ on May 16, 2019 to take small numbers of harbor seals, by harassment, incidental to the Juneau dock and harbor waterfront improvement project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to modify the IHA. This modification includes changes to the

prescribed mitigation and to the amount of authorized take by Level A harassment. The total amount of authorized taking remains the same. There are no changes to the activity, NMFS' findings, the effective dates of the issued IHA, or any other aspect of the IHA. NMFS will consider public comments prior to making any final decision on the requested modification of the authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 9, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.guan@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS FR notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

History of Request

On October 25, 2018, CBJ submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of harbor seals incidental to the City of Juneau Dock and Harbor waterfront improvement project in Juneau, Alaska. On March 5, 2019, NMFS published a **Federal Register** notice (84 FR 7880) for the proposed IHA. On May 16, 2019, NMFS issued an IHA to CBJ. On May 28, 2019, NMFS published a **Federal Register** notice (84 FR 24490) announcing the issuance of the IHA, which is valid from July 15, 2019, through July 14, 2020.

On December 19, 2019, NMFS received a request from CBJ to modify the 2019 IHA. CBJ subsequently submitted a revised IHA modification request on January 22, 2019, which NMFS determined to be adequate and complete. In the original IHA issued to CBJ, NMFS authorized 72 takes by Level A harassment and 3,454 takes by Level B harassment for harbor seals, and prescribed a shutdown distance of 130 m for impact driving of steel pipe piles. Prior to the start of in-water impact pile driving, CBJ conducted marine mammal abundance survey effort in the vicinity of the project area and found that there were significantly greater numbers of harbor seals present within the immediate vicinity of the construction site than previously estimated. The close proximity of the seals to the pile driving locations would preclude impact pile driving, due to the requirement to clear the 130-m shutdown zone prior to starting up. In addition, CBJ has determined that the high occurrence of harbor seals within the immediate vicinity of the construction site is likely lead to excessive shutdowns during pile driving, which would compromise the timely completion of CBJ's dock and harbor waterfront improvement project on time. CBJ asserts that this renders the prescribed 130-m shutdown zone impracticable, and on the basis of the new information provided by CBJ, NMFS concurs with this determination.

Therefore, CBJ requested to reduce the shutdown distance for impact pile driving from 130 m (as prescribed in the original IHA) to 25 m. As a direct result of this requested change, CBJ determined it necessary to request an increase in the amount of authorized incidents of take by Level A harassment from 72 to 324, while the total amount of authorized taking by harassment remains the same. The original 130-m shutdown zone was designed to avoid most Level A harassment, and was therefore based on the size of Level A harassment radius for impact pile driving. During construction conducted to date, CBJ has not exceeded the authorized amounts of take.

The scope of the project and potential effects to marine mammals in the area remain the same as analyzed previously for the issuance of the IHA in 2019 (84 FR 24490; May 28, 2019).

Description of the Proposed Activity and Anticipated Impacts

Detailed Description of the Action

The purpose of the CBJ's project is to improve the downtown waterfront area within Gastineau Channel in Juneau, Alaska, to accommodate the needs of the growing cruise ship visitor industry and its passengers while creating a waterfront that meets the expectations of a world-class facility. The project would meet the needs of an expanding cruise ship industry and its passengers by creating ample open space thereby decreasing congestion and improving pedestrian circulation.

The CBJ waterfront improvements project includes constructing a pile

supported deck along the waterfront to meet the needs of an expanding cruise ship industry and its passengers by creating ample open space thereby decreasing congestion and improving pedestrian circulation. More details of the CBJ waterfront improvement project are provided in the **Federal Register** notice for the proposed IHA (84 FR 7880; March 5, 2019) and are not repeated here. There is no change from the description of the project activities that is provided in the **Federal Register** notice for the proposed IHA.

A list of pile driving and removal activities is provided in Table 1. The total number of days that involve in-water pile driving is estimated to be 82 days.

Construction of the CBJ waterfront improvements project is planned between May 15, 2019 and August 31, 2020. The in-water portion of the construction work occurs from July 15, 2019, through July 14, 2020, and is covered under an IHA issued by NMFS on May 16, 2019 (84 FR 24490; May 28, 2019). CBJ has not started in-water pile driving, but is expected to do so as soon as the modified IHA is issued.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING ACTIVITIES

Method	Pile type and size	Total number piles	Number piles/day	Pile driving/ removal duration (sec.) per pile (vibratory) or strikes per pile (impact)	Work days
Vibratory pile removal	Timber piles, unknown diameter but assumed to be no more than 14-in.	100	10	900	10
Vibratory piling for supported dock	Steel piles, 16-in	*42	5	5,400	9
Impact proofing for supported dock	Steel piles, 16-in	*42	5	150	9
Vibratory piling for supported dock	Steel piles, 18-in	*45	5	5,400	9
Impact proofing for supported dock	Steel piles, 18-in	*45	5	150	9
Vibratory piling for temporary piles	Steel piles, 18-in	87	5	5,400	18
Vibratory pile removal for temporary piles.	Steel piles, 18-in	87	5	900	18
Total		274			82

*Vibratory driving and impact proofing will occur on separate days.

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in the previous notice (84 FR 7880; March 5, 2019), which remains applicable to the proposed IHA modification as well. NMFS is not aware of relevant new scientific information since issuance of the original IHA in May 2019.

A recent marine mammal monitoring effort conducted by CBJ in the project area showed more harbor seal occurrence at the pile driving location than previously expected. However, this information does not necessarily indicate an increase in the regional seal population.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the previous notice (84 FR 7880; March 5, 2019), which remains valid and applicable to the proposed IHA modification. NMFS is not aware of new information regarding potential effects.

Anticipated Impact on Subsistence Use

CBJ has contacted the Alaska Department of Fish and Game (ADF&G) regarding potential impact on subsistence use of marine mammal resources. CBJ was notified by ADF&G that the project area in Gastineau Channel is not a subsistence use area for harbor seals. Therefore, the proposed project is not likely to adversely impact the availability of any marine mammal species or stocks that are used for subsistence purposes in the Juneau area.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take is found in the previous notice (84 FR 7880; March 5, 2019). The methods of estimating take by harassment from pile driving and pile removal activities for the original IHA are retained here. The source levels, days of operation, and marine mammal abundance remain unchanged from the previously issued IHA.

While the total number of harbor seal takes by harassment remain the same, the proposed IHA modification would allow an increase of Level A harassment due to the reduction of shutdown zone from impact pile driving and, therefore, a reduction in authorized incidents of take by Level B harassment. As stated in the **Federal Register** notice for the final IHA (84 FR 24490; May 28, 2019), the total take number was determined as follows:

Take = animal number in a typical day near the project area × operating days = 43 × 82 = 3,526.

The previously issued IHA required a shutdown distance of 130-m to avoid most Level A harassment, but included authorization of some minimal Level A harassment based on the possibility that harbor seals could enter the shutdown zone unnoticed. We assumed that four seals could enter the Level A harassment zone on each of the 18 days when impact pile driving would occur.

Marine mammal monitoring carried out by CBJ showed that an average of 18 different individual harbor seals could occur within the prescribed 130-m Level A harassment zone, and that they were unlikely to leave the area. Therefore, NMFS and CBJ agreed to adjust the number of Level A harassment calculation by:

Level A harassment = Daily average harbor seals within Level A harassment zone × Impact pile driving days = 18 × 18 = 324.

Subtracting the number of Level A harassment takes from the total take, we derive the number of Level B harassment at 3,202 seals.

A summary of modified estimated takes in relation to population percentage is provided in Table 2.

TABLE 2—ESTIMATED TAKE NUMBERS

Species	Estimated Level A take	Estimated Level B take	Estimated total take	Abundance
Harbor seal	324	3,202	3,526	9,478

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures proposed remain the same except that for the proposed IHA modification, the shutdown zone for impact pile driving would be reduced to 25 m from the previously required 130 m.

The following additional measures are included in the original IHA:

- Establishment of Shutdown Zone—For all pile driving activities, CBJ will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). For vibratory pile driving and pile removal, shutdown zone is established at 10 m from the pile, which is the same as described in the **Federal Register** notice of the issuance (84 FR 24490; May 28, 2019). As noted above, for impact pile driving, the shutdown zone is modified from 130 m to 25 m from the pile.
- Establishment of Monitoring Zones—CBJ must identify and establish Level A harassment zones. These zones are areas beyond the shutdown zones where animals may be exposed to sound levels that could result in permanent threshold shift (PTS). CBJ will also identify and establish Level B harassment disturbance zones which are areas where sound pressure levels (SPLs) equal or exceed 160 dB rms for impact driving and 120 dB rms during vibratory driving. Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the shutdown zone and thus prepare for potential shutdowns of activity. NMFS has established monitoring protocols described in the **Federal Register** notice of the issuance (84 FR 24490; May 28, 2019) which are based on the distance and size of the monitoring and shutdown zones. These same protocols are contained in this proposed IHA modification.
- Time Restrictions—Work may occur only during daylight hours, when visual monitoring of marine mammals can be conducted.
- Soft Start—The use of a soft start procedure is believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to implement soft start procedures. Soft start is not required during vibratory pile driving and removal activities.
- Visual Marine Mammal Observation—Monitoring must be conducted by qualified protected species observers (PSOs), who are trained biologists, with minimum qualifications described in the **Federal Register** notice of the issuance of the original IHA (84 FR 24490; May 28, 2019). In order to effectively monitor the pile driving monitoring zones, a minimum of two PSOs must be positioned at the best practical vantage point(s). PSOs shall record specific information on the sighting forms as described in the **Federal Register** notice of the issuance of the original IHA (84 FR 24490; May 28, 2019). At the conclusion of the in-water construction work, CBJ will provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the total number of marine mammals that may have been harassed.

Preliminary Determinations

The activities to be conducted by CBJ in the proposed modified IHA are the same as those analyzed in the original IHA.

The reduction of shutdown zones for impact pile driving, and the resulting increase of Level A harassment of harbor seals do not change our original analysis and determination. Although some individual harbor seals are estimated to experience Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. Impact pile driving for each pile would last for approximately 30 minutes. After that, the contractor would take 5 to 30 minutes to start the next pile. In addition, it is expected that, if hearing impairment occurs, most likely the affected animal would lose a few decibels (dB) in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment. Hearing impairment that might occur for these individual animals would be limited to the dominant frequency of the noise sources, *i.e.,* in the low-frequency region below 2 kHz.

Under the majority of the circumstances, anticipated takes are expected to be limited to short-term Level B harassment. Harbor seals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal. Given the limited estimated number of incidents of total harassment and the limited, short-term nature of the responses by the individuals, the impacts of the estimated take cannot be reasonably expected to, and are not reasonably likely to, rise to the level that they would adversely affect the species at the population level, through effects on annual rates of recruitment or survival.

There are no known important habitats, such as rookeries or haulouts, in the vicinity of the CBJ's waterfront improvement construction project. The project also is not expected to have significant adverse effects on affected marine mammals' habitat, including prey, as analyzed in detail in the **Federal Register** notice of the issuance of the existing IHA (84 FR 24490; May 28, 2019). In conclusion, there is no new information suggesting that our analysis or findings should change.

The estimated take of harbor seal would be 37 percent of the population, if each single take were a unique individual. However, this is highly unlikely because the harbor seal in the vicinity of the project area shows site fidelity to small areas for period of time that can extend between seasons, as discussed in detail in the **Federal Register** notice for the issuance of the

existing IHA (84 FR 24490; May 28, 2019). The total number of harbor seals that is authorized to be taken has not changed. Based on the analysis contained herein of the proposed activity (including the prescribed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of harbor seal will be taken relative to the population size of the affected species or stocks.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) The required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) CBJ's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the original IHA qualified to be categorically excluded from further NEPA review.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue a modified IHA to CBJ for conducting downtown waterfront improvement project in Juneau, Alaska, to replace the existing IHA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The modified IHA would remain valid through July 14, 2020. A draft of the proposed modified IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our proposed modification, and any other aspect of this Notice of Proposed Modification for the CBJ waterfront improvement project. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–02485 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 06448–XA033]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Advisory Subpanel (HMSAS) and HMS Management Team (HMSMT) will hold a webinar, which is open to the public.

DATES: The webinar will be held Wednesday, February 26, 2020, from 1:30 p.m. to 4:30 p.m. Pacific Standard Time, or when business for the day has been completed.

ADDRESSES: A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the meeting by using this link: *https://meetings.ringcentral.com/join,* (2) enter the Meeting ID provided in the meeting announcement (see *http://www.pcouncil.org*) and click JOIN, (3) you will be prompted to either download the RingCentral meetings application or join the meeting without a download via your web browser, and (4) enter your name and click JOIN. NOTE: We require all participants to use a telephone or cell phone to participate. (1) You must use your telephone for the audio portion of the meeting by dialing the TOLL number provided on your screen followed by the meeting ID and participant ID, also provided on the screen. (2) Once connected, you will be in the meeting, seeing other participants and a shared screen, if applicable. Technical Information and System Requirements: PC-based attendees are required to use Windows® 10, 8; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the RingCentral mobile apps in your app store). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The primary purpose of this HMSAS/MT webinar is to prepare for the March 2020 Pacific Council meeting. The HMS topics on the Pacific Council's March agenda are: (1) National Marine Fisheries Report, (2) Review of Essential Fish Habitat—Scoping, (3) International Management Recommendations including the U.S.-Canada Albacore Treaty, and (4) Drift Gillnet Fishery Hard Caps Update. The HMSAS/MT may also discuss other items related to HMS management and administrative Pacific Council agenda items. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting. No management actions will be decided by the HMSAS or HMSMT.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–02435 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting of the National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Oceanic and Atmospheric Research (OAR), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board). Board members will discuss and provide advice on the National Sea Grant College Program (Sea Grant) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the Sea Grant website.

DATES: The announced meeting is scheduled for Monday, March 9, 2020 from 9:00 a.m. to 5:00 p.m. Eastern Time and Tuesday, March 10, 2020 from 9:30 a.m. to 3:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held virtually and in Washington, DC. The physical location of the meeting is the Wink Hotel, 1143 New Hampshire Ave. NW, Washington, DC 20037. For more information and, for virtual access, see below in the **FOR FURTHER INFORMATION CONTACT** section.

Status: The meeting will be open to public participation with a 15-minute public comment period on March 9 from 1:15–1:30 p.m. Eastern Time. (Check agenda using link in the Matters to be Considered section to confirm time.) The Board expects that public statements presented 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 a total time of three (3) minutes. Written comments should be received by Ms. Donna Brown by Wednesday, March 4, 2020 to provide sufficient time for Board review. Written comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date. Seats for the meeting will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Ms. Donna Brown, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, SSMC3, Room 11717, Silver Spring, Maryland 20910. Phone Number: 301–734–1088, Fax Number: 301–713–1031, Email: *Donna.Brown@noaa.gov*) or to attend in person or virtually, please R.S.V.P. to Ms. Brown by Wednesday, March 4, 2020.

Special Accommodations: The Board meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Donna Brown by Friday, February, 28, 2020.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of Sea Grant with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Matters to be Considered: Board members will discuss and provide advice on Sea Grant in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the Sea Grant website. *http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard/UpcomingAdvisoryBoardMeetings.aspx*

Dated: January 27, 2020.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–02474 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA031]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting and hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Hawaii Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP), American Samoa FEP AP, Mariana Archipelago FEP-Guam AP, and Mariana Archipelago FEP-Commonwealth of the Northern Mariana Islands (CNMI) AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The Hawaii Archipelago FEP AP will meet on Friday, February 21, 2020 between 1 p.m. and 4 p.m.; the American Samoa FEP AP will meet on Wednesday, February 26, 2020, from 5:30 p.m. to 7:30 p.m.; the Mariana Archipelago FEP-Guam AP will meet on Thursday, February 27, 2020, between 6:30 p.m. and 8:30 p.m.; and the Mariana Archipelago FEP–CNMI AP will meet on Thursday, February 27, 2020, between 6 p.m. and 8 p.m. All times listed are local island times. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Hawaii Archipelago FEP AP will meet at the Council Office at 1164 Bishop St, Suite 1400, Honolulu, HI 96813; The American Samoa FEP AP will meet at the NASAC Building in Pava'ia'i Village, Tutuila, American Samoa, 96799; the Mariana Archipelago FEP-Guam AP will meet at the Guam Division of Aquatics and Wildlife Resources Conference Room, 163 Dairy Road, Mangilao, Guam, 96913; and the Mariana Archipelago FEP–CNMI AP will meet at the Micronesian Environmental Services Conference Room, Garapan, Saipan, CNMI 96950

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The

meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the Hawaii Archipelago FEP AP Meeting

Friday, February 21, 2020, 1 p.m.–4 p.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. Council Issues
   A. Hawaii Small-boat Scoping Report
   B. Designating New Precious Coral Beds
   C. Hawaii/Pacific Remote Island Area Marine Conservation Plan (MCP)
   D. Regional Electronic Technologies
   E. Hawaii Longline Electronic Reporting Update
4. Hawaii Reports
5. Report on Hawaii Archipelago FEP AP Plan Activities
6. Island Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the American Samoa FEP AP Meeting

Wednesday, February 26, 2020, 5:30 p.m.–7:30 p.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. Council Issues
   A. Territorial Bottomfish Annual Catch Limit (ACL)
   B. Bottomfish Rebuilding Plan
   C. Regional Electronic Technologies
   D. 2020 Territorial Bigeye Tuna Specifications
4. American Samoa Reports
5. Report on American Samoa Archipelago FEP AP Plan Activities
6. Island Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the Mariana Archipelago FEP–Guam AP Meeting

Thursday, February 27, 2020, 6:30 p.m.–8:30 p.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. Council Issues
   A. Territorial Bottomfish ACL
   B. Bottomfish Rebuilding Plan
   C. Guam MCP
   D. Regional Electronic Technologies
   E. 2020 Territorial Bigeye Tuna Specifications
4. Guam Reports
5. Report on Mariana Archipelago FEP Advisory Panel Plan Activities
6. Island Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the Mariana Archipelago FEP–CNMI AP Meeting

Thursday, February 27, 2020, 6 p.m.–8 p.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. Council Issues
   A. Territorial Bottomfish ACL
   B. CNMI MCP
   C. Regional Electronic Technologies
   D. 2020 Territorial Bigeye Tuna Specifications
4. CNMI Reports
5. Report on Mariana Archipelago FEP AP Plan Activities
6. Island Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–02433 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR064]

Marine Mammals; File No. 23467

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Sarah Conner, Wild Space Productions, St. Stephens House, Colston Avenue, Bristol, BS1 4ST, United Kingdom, has applied for an amendment to Permit No. 23467.

DATES: Written, telefaxed, or email comments must be received on or before March 9, 2020.

ADDRESSES: These documents are available 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.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan or Erin Markin, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 23467 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking of marine mammals (50 CFR part 216).

Permit No. 23467, issued on December 19, 2019 (85 FR 1805, January 13, 2020), authorizes the permit holder to film pinnipeds in Monterey Bay National Marine Sanctuary to obtain footage for a wildlife documentary celebrating the world's greatest national parks and marine sanctuaries. The permit authorizes filming of Northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*; Eastern Distinct Population Segment), and harbor seals (*Phoca vitulina*).

The permit holder is requesting the permit be amended to include authorization to film additional marine mammal species with new methods in the same location. Up to 5,000 bottlenose dolphins (*Tursiops truncatus*), 10 Baird's beaked whales (*Berardius bairdii*), 10 Cuvier's beaked whales (*Ziphius cavirostris*), 200 Dall's porpoise (*Phocoenoides dalli*), 1,050 gray whales (*Eschrichtius robustus*), 600 killer whales (*Orcinus orca*), 2,000 long-beaked common dolphin (*Delphinus capensis*), 3,000 northern right whale dolphin (*Lissodelphis borealis*), 2,000 Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), 2,000 Risso's dolphin (*Grampus griseus*), 11,000 short-beaked common dolphin (*Delphinus delphis*), 5,500 California sea lions, 300 harbor seals, and 10

northern fur seal (*Callorhinus ursinus*). Marine mammals may be filmed from land, vessels, underwater divers or camera, helicopters, and unmanned aircraft systems. The permit would expire on February 28, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 3, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–02412 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR037]

Marine Mammals; File No. 23220

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Andrew Trites, Ph.D., University of British Columbia, Room 247, Aquatic Ecosystems Research Laboratory, 2202 Main Mall, Vancouver, BC, Canada, has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before March 9, 2020.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23220 from the list of available applications.

These documents are also available 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.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan or Courtney Smith, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 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).

The applicant requests a five-year permit to study endangered Southern Resident killer whales (SRKW; *Orcinus orca*) in Washington State inland waters to identify important characteristics of prey fields (primarily chinook salmon, *Oncorhynchus tshawytscha*). Up to 714 takes of SRKW may occur annually by Level B harassment during marine vessel and aerial (unmanned aircraft system) based-research activities including photo-identification and other photography, video recording, acoustic exposure by echosounders for prey mapping, behavioral observations, focal follows, and tracking. Non-target species that may be taken during research include Transient killer whales, humpback (*Megaptera novaeangliae*) and minke (*Balaenoptera acutorostrata*) whales, Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Dall's (*Phocoenoides dalli*) and harbor (*Phocoena phocoena*) porpoise, California (*Zalophus californianus*) and Steller (*Eumetopias jubatus*) sea lions, and harbor seals (*Phoca vitulina*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 3, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–02410 Filed 2–6–20; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete products and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* March 8, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 7530–01–583–0558—Folders, File, Reinforced Tab, Manila, 2/5 Cut, Letter

Mandatory Source of Supply: Central Association for the Blind & Visually Impaired, Utica, NY

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):

7510–01–660–3972—Toner Cartridge, Remanufactured, Standard Yield, Black, HP LaserJet 8100/8150 Compatible
7510–01–625–1726—Toner cartridge, Laser, Extra High Yield, HP Compatible for the P1102
7510–01–625–0852—Toner Cartridge, Laser, Double Yield, Compatible w/ Lexmark E250d & other LM, Dell, & IBM printers
Mandatory Source of Supply: Alabama Industries for the Blind, Talladega, AL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Services

Service Type: Administrative Services
Mandatory for: GSA, Field Office Los Angeles: 312 N Spring Street, Los Angeles, CA
Mandatory for: GSA, Field Office Los Angeles: 300 N Los Angeles Street, Los Angeles, CA
Mandatory for: GSA, Field Office Los Angeles: 888 S Fugueroa, Los Angeles, CA
Mandatory Source of Supply: Elwyn, Aston, PA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Grounds Maintenance
Mandatory for: Hannah Houses & adjacent property 157–159 Conception St., Mobile AL
Mandatory Source of Supply: GWI Services, Inc., Mobile, AL
Contracting Activity: PUBLIC BUILDINGS SERVICE, ACQUISITION DIVISION/ SERVICES BRANCH

Service Type: Mailroom Operation
Mandatory for: National Guard Bureau, Arlington Hall Building One and Two, Arlington, VA
Mandatory Source of Supply: Didlake, Inc., Manassas, VA
Contracting Activity: DEPT OF THE ARMY, W39L USA NG READINESS CENTER

Service Type: Administrative Services
Mandatory for: GSA, National Furniture Center: Crystal Mall Building 4, Arlington, VA
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Grounds Maintenance
Mandatory for: U.S. Court of Appeals: 7th and Mission Streets, San Francisco, CA
Mandatory Source of Supply: Rubicon Programs, Inc., Richmond, CA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–02444 Filed 2–6–20; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

National Assessment Governing Board; Notice of a Meeting

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of open and closed meetings.

SUMMARY: This notice sets forth the agenda for the March 5–7, 2020 Quarterly Board Meeting of the National Assessment Governing Board (hereafter referred to as Governing Board). This notice provides information to members of the public who may be interested in attending the meeting or providing written comments related to the work of the Governing Board. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

DATES: The Quarterly Board Meeting will be held on the following dates:

- March 5, 2020 from 4 p.m. to 6 p.m.
- March 6, 2020 from 8 a.m. to 5:15 p.m.
- March 7, 2020 from 7:15 a.m. to 11:30 a.m.

ADDRESSES: Doubletree by Hilton El Paso Downtown, 600 N El Paso Street, Texas 79901.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/ Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279. Information on the Governing Board and its work can be found at *www.nagb.gov.*

The Governing Board is established to formulate policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

Written comments related to the work of the Governing Board may be submitted electronically or in hard copy to the attention of the Executive Officer/ Designated Federal Official (see contact information noted above).

March 5–7, 2020 Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work based on agenda items planned for this Quarterly Board Meeting and follow-up items as reported in the Governing Board's committee meeting minutes available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html.*

Detailed Meeting Agenda: March 5–7, 2020

March 5: Committee Meetings

Executive Committee: Open Session: 4 p.m. to 4:45 p.m.; Closed Session 4:45 p.m. to 6 p.m.

March 6: Full Governing Board and Committee Meetings

Full Governing Board: Open Session: 8 a.m. to 5:15 p.m.

Committee Meetings: 10:30 a.m. to 12:30 p.m.

Assessment Development Committee (ADC): Open Session: 10:30 a.m. to 12:30 p.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 10:30 a.m. to 12:30 p.m.

Reporting and Dissemination Committee (R&D): Open Session: 10:30 a.m. to 12:30 p.m.

March 7: Full Governing Board and Committee Meetings

Nominations Committee: Closed Session: 7:15 a.m. to 8:15 a.m.

Full Governing Board: Closed Session: 8:30 a.m. to 10 a.m.; Open Session: 10:00 a.m. to 11:30 a.m.

On Thursday, March 5, 2020, the Executive Committee will convene in open session from 4 p.m. to 4:45 p.m. and thereafter in closed session from 4:45 p.m. to 6:00 p.m. During the closed session, the Executive Committee will discuss the NAEP Budget vis-à-vis the NAEP Assessment Schedule. The discussions will include independent government cost estimates for assessing NAEP subjects on the recently-approved NAEP Assessment Schedule. This meeting must be conducted in closed session, because independent government cost estimates for NAEP that impact current and future NAEP contracts must be kept confidential. Public disclosure of secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such

matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

On Friday, March 6, 2020, the Governing Board will meet in open session from 8:30 a.m. to 8:35 a.m. to review and approve the March 6–7, 2020 Quarterly Board Meeting agenda and minutes from the November 2019 Quarterly Board meeting. Newly appointed Board members will introduce themselves. The Board then will be welcomed by Governing Board member from El Paso, Dana Boyd, along with Dee Margo, Mayor of the City of El Paso, and Superintendent Xavier De La Torre, of Ysleta Independent School District, all of whom will provide remarks. This session will take place from 8:15 a.m. to 8:40 a.m.

From 8:40 a.m. to 9:45 a.m. the Board will be engaged in a panel discussion moderated by Dana Boyd on growing up in a border town from pre-school through higher education.

The Governing Board Executive Director Lesley Muldoon will provide an update on the Governing Board's work from 9:45 a.m. to 10:15 a.m. followed by a preview of committee meetings from the committee chairs from 10:15 a.m. to 10:20 a.m.

At 10:20 a.m., the Governing Board will recess for a 10-minute break and meet thereafter in standing committee meetings, convened in open session, from 10:30 a.m. to 12:30 p.m.

Following the committee meetings, on Friday, March 6, 2020, the Governing Board will convene in open session from 12:45 p.m. to 5:15 p.m. The Governing Board will receive a briefing and discuss the achievement levels work plan, led by Chair of Achievement Levels Working Group, Gregory Cizek from 12:45 p.m. to 1:20 p.m. This session will be followed by discussion on the Intended Meaning of NAEP led by COSDAM Chair, Andrew Ho from 1:20 p.m. to 1:50 p.m.

From 1:50 p.m. to 2:50 p.m. Lesley Muldoon and Lisa Stooksberry, Governing Board Deputy Executive Director, will lead a session on the Governing Board's Strategic Vision 2025. The Board will recess for a 10-minute break and reconvene from 3:00 p.m. to 4:30 p.m. in small groups to discuss the Strategic Vision. The Governing Board will reconvene in plenary session from 4:45 p.m. to 5:15 p.m. to report on the small group discussions. The March 6, 2020 session of the Governing Board meeting will adjourn at 5:15 p.m.

On Saturday, March 7, 2020, the Nominations Committee will meet in closed session from 7:15 a.m. to 8:15 a.m. to review and discuss recommendations for a final slate of candidates from applications received for the 2020 nominations cycle for open positions on the Governing Board. Thereafter, the Governing Board will meet in closed session from 8:30 a.m. to 8:45 a.m. to receive a briefing from the Nominations Committee on its recommendations for candidates to fill board vacancies. The Board will review the recommendations in closed session on on the final slate of candidates for submission to the Secretary of Education for appointments that begin October 1, 2020.

For both the Nominations Committee and full Board closed sessions, the discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

From 8:45 a.m. to 10 a.m., the Governing Board will meet in closed session to receive a briefing from NCES on the 2018 NAEP Civics, U.S. History and Geography results. This meeting must be conducted in closed session, because the assessment results are secure and will not have been released to the public at that point. Public disclosure of assessment results would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

The Board will meet in open session from 10 a.m. to 10:45 a.m. to receive committee reports. Governing Board actions are planned for the following four items:

(1) Achievement Levels Work Plan presented by COSDAM;

(2) Intended Meaning of NAEP, presented by COSDAM;

(3) Release Plan for 2018 Nation's Report Cards in Civics, Geography and U.S. History, presented by the R&D Committee.

(4) Submission of final slate of candidates to the Secretary of Education for the 2020 terms of service, presented by the Nominations Committee.

Following discussion and action on the Committee Reports, Lesley Muldoon will facilitate a brief discussion with Board members about next steps regarding the Strategic Vision from 10:45 a.m. to 11:15 a.m. Commissioner James Woodworth of NCES will then provide an update on NCES activities from 11:15 a.m. to 11:30 a.m. The March 7, 2020 session of the Governing Board meeting will adjourn at 11:30 a.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* beginning on March 2, 2020, by 10 a.m. EST. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than Monday, February 24, 2020.

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

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2020–02486 Filed 2–6–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Formula Grants to Local Educational Agencies

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

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2020

for Indian Education Formula Grants to Local Educational Agencies, Catalog of Federal Domestic Assistance (CFDA) number 84.060A.

DATES:

Part I of Electronic Application System for Indian Education (EASIE) Applications Available: February 6, 2020.

Deadline for Transmittal of EASIE Part I: March 9, 2020.

Part II of EASIE Applications Available: April 6, 2020.

Deadline for Transmittal of EASIE Part II: May 21, 2020.

FOR FURTHER INFORMATION CONTACT: For questions about the Formula Grants program, contact Angeline Boulley, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W101, Washington, DC 20202–6335. Telephone: (202) 453–7042. Email: *angeline.boulley@ed.gov.* For technical questions about the EASIE application and uploading documentation, contact the ED*Facts* Partner Support Center (PSC). Telephone: 877–457–3336 (877–HLP–EDEN). Email: *eden_OIE@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), contact the Federal Relay Service (FRS), toll free, at 1–800–877–0996 or by email at: *federalrelay@sprint.com.*

SUPPLEMENTARY INFORMATION:

Note: Applicants must meet the deadlines for both EASIE Part I and Part II to be eligible to receive a grant. Failure to submit the required supplemental documentation, described under *Content and Form of Application Submission* in section IV of this notice, by the EASIE Part I or II deadline will result in an incomplete application that will not be considered for funding. The Office of Indian Education (OIE) recommends uploading the documentation at least two days prior to each deadline date to ensure that any potential submission issues are resolved prior to the deadlines.

I. Funding Opportunity Description

Purpose of Program: The Indian Education Formula Grants to Local Educational Agencies (Formula Grants) program provides grants to support local educational agencies (LEAs), Indian Tribes and organizations, and other eligible entities in developing and implementing elementary and secondary school programs that serve Indian students. The U.S. Department of Education (Department) funds comprehensive programs that are designed to meet the unique cultural, language, and educational needs of American Indian and Alaska Native (AI/AN) students and ensure that all students meet challenging State academic standards.

As authorized under section 6116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Secretary will, upon receipt of an acceptable plan for the integration of education and related services, and in cooperation with other relevant Federal agencies, authorize the entity receiving the funds under this program to consolidate all Federal funds that are to be used exclusively for Indian students. Instructions for submitting an integration of education and related services plan are included in the EASIE, which is described under *Application and Submission Information* in section IV of this notice.

Note: Under the Formula Grants program, all applicants are required to develop proposed projects in open consultation, including through public hearings held to provide a full opportunity to understand the program and to offer recommendations regarding the program (section 6114(c)(3)(C) of the ESEA), with parents of Indian children and teachers of Indian children, representatives of Indian Tribes on Indian lands located within 50 miles of any school that the LEA will serve if such Tribes have any children in such school, Indian organizations (IOs), and, if appropriate, Indian students from secondary schools. LEA applicants are required to develop proposed projects with the participation and written approval of a parent committee whose membership includes parents and family members of Indian children in the LEA's schools; representatives of Indian Tribes on Indian lands located within 50 miles of any school that the LEA will serve if such Tribes have any children in such school; teachers in the schools; and, if appropriate, Indian students attending secondary schools of the LEA (section 6114(c)(4) of the ESEA). The majority of the parent committee members must be parents and family members of Indian children (section 6114(c)(4) of the ESEA).

Definitions: The following definition is from section 6112(d)(3) of the ESEA:

Indian community-based organization (ICBO) means any organization that (1) is composed primarily of Indian parents, family members and community members, tribal government educational officials, and tribal members, from a specific community; (2) assists in the social, cultural, and educational development of Indians in such community; (3) meets the unique cultural, language, and academic needs of Indian students; and (4) demonstrates organizational and administrative capacity to manage the grant.

Statutory Hiring Preference:

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to IOs and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian Tribe (25 U.S.C. 1452(b)).

Program Authority: 20 U.S.C. 7421, *et seq.*

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

II. Award Information

Type of Award: Formula grants.

Estimated Available Funds: $105,381,000.

Estimated Range of Awards: $4,000 to $2,772,768.

Estimated Average Size of Awards: $81,000.

Estimated Number of Awards: 1,300.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities are eligible under this program: Certain LEAs, as prescribed by section 6112(b) of the ESEA, including charter schools authorized as LEAs under State law; certain schools funded by the Bureau of Indian Education of the U.S. Department of the Interior (BIE), as prescribed by section 6113(d) of the ESEA; Indian Tribes and IOs under certain conditions, as prescribed by section 6112(c) of the ESEA; and ICBOs,

as prescribed by section 6112(d) of the ESEA. Consortia of two or more eligible entities are also eligible under certain circumstances, as prescribed by section 6112(a)(4) of the ESEA.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* Section 6114(c)(1) of the ESEA requires a grantee to use these grant funds only to supplement the funds that, in the absence of these Federal funds, such agency would make available for services described in this application, and not to supplant such funds.

IV. Application and Submission Information

1. *How to Request an Application Package:* You can obtain a log-in and password for the electronic application for grants under this program by contacting the ED*Facts* PSC listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the ED*Facts* PSC listed under **FOR FURTHER INFORMATION CONTACT**.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are located in the Getting Started page in the ED*Facts* System Portal.

a. *Supplementary Documentation:* The EASIE application requires submission of the following supplementary documentation in electronic Portable Document Format (PDF):

(i) In EASIE Part I, applicants that are Tribes, IOs, or ICBOs must submit the appropriate ''Applying in Lieu of the LEA'' agreement form with their application to verify their eligibility no later than March 9, 2020 (which is the closing date of EASIE Part I). Each separate eligibility document is identified by applicant-type as either: Tribe Applying in Lieu of an LEA Agreement; IO Agreement; or ICBO Agreement. These are available on the Getting Started page in the ED*Facts* System Portal as downloadable documents. The details of the verification process, which are necessary to meet the statutory eligibility requirements for Tribes, IOs, and ICBOs, are in the application package.

(ii) In EASIE Part I, an applicant that is the lead applicant for a consortium must use the consortium agreement form that is available on the Getting Started page in the ED*Facts* System Portal as a downloadable document and upload it to EASIE no later than March 9, 2020.

(iii) In EASIE Part II, for an applicant that is an LEA or a consortium of LEAs, the EASIE application requires the electronic PDF submission of the Indian Parent Committee Approval (PCA) form no later than the deadline for transmittal of EASIE Part II, which is May 21, 2020. Applicants are encouraged to begin planning parent committee meetings early to ensure parent committee requirements are met before EASIE Part II closes. The form is available on the Getting Started page in the ED*Facts* System Portal.

3. *Submission Dates and Times:*

Part I of the Formula Grant EASIE Applications Available: January 27, 2020.

Deadline for Transmittal of EASIE Part I: March 9, 2020, 8:00 p.m., Eastern Time.

Part II of the Formula Grant EASIE Applications Available: April 6, 2020.

Deadline for Transmittal of EASIE Part II: May 21, 2020, 8:00 p.m., Eastern Time.

Submit applications for grants under this program electronically using EASIE located in the ED*Facts* System Portal. For information (including dates and times) about how to submit your application, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We note that, under ESEA section 6115(d) and per the Department of Education Appropriations Act, 2020, no more than five percent of the funds awarded for a grant may be used for direct administrative costs. This five percent limit does not include indirect costs.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your SAM application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following website: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

7. *Other Submission Requirements:*

a. *Electronic Submission of Applications.*

Electronic Application System for Indian Education (EASIE): EASIE is an electronic application found in the ED*Facts* System Portal at *https://eden.ed.gov/Survey.* It is divided into

two parts—EASIE Part I and EASIE Part II.

EASIE Part I, student count, provides the appropriate data-entry screens to submit verified, aggregated, Indian student count totals based on either the Indian School Equalization Program (ISEP) count or the Indian Student Eligibility Certification Form (ED 506 Form). All applicants must submit a current Indian student count for FY 2020. Applicants must use the Indian Student Eligibility Certification Form (ED 506 Form) to document eligible Indian students; however, BIE schools may use either the Indian School Equalization Program (ISEP) count or the ED 506 Form count to verify their Indian student counts. Applicants must protect the privacy of all individual data collected and only report aggregated data to the Secretary.

Applicants that verify their Indian student count with the ED 506 Form must document their Indian student counts by completing the following: (1) Each year, the applicant must verify there is a valid ED 506 Form for each Indian child included in the count; (2) all ED 506 Forms included in the count must be completed, signed, and dated by the parent, and be on file; (3) the applicant must maintain a copy of the student enrollment roster(s) covering the same period of time indicated in the application as the ''count period''; and (4) each Indian child included in the count must be listed on the LEA's enrollment roster(s) for at least one day during the count period.

BIE schools that enter an ISEP count to verify their Indian student count must use the most current Indian student count certified by the BIE.

Once an Indian child is determined to be eligible to be counted for such grant award, the applicant must maintain a record of such determination and must not require a new or duplicate determination or form to be made for such child for a subsequent application for a grant under this program.

Applicants must indicate the time span for the project objectives and corresponding activities and services for AI/AN students. Applicants can choose to set objectives that remain the same for up to four years in order to facilitate data collection and enhance long-term planning.

In EASIE Part II, all applicants must—

(1) Select the type of program being submitted as either regular formula grant program, formula grant project consolidated with a title I schoolwide program, or integration of services under section 6116 of the ESEA;

(2) Select the grade levels offered by the LEA or BIE school;

(3) Identify, from a list of possible Department grant programs (*e.g.,* ESEA title I), the programs in the LEA that are currently coordinated with a title VI project, or with which the school district plans to coordinate during the project year, in accordance with section 6114(c)(5) of the ESEA, and describe the comprehensive program for AI/AN students with those grant programs;

(4) Describe the professional development opportunities that will be provided as part of a comprehensive program to ensure that teachers and other school professionals who are *new* to the Indian community are prepared to work with Indian children, and that all teachers who will be involved in programs assisted by this grant have been properly trained to carry out such programs, as required by section 6114(b)(5) of the ESEA;

(5) Provide information on how the State assessment data of all Indian students (not just those served) are used and how such information will be disseminated to the Indian community, parent committee, and Indian Tribes whose children are served by the LEA. Also describe how assessment data from the previous school year (SY) were used, as required by section 6114(b)(6) of the ESEA;

(6) Indicate when the public hearing was held for SY 2020, as required by section 6114(c)(3)(C) of the ESEA;

(7) For an applicant that is an LEA, BIE school, or a consortium of LEAs or BIE schools, describe the process the applicant used to meaningfully collaborate with Indian Tribes located in the community in a timely, active, and ongoing manner in the development of the comprehensive program and the actions taken as a result of such collaboration (ESEA section 6114(b)(7));

(8) Identify specific project objectives that will further the goal of providing culturally responsive education for AI/AN students to meet their academic needs and help them meet State achievement standards (ESEA section 6115(b)), and identify the data sources that will be used to measure progress towards meeting project objectives;

(9) For an LEA that selects a schoolwide application, identify how the use of such funds in a schoolwide program will produce benefits to Indian students that would not be achieved if the funds were not used in a schoolwide program (ESEA section 6115(c)(3));

(10) Submit a program budget and justification based on the estimated grant amount that the EASIE system calculates from the Indian student count submitted in EASIE Part I. After the initial grant amounts are determined, additional funds may become available due to such circumstances as withdrawn applications or reduction in another applicant's student count. An applicant whose award amount increases or decreases more than $5,000 must submit a revised budget prior to receiving its grant award but will not need to re-certify its application. If an applicant's award amount increases or decreases by less than $5,000, a budget update is not required. For an applicant that receives an increased award amount following submission of its original budget, the applicant must allocate the increased amount only to previously approved budget categories;

(11) As required by section 427 of the General Education Provisions Act (GEPA), describe the steps the applicant proposes to take to ensure equitable access to, and participation in, the project or activity to be conducted with such assistance, by addressing the special needs of students, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age; and

(12) If needed, provide additional comments to assist OIE in the review of the application.

Registration for Formula Grant EASIE: Current, former, and new applicants interested in submitting a Formula Grant EASIE application must register for Formula Grant EASIE. Prior to the opening of EASIE Part I, ED*Facts* PSC will send a broadcast to prior year grantees and new prospective applicants that have contacted ED*Facts* PSC and registered for EASIE. All recipients who receive ED*Facts* PSC's broadcast will be asked to respond if updates to their registration information are necessary or they would like to decline registration. Entities that do not have an active registration or are new applicants should contact ED*Facts* PSC listed under **FOR FURTHER INFORMATION CONTACT** to register any time before the EASIE Part I application deadline date. Registration *does not* serve as the entity's grant application. For assistance registering, contact the ED*Facts* PSC listed under **FOR FURTHER INFORMATION CONTACT**.

Certification for Formula Grant EASIE: The applicant's authorized representative, who must be legally authorized by the applicant to approve the application, must certify EASIE Part I and Part II. Only users with the EASIE User Account Type ''managing user'' or ''certifying official user'' in the EASIE system can certify an application. Each applicant should identify at least three

system users, one for each of the following: Project director, authorized representative, and another party designated to answer questions in the event the project director is unavailable. The certification process ensures that the information in the application is true, reliable, and valid. An applicant that provides a false statement in the application is subject to penalties under the False Claims Act, 18 U.S.C. 1001.

b. *Submission of Paper Applications by Mail.*

We discourage paper applications, but if electronic submission is not possible (*e.g.,* you do not have access to the internet), you must provide a written statement that you intend to submit a paper application. Send this written statement no later than February 21, 2020.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date of EASIE Part I. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date of EASIE Part I. If you email the written statement, it must be sent no later than two weeks before the application deadline date to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Address and mail or fax your statement to: Angeline Boulley, U.S. Department of Education, Office of Indian Education, 400 Maryland Avenue SW, Room 3W101, Washington, DC 20202–6335. FAX: (202) 205–0606.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

You must mail the original and two copies of your application, on or before the application deadline dates for both EASIE Part I and Part II, to the Department at the following address: U.S. Department of Education, Office of Indian Education, Attention: CFDA Number 84.060A, 400 Maryland Avenue SW, Room 3W101, Washington, DC 20202–6335.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date for EASIE Part I or Part II.

c. *Submission of Paper Applications by Hand Delivery.*

If you are submitting a paper application, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline dates for both EASIE Part I and Part II, to the Department at the following address: U.S. Department of Education, Office of Indian Education, Attention: CFDA Number 84.060A, 400 Maryland Avenue SW, Room 3W101, Washington, DC 20202–6335.

The program office accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Eastern Time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, of this program—84.060A; and

(2) The program office will mail you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should contact the program office at (202) 453–7042.

V. Grant Administration Information

1. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice. We reference the regulations outlining the terms and conditions of a grant in the *Applicable Regulations* section of this notice.

3. *Reporting:* (a) If you apply for a grant under this program, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) You must submit an annual performance report (APR) using the ED*Facts* System Portal at *https://eden.ed.gov,* including financial information, as directed by the Secretary, within 90 days after the close of the grant year. The APR is located within the ED*Facts* System Portal under the EASIE Part III tab. Prior to the system being open to users, grantees will receive an email from the ED*Facts* PSC identifying the date that the APR will be available to grantees and the deadline for its transmission.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness and efficiency of the Formula Grants program: (1) The percentage of AI/AN students in grades four and eight who score at or above the basic level in reading on the National Assessment of Educational Progress (NAEP); (2) the percentage of AI/AN students in grades four and eight who score at or above the basic level in mathematics on the NAEP; (3) the percentage of AI/AN students in grades three through eight meeting State achievement standards by scoring at or above the proficient level in reading and mathematics on State assessments; (4) the difference between the percentage of AI/AN students in grades three through eight at or above the proficient level in reading and mathematics on State assessments and the percentage of all students scoring at those levels; (5) the percentage of AI/AN students who graduate from high school as measured by the four-year adjusted cohort graduation rate; (6) the percentage of grantees providing culturally responsive activities; and (7) the percentage of funds used by grantees prior to award close-out.

5. *Integrity and Performance System:* If you receive an award under this grant program that over the course of the project period may exceed the

simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the ED*Facts* PSC listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is 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 other documents of this Department published in the **Federal Register**, in text or 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.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2020–02476 Filed 2–6–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9049–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed January 27, 2020, 10 a.m. EST Through February 3, 2020, 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200023, Final, FERC, CA, Bucks Creek Hydropower Project, Review Period Ends: 03/09/2020, Contact: Office of External Affairs 866–208–3372

EIS No. 20200024, Final, FHWA, NC, I–26 Asheville Connector, Review Period Ends: 03/16/2020, Contact: Clarence W. Coleman 919–747–7014

EIS No. 20200025, Draft Supplement, FDOT, FHWA, FL, Tampa Interstate Study, Comment Period Ends: 03/23/2020, Contact: Luis D. Lopez Rivera 407–867–6420

EIS No. 20200026, Final, USACE, TX, Houston Ship Channel Expansion Channel Improvement Project, Review Period Ends: 03/09/2020, Contact: Harmon Brown 409–766–3837

EIS No. 20200027, Draft, BLM, CO, Parkdale Quarry Expansion Project, Comment Period Ends: 03/23/2020, Contact: Stephanie Carter 719–269–8551

EIS No. 20200028, Draft, MARAD, USCG, TX, SPOT Terminals LLC Deepwater Port License Application, Comment Period Ends: 03/23/2020, Contact: William Nabach 202–372–1437

EIS No. 20200029, Final, USACE, FL, Loxahatchee River Watershed Restoration Project Final Integrated Project Implementation Report and Environmental Impact Statement, Review Period Ends: 03/09/2020, Contact: Ann B. Hodgson 904–232–3691

Dated: February 3, 2020.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2020–02452 Filed 2–6–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10005–00–OA]

Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) is in the public interest and is necessary in connection with the performance of EPA's duties. Accordingly, the FRRCC will be renewed for an additional two-year period. The purpose of the FRRCC is to provide advice and recommendations to the EPA Administrator on environmental issues and policies that are of importance to agriculture and rural communities. Inquiries may be directed to Hema Subramanian, Designated Federal Officer for the FRRCC, U.S. EPA, (Mail Code 1101A), 1200 Pennsylvania Avenue NW, Washington, DC 20460, or *FRRCC@epa.gov.*

Dated: January 21, 2020.

Elizabeth (Tate) Bennett,

Agriculture Advisor to the Administrator, Associate Administrator, Office of Public Engagement and Environmental Education.

[FR Doc. 2020–02304 Filed 2–6–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10098	First State Bank	Sarasota	FL	02/01/2020
10099	Community National Bank of Sarasota County	Venice	FL	02/01/2020
10107	ebank	Atlanta	GA	02/01/2020
10512	Capitol City Bank and Trust Company	Atlanta	GA	02/01/2020

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on February 4, 2020.

Annmarie H. Boyd,

Executive Secretary.

[FR Doc. 2020–02440 Filed 2–6–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551–0001, not later than March 9, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Equity Corp., Skokie, Illinois;* to merge with Northwest Equity Corp., and thereby indirectly acquire 1st Equity Bank Northwest, both of Buffalo Grove, Illinois.

Board of Governors of the Federal Reserve System, February 3, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–02398 Filed 2–6–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 24, 2020.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *John D. Marchell, Grand Forks, North Dakota;* individually, to retain voting shares of Full Service Insurance Agency, Inc., Buxton, North Dakota, and thereby indirectly retain voting shares of First State Bank, Buxton, North Dakota.

In addition, John D. Marchell, Pernell S. Marchell, Warwick, North Dakota, and Lisa B. Marchell, West Richland, Washington (collectively, the Marchell Family Group), as members of a group acting in concert; Janice M. Kloster, Fargo, North Dakota, Laurie Kloster Gray, Greenbrae, California, Nancy K. Tibbs, Loveland, Ohio, Katie Kloster, Edina, Minnesota, Polly Kloster, Fargo, North Dakota, and Dan Kloster, Fairway, Kansas (collectively, the Kloster Family Group), as members of a group acting in concert; and Marilyn J. Aarsvold, Blanchard, North Dakota, Nicole Haugen Prom, Bloomington, Minnesota, Peter Haugen, Portland, North Dakota, Jon Aarsvold, Fargo, North Dakota, Bruce Aarsvold, Peachtree, Georgia, and Julie Haugen, Fargo, North Dakota (collectively, the Haugen Family Group), as members of a group acting in concert, to retain voting shares of Full Service Insurance Agency, Inc., and thereby indirectly retain voting shares of First State Bank.

Board of Governors of the Federal Reserve System, February 3, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–02397 Filed 2–6–20; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–WSCC–2020–01; Docket No. 2020–0004; Sequence No. 1]

Women's Suffrage Centennial Commission; Notification of Public Meeting

AGENCY: Women's Suffrage Centennial Commission, General Services Administration.

ACTION: Meeting notice.

SUMMARY: Notice is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the schedule and agenda for the March 3, 2020 in-person meeting of the Women's Suffrage Centennial Commission (Commission), the June 3, 2020 telephonic Commission meeting, and the July 17, 2020 in-person Commission meeting. These meetings are open to the public.

DATES: The March 3, 2020 in-person meeting will begin at 9:30 a.m., Eastern Standard Time (EST) and ends no later than 3:00 p.m., EST. The June 3, 2020 meeting will begin at 1:00 p.m., EST and ends no later than 3:00 p.m., EST. The July 17, 2020 meeting will begin at 8:30 a.m., EST and ends no later than 10:00 a.m., EST.

ADDRESSES: The March 3rd meeting will be held at the Library of Congress—Thomas Jefferson Building, Room 119, 10 First St. SE, Washington, DC 20540. The public may also dial into the meeting by calling 888–455–2896 participant passcode: 6980059. The June 3rd meeting will be telephonic. The public may dial into the meeting by calling 888–455–2896 participant passcode: 3479770. The July 17th meeting will be held at the Hilton Garden Inn Chardonnay Room at 1950 Balsley Rd., Seneca Falls, NY 13148. The public may also dial in by calling 888–455–2896 participant passcode: 3479770.

FOR FURTHER INFORMATION CONTACT: Stephanie Marsellos, Designated Federal Officer, Women's Suffrage Centennial Commission, P.O. Box 2020, Washington, DC 20013; phone: 202–707–0106; email: *stephanie@womensvote100.org.*

SUPPLEMENTARY INFORMATION:

Background

Congress passed legislation to create the Women's Suffrage Centennial Commission Act, a bill, ''to ensure a suitable observance of the centennial of the passage and ratification of the 19th Amendment of the Constitution of the United States providing for women's suffrage.''

The duties of the Commission, as written in the law, include: (1) To encourage, plan, develop, and execute programs, projects, and activities to commemorate the centennial of the passage and ratification of the 19th Amendment; (2) To encourage private organizations and State and local Governments to organize and participate in activities commemorating the centennial of the passage and ratification of the 19th Amendment; (3) To facilitate and coordinate activities throughout the United States relating to the centennial of the passage and ratification of the 19th Amendment; (4) To serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of the passage and ratification of the 19th Amendment; and (5) To develop recommendations for Congress and the President for commemorating the centennial of the passage and ratification of the 19th Amendment.

Meeting Agenda for March 3, 2020

- Welcome and Introductions
- Leadership update
- Subcommittee updates
- Suffrage Presentation
- Commission discussion
- Public Comment Period
- Adjourn

Meeting Agenda for June 3, 2020

- Welcome and Introductions
- Leadership update
- Subcommittee updates
- Commission discussion
- Public Comment Period
- Adjourn

Meeting Agenda for July 17, 2020

- Welcome and Introductions
- Leadership update
- Subcommittee updates
- Commission discussion
- Public Comment Period
- Adjourn

The meetings are open to the public, but pre-registration is required. Any individual who wishes to attend the meeting should register via email at *stephanie@womensvote100.org* or telephone 202–707–0106.

Interested persons may choose to make a public comment at the meeting during the designated time for this purpose. Public comments shall be limited by minutes based on the number of participants signed up to comment for the allotted time, and subject to agenda time changes based on the speed of the commission's work through the agenda. Speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements up to 30 days after the meeting.

Members of the public may also choose to submit written comments by mailing them to Stephanie Marsellos, Designated Federal Officer, P.O. Box 2020, Washington, DC 20013, or via email at *stephanie@womensvote100.org.* Please contact Ms. Marsellos at the email address above to obtain meeting materials. All written comments received will be provided to the Commission. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Individuals requiring special accommodations to access the public meeting should contact Ms. Marsellos at least five business days prior to each meeting, so that appropriate arrangements can be made.

Public Disclosure of Comments

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time.

While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Dated: January 28, 2020.

Anna Laymon,

Executive Director, Women's Suffrage Centennial Commission.

[FR Doc. 2020–02447 Filed 2–6–20; 8:45 am]

BILLING CODE 3420–37–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for a Modified OGE Form 201, Request To Inspect or Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of request for agency and public comments.

SUMMARY: After publication of this second round notice, the U.S. Office of Government Ethics (OGE) plans to submit a proposed modified OGE Form 201, Request to Inspect or Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records, to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995. The OGE Form 201 is used by persons requesting access to executive branch public financial disclosure reports and other covered records.

DATES: Written comments by the public and agencies on this proposed extension are invited and must be received by March 9, 2020.

ADDRESSES: You may submit comments on this paperwork notice to the Office of Management and Budget, Attn: Desk Officer for OGE, via fax at 202–395–6974 or email at *OIRA_Submission@omb.eop.gov.* (Include reference to ''OGE Form 201 paperwork comment'' in the subject line of the message).

FOR FURTHER INFORMATION CONTACT: Grant Anderson at the U.S. Office of Government Ethics; telephone: 202–482–9318; TTY: 800–877–8339; FAX: 202–482–9237; Email: *ganderso@oge.gov.* An electronic copy of the OGE Form 201 version used to manually submit access requests to OGE or other executive branch agencies by mail or FAX is available in the Forms Library section of OGE's website at *http://www.oge.gov.* A paper copy may also be obtained, without charge, by contacting Mr. Anderson. An automated version of the OGE Form 201, also available on OGE's website, enables the requester to electronically fill out, submit and receive access to copies of the public financial disclosure reports certified by the U.S. Office of Government Ethics.

SUPPLEMENTARY INFORMATION:

Title: Request to Inspect or Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records.

Agency Form Number: OGE Form 201.

OMB Control Number: 3209–0002.

Type of Information Collection: Extension with modifications of a currently approved collection.

Type of Review Request: Regular.

Respondents: Individuals requesting access to executive branch public financial disclosure reports and other covered records.

Estimated Annual Number of Respondents: 7,600.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 1,300 hours.

Abstract: The OGE Form 201 collects information from, and provides certain information to, persons who seek access to OGE Form 278 Public Financial Disclosure Reports, including OGE Form 278–T Periodic Transaction Reports, and other covered records. The form reflects the requirements of the Ethics in Government Act, subsequent amendments pursuant to the Representative Louise McIntosh Slaughter Stop Trading on Congressional Knowledge Act, and OGE's implementing regulations that must be met by a person before access can be granted. These requirements include the address of the requester, as well as any other person on whose behalf a record is sought, and acknowledgement that the requester is aware of the prohibited uses of executive branch public disclosure financial reports. See 5 U.S.C. appendix 105(b) and (c) and 402 (b)(1) and 5 CFR 2634.603(c) and (f). Executive branch departments and agencies are encouraged to use the OGE Form 201 for individuals seeking access to public financial disclosure reports and other covered documents. OGE permits departments and agencies to use or develop their own forms as long as the forms collect and provide all of the required information.

OGE recently revised its OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records system of records. The revisions were published in the **Federal Register** on September 9, 2019, and went into effect on November 8, 2019. The revisions included several new and modified routine uses. The information collected on the OGE Form 201 is maintained in the OGE/GOVT–1 Governmentwide system of records, and the form contains a Privacy Act statement referencing OGE/GOVT–1 as required by section (e)(3) of the Privacy Act. Accordingly, OGE proposes to update the Privacy Act statement in accordance with changes to the OGE/GOVT–1 system of records. This change will have no material effect on the burden to filers.

On January 15, 2020, OGE published a final rule making inflationary adjustments to the Ethics in Government Act civil monetary penalties in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Pursuant to these changes, the penalty for misuse of public reports is now $20,489. Accordingly, OGE proposes to update the penalty amount stated on the Form 201, in the paragraph above the applicant's signature. This change will have no material effect on the burden to filers.

On November 25, 2019, OGE published a first round notice of its intent to request approval for the modified OGE Form 201, Request to Inspect or Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records. *See* 84 FR 64895. OGE received no responses to that notice.

Request for Comments: Agency and public comment is again invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility, and clarity of the information collected, and the minimization of burden (including the use of information technology). The comments will become a matter of public record.

Approved: February 3, 2020.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2020–02396 Filed 2–6–20; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–3427, CMS–10709, CMS–10631 and CMS–10466]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 9, 2020.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax

Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease Application and Survey and Certification Report; *Use:* Part I of this form is a facility identification and screening measurement used to initiate the certification and recertification of ESRD facilities. Part II is completed by the Medicare/Medicaid State survey agency to determine facility compliance with ESRD conditions for coverage. *Form Number:* CMS–3427 (OMB control number: 0938–0360); *Frequency:* Every three years; *Affected Public:* Private sector (Business or other for-profit and Not-for profit institutions); *Number of Respondents:* 7,493; *Total Annual Responses:* 2,473; *Total Annual Hours:* 824. (For policy questions regarding this collection contact Jennifer Milby at 410–786–8828).

2. Type of Information Collection Request: New collection (Request for a new OMB control number); Title of Information Collection: Hospital Survey for Specified Covered Outpatient Drugs (SCODs); Use: In the CY 2018 OPPS/ASC payment system final rule with comment period, CMS finalized a policy to adjust payment for separately payable outpatient drugs acquired by eligible hospitals at discounted rates under HRSA's 340B program from Average Sales Price (ASP) plus 6 percent to ASP minus 22.5 percent. According to 42 U.S.C. 256b, eligible hospitals include those with a Medicare Disproportionate Share Hospital adjustment of greater than 11.75 percent, Children's Hospitals, Critical Access Hospitals, Cancer Hospitals, Rural Referral Centers and Sole Community Hospitals. The 340B program sets a ceiling on the price that covered entities pay for outpatient drugs. The 340B ceiling price refers to the maximum amount that a manufacturer can charge a covered entity for the purchase of a 340B covered outpatient drug. The 340B ceiling price is statutorily defined as the Average Manufacturer Price (AMP) reduced by the rebate percentage, which is commonly referred to as the Unit Rebate Amount (URA).

On December 27, 2018, the United States District Court for the District of Columbia ruled that the Secretary of the Department of Health & Human Services exceeded his statutory authority to adjust payment rates under the Hospital Outpatient Prospective Payment System (OPPS) for separately payable, 340B-acquired drugs. See American Hospital Ass'n v. Azar, 348 F. Supp. 3d 62, 82–83 (D.D.C. 2018), appeal pending, Nos. 19–5048 & 19–5198 (D.C. Cir.). The Court reasoned, in part, that the Secretary had not collected the necessary data to set payment rates based on acquisition costs. The government disagrees with that ruling and has appealed. Nonetheless, in the event that the ruling is affirmed, CMS believes that it is important to begin obtaining acquisition costs for specified covered outpatient drugs to set payment rates based on cost for 340B-acquired drugs when they are furnished by certain covered entity hospitals.

The acquisition cost data hospitals submit in response to this survey will be used to help determine payment amounts for drugs acquired under the 340B program. We want to ensure that the Medicare program pays for specified covered outpatient drugs purchased under the 340B program at amounts that approximate what hospitals actually pay to acquire the drugs. This will ensure that the Medicare program uses taxpayer dollars prudently while maintaining beneficiary access to these drugs and allowing beneficiary cost-sharing to be based on the amounts hospitals actually pay to acquire the drugs. Form Number: CMS–10709 (OMB control number: 0938–New); Frequency: Occasionally; Affected Public: Business or other for-profits and Not-for-profits, State, Local, or Tribal Governments; Number of Respondents: 1,338; Total Annual Responses: 1,338; Total Annual Hours: 64,224. (For policy questions regarding this collection contact Steven Johnson at 410–786–3332.)

3. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* The PACE Organization Application Process in 42 CFR part 460; *Use:* The Programs of All-Inclusive Care for the Elderly (PACE) consist of pre-paid, capitated plans that provide comprehensive health care services to frail, older adults in the community who are eligible for nursing home care according to State standards. PACE organizations (PO) must provide all Medicare and Medicaid covered services; financing of this model is accomplished through prospective capitation of both Medicare and Medicaid payments. Upon approval of a PACE application, CMS executes a 3-way program agreement with the applicant entity and the applicable State Administering Agency (SAA). CMS regulations at 42 CFR 460.98(b)(2) require a PO to provide PACE services in at least the PACE center, the home, and inpatient facilities. The PACE center is the focal point for the delivery of PACE services; the center is where the interdisciplinary team (IDT) is located, services are provided, and socialization occurs with staff that is consistent and familiar to participants.

Collection of this information is mandated by statute under sections 1894(f) and 1934(f) of the Act and at 42 CFR part 460, subpart B, which addresses the PO application and waiver process. In general, PACE services are provided through a PO. An entity wishing to become a PO must submit an application to CMS that describes how the entity meets all the requirements in the PACE program. An entity's application must be accompanied by an assurance from the SAA of the State in which the PO is located.

CMS recently issued a final PACE rule (CMS–4168–F), effective August 2, 2019, which updates and modernizes the PACE program. This final rule codifies CMS' existing practice of

relying on automated review systems for processing initial applications to become a PACE organization and expansion applications for existing PACE organizations. In addition, the final rule will modify the PACE regulations to eliminate the need for PACE organizations to request waivers for a number of the most commonly waived provisions. This latter change is expected to reduce burden and improve efficiency for POs, state administering agencies, and CMS.

In addition to codifying the current automated processes for the submission and review of both initial and service area expansion applications, this rule modifies existing regulatory provisions and requirements. As a result, certain attestations associated with the application are no longer applicable, and others need to be updated to reflect updated regulatory requirements. We are also making minor tweaks to certain document upload requirements for clarification purposes based on experience reviewing applications. *Form Number:* CMS–10631 (OMB control number: 0938–1326); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 72; *Total Annual Responses:* 109; *Total Annual Hours:* 7,226. (For policy questions regarding this collection contact Debbie Vanhoven at 410–786–6625.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; *Use:* The data collection and reporting requirements in ''Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions'' (78 FR 39494—July 1, 2013)), address federal requirements that states must meet with regard to the Exchange minimum function of performing eligibility determinations and issuing certificates of exemption from the shared responsibility payment. In the final regulation, CMS addresses standards related to eligibility, including the verification and eligibility determination process, eligibility redeterminations, options for states to rely on HHS to make eligibility determinations for certificates of exemption, and reporting. *Form Number:* CMS–10466 (OMB control number: 0938–1190); *Frequency:* Occasionally; *Affected Public:* Private Sector (Businesses or other for-profits); *Number of Respondents:* 45,060; *Total Annual Responses:* 45,060; *Total Annual Hours:* 12,150. (For policy questions regarding this collection contact Katherine Bentley at 301–492–5209.)

Dated: February 3, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–02357 Filed 2–5–20; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Tribal Budget and Narrative Justification Template (New Collection)

AGENCY: Office of Child Support Enforcement; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect expenditure estimates for the Tribal Child Support Enforcement Program through an optional financial reporting form, Tribal Budget and Narrative Justification Template. This optional template is designed for tribes operating an approved Tribal Child Support Enforcement Program to use in preparing their annual budget and narrative justification estimates in accordance with the tribal child support enforcement regulations.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: To receive child support funding under 45 CFR part 309, tribes and tribal organizations must submit the financial forms described in 45 CFR 309.130(b) and other forms as the Secretary may designate, due no later than August 1 annually. The optional Tribal Budget and Narrative Justification Template will help to improve efficiency and establish uniformity and consistency in the annual budget submission and review process. Tribes may use the Excel or Word version of the template to submit the required financial information.

Respondents: Tribes and tribal organizations administering a Tribal Child Support Enforcement Program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Tribal Budget and Narrative Justification—Excel	50	3	16	2,400	800
Tribal Budget and Narrative Justification—Word	10	3	20	600	200

Estimated Total Annual Burden Hours: 1,000.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 45 CFR part 309.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–02386 Filed 2–6–20; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[OMB #0985–New]

Agency Information Collection Activities; Proposed Collection; Comment Request; Evaluation of Participants of an Annual SMP/SHIP National Training Conference Hosted by the Office of Healthcare Information and Counseling

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

This notice solicits comments on the Proposed New Survey, and solicits comments on the information collection requirements related to the Evaluation of participants of an Annual SMP/SHIP National Training Conference.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by April 7, 2020.

ADDRESSES: Submit electronic comments on the collection of information to: *Marissa.Whitehouse@acl.hhs.gov.* Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Marissa Whitehouse.

FOR FURTHER INFORMATION CONTACT: Marissa Whitehouse, Administration for Community Living, Washington, DC 20201, *Marissa.Whitehouse@acl.hhs.gov* or 202–795–7425.

SUPPLEMENTARY INFORMATION: Under the PRA Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Office of Healthcare Information and Counseling (OHIC) hosts an annual national training conference for the federally funded programs that it administers. The audience for this training conference includes attendees from State Health Insurance Assistance Program (SHIP) and Senior Medicare Patrol (SMP) programs, which are two nationally recognized programs that provide Medicare information and counseling to Medicare beneficiaries and help fight Medicare fraud through prevention and education. Grantee leadership is required to attend this training annually to ensure they receive critical information and technical assistance needed to help them successfully meet the requirements of their grant awards. Grantees are encouraged to bring up to three (3) people from each program. Programs operate in each of the 50 states, the District of Columbia, Guam, Puerto Rico, and the US Virgin Islands.

The information collected in this survey is necessary to ensure that ACL is meeting the technical assistance needs of the attendees and to capture valuable feedback to be used for future training meetings. By gathering feedback on the quality of the training and content provided, we can ensure attendee satisfaction and gather information for future planning. ACL administers a contract to develop and provide the training conference evaluation tool for ACL's approval. They also disseminate a tool to all participants following each training conference to evaluate attendee satisfaction. This training conference survey is introduced and explained during the program specific meetings and during the general session on the first day of the training conference. The survey is not mandatory, but is reinforced as a way for ACL to provide useful, engaging sessions that assist the attendees in successfully meeting the requirements of their grant awards. This evaluation tool will gather feedback on the quality of the training and content provided and the experience of the attendees to be used for future planning.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Conference Evaluation	350	1	0.25	0.25
Total				

Dated: January 29, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020–02498 Filed 2–6–20; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[0985–0044]

Agency Information Collection Activities; Submission for OMB Review; the State Plan for Independent Living

AGENCY: Administration for Community Living (ACL), HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to State Plan for Independent Living (SPIL) (Information Collection Request Rev (ICR Rev)).

DATES: Comments on the information collection request must be submitted electronically by 11:59 p.m. (EST) or postmarked by March 9, 2020.

ADDRESSES: Submit written comments on the collection of information by:

(a) email to: *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Peter Nye, Administration for Community Living, Washington, DC 20201, (202) 795–7606 or *OILPPRAComments@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. Legal authority for the State Plan for Independent Living is contained in Chapter 1 of Title VII of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act ([the Act], Pub. L. 113–128). Section 704 of the Rehabilitation Act requires that, to be eligible to receive financial assistance under Chapter 1, ''a State shall submit to the Department, and obtain approval of, a State plan containing such provisions as the Department may require.'' The Administration for Community Living's (ACL) approval of the SPIL is required for states to receive federal funding for both the Independent Living Services State grants and Centers for Independent Living programs. Federal statute and regulations require the collection of this information every three years.

The SPIL is jointly developed by the chairperson of the Statewide Independent Living Council and the directors of the centers for independent living in the State, after receiving public input from individuals throughout the State; and signed by the chairperson of the Statewide Independent Living Council, acting on behalf of—and at the direction of—the Council, the director of the designated State entity, and not less than 51 percent of the directors of the centers for independent living in the State. ACL reviews the SPIL for compliance with the Rehabilitation Act and 45 CFR part 1329 and approves it. The SPIL also serves as a primary planning document for continuous monitoring of, and technical assistance to, the state independent living programs to ensure appropriate planning, financial support and coordination, and other assistance to appropriately address, on a statewide basis, needs for the provision of independent living services in the state.

Comments in Response to the 60-Day Federal Register Notice

A notice was published in the **Federal Register** on August 12, 2019 (Vol. 84, Number 2019–17172; pp. 39854–39855).

ACL received 251 comments during the 60-day public-comment period. To access these comments and ACL responses, please see the attachment.

The proposed form(s) and public comments and ACL responses may be found on the ACL website at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden of this collection of information as follows: 56 Statewide Independent Living Councils will respond to the requirement for a SPIL every three years. It will take approximately 60 hours for each state's Statewide Independent Living Council to jointly complete the development of the SPIL for a total of approximately 3,360 hours. This estimate is based on amounts of time that Statewide Independent Living Councils have reported that they have spent responding to previous requests for this report. ACL is not requesting any change in the data States are required to submit. As such, there is no change to the estimated reporting burden.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Statewide Independent Living Councils	56	1	60	3,360
Total	56	1	60	3,360

Dated: January 22, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020–02497 Filed 2–6–20; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0825]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 9, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0231. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Approval of Medical Devices

OMB Control Number 0910–0231—Extension

Under section 515 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360e) all devices placed into class III by FDA are subject to premarket approval application (PMA) requirements. PMA is the process of scientific and regulatory review to ensure the safety and effectiveness of class III devices. An approved PMA is, in effect, a private license granted to the applicant for marketing a particular medical device. A class III device that fails to meet PMA requirements is considered to be adulterated under section 501(f) of the FD&C Act (21 U.S.C. 351(f)) and cannot be marketed. PMA requirements apply differently to preamendments devices, postamendments devices, and transitional class III devices.

Manufacturers of class III preamendments devices (devices that were in commercial distribution before May 28, 1976) are not required to submit a PMA until 30 months after the issuance of a final classification regulation or until 90 days after the publication of a final regulation requiring the submission of a PMA, whichever period is later. FDA may allow more than 90 days after issuance of a final rule for submission of a PMA.

A postamendments device is one that was first distributed commercially on or after May 28, 1976. Postamendments devices determined by FDA to be substantially equivalent to preamendments class III devices are subject to the same requirements as the preamendments devices. FDA determines substantial equivalence after reviewing an applicant's premarket notification submitted in accordance with section 510(k) of the FD&C Act. Postamendments devices determined by FDA to be not substantially equivalent to either preamendments devices or postamendments devices classified into class I or II are ''new'' devices and fall automatically into class III. Before such devices can be marketed, they must have an approved PMA or must be reclassified into class I or class II.

The Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended the FD&C Act by streamlining the process of bringing safe and effective drugs, medical devices, and other therapies to the U.S. market. FDAMA added section 515(d)(6) to the FD&C Act, which provided that PMA supplements were required for all device changes that affect safety and effectiveness unless such changes are modifications to manufacturing procedures or method of manufacture. That type of manufacturing change requires a 30-day notice, or where FDA finds such notice inadequate, a 135-day PMA supplement.

The implementing regulations, contained in 21 CFR part 814, further specify the contents of a PMA for a medical device and the criteria FDA will employ in approving, denying, or withdrawing approval of a PMA and supplements to PMAs. The regulations' purpose is to establish an efficient and thorough procedure for FDA's review of PMAs and supplements to PMAs for class III medical devices. The regulations facilitate the approval of PMAs and supplements to PMAs for devices that have been shown to be reasonably safe and effective and otherwise meet the statutory criteria for approval. The regulations also allow for the denial of PMAs and supplements to PMAs for devices that have not been shown to be reasonably safe and effective and that do not otherwise meet the statutory criteria for approval.

The burden estimate is based on the annual rate of receipt of PMA submissions for fiscal years (FYs) 2016 through 2018 and our expectation of submissions to come in the next few years. The burden data for PMAs is based on data provided by applicants by device type and cost element in an earlier study.

Reporting Burden

Section 814.15(b)—Research Conducted Outside the United States. FDA will accept information on a clinical investigation conducted outside the United States (OUS) to support a PMA if the investigation is well-designed and well-conducted and certain other conditions are met, including that the investigation was conducted in accordance with good clinical practice (GCP) as specified in 21 CFR 812.28. If the OUS clinical investigation did not conform to GCP, then the PMA submission should include a waiver request or a statement explaining the reason for not conducting the investigation in accordance with GCP and a description of steps taken to ensure that the data and results are credible and accurate and that the rights, safety, and well-being of subjects have been adequately protected. Based on the number of PMAs received that contained studies from overseas, FDA estimates that the burden estimate necessary to meet this requirement is 50 hours.

Section 814.20—Application. Specifies the information required in a PMA and update reports such as the applicant's name and address, a description of the device, its labeling, its indications for use, and summary of clinical and non-clinical studies. Included in this requirement is the conduct of laboratory and clinical trials, as well as the analysis, review, and physical preparation of the PMA application. FDA estimates that 38 applicants, including hospital remanufacturers of single-use devices, will be affected by these requirements, which are based on the actual average of FDA receipt of new PMA applications in FYs 2016 through 2018.

Additionally, the ''Human Subject Protection; Acceptance of Data from

Clinical Investigations for Medical Devices'' final rule (83 FR 7366; February 21, 2018) amended this section to address requirements for a PMA supported by data from clinical investigations conducted outside the United States. The applicant will be required to submit the information as described in § 814.20(b)(6)(ii)(C). We estimate this will take 30 minutes per respondent. We estimate that 10 respondents annually will submit such information.

The collections in OMB control number 0910–0741, ''Human Subject Protection; Acceptance of Data from Clinical Studies for Medical Devices,'' were submitted to OMB as a new information collection request with the expectation that the currently approved requirements will be amended. As noted in the Supporting Statement for OMB control number 0910–0741, we are amending OMB control number 0910–0231 to reflect the information collections associated with the rulemaking under § 814.20(b)(6)(ii)(C).

Section 814.37(a) through (c) and (e)—PMA Amendments and Resubmitted PMAs. As part of the review process, FDA often requests the PMA applicant to submit additional information regarding the device necessary for FDA to file the PMA or to complete its review and make a final decision. The PMA applicant may, on their own initiative, submit additional information to FDA during the review process. These amendments contain information ranging from additional test results and reanalysis of the original data set to revised device labeling. Almost all PMAs received by the Agency have amendments submitted during the review process.

Section 814.39(a)—PMA Supplements. This information collection includes the requirements for the range of PMA supplements (panel track, 180-day fee-based, 180-day non-fee-based, and real-time supplements).

Section 814.39(d)—Special PMA Supplements—Changes Being Affected. This type of supplement is intended to enhance the safety of the device or the safe use of the device. The number of PMA supplements received that fit this category averaged 75 per year based on the numbers received from FYs 2016 through 2018.

Section 814.39(f)—30-Day Notice. Under section 515(d) of the FD&C Act, modifications to manufacturing procedures or methods of manufacture that affect the safety and effectiveness of a device subject to an approved PMA do not require submission of a PMA supplement under paragraph (a) of that section and are eligible to be the subject of a 30-day notice. A 30-day notice shall describe in detail the change, summarize the data or information supporting the change, and state that the change has been made in accordance with the requirements of part 820 (21 CFR part 820). The applicant may distribute the device 30 days after the date on which FDA receives the 30-day notice, unless FDA notifies the applicant within 30 days from receipt of the notice that it is not adequate.

Section 814.82(a)(9)—Postapproval Requirements. Postapproval requirements concern approved PMAs that were not reclassified and require a periodic report. After approval, all PMAs require a submission of an annual report. A majority of the submitted PMAs require associated postapproval studies, *i.e.,* followup of patients used in clinical trials to support the PMA or additional preclinical information that is labor-intensive to compile and complete; the remaining PMAs require minimal information.

Section 814.84(b)—Periodic Reports. Postapproval requirements described in § 814.82(a)(7) require submission of an annual report for each approved PMA. FDA estimates that respondents will average about 10 hours in preparing their reports to meet this requirement. This estimate is based on FDA's experience and consultation with industry.

The Breakthrough Devices Program—The Breakthrough Devices Program supersedes the Expedited Access Pathway and Priority Review for medical devices. The guidance document ''Breakthrough Devices Program'' implements section 515B of the FD&C Act (21 U.S.C. 360e-3), as created by section 3051 of the 21st Century Cures Act (Pub. L. 114–255) and amended by section 901 of the FDA Reauthorization Act of 2017 (Pub. L. 115–52). The Breakthrough Devices Program is a voluntary program for certain medical devices and device-led combination products that provide for more effective treatment or diagnosis of life-threatening or irreversibly debilitating diseases or conditions. The program is intended to help patients have more timely access to these medical devices by expediting their development, assessment, and review, while preserving the statutory standards for premarket approval, 510(k) clearance, and De Novo marketing authorization, consistent with the Agency's mission to protect and promote public health.

Section 520(g)(7) of the FD&C Act (21 U.S.C. 360j(g)(7))—Agreement Meeting. Applicants planning to submit a PMA may submit a written request to reach agreement with FDA on the key parameters of the investigational plan.

Section 513(a)(3)(D) of the FD&C Act (21 U.S.C. 360c(a)(3)(D))—Determination Meeting. Applicants planning to submit a PMA may submit a written request to FDA for a meeting to determine the type of information (valid scientific evidence) necessary to support the effectiveness of their device.

Section 515(c)(3) of the FD&C Act—Panel of Experts. An original PMA or panel track PMA supplement is taken to an advisory panel of experts unless FDA determines that the information in the application substantially duplicates information that has previously been reviewed by the panel.

Section 515(d)(3) of the FD&C Act—Day 100 Meeting. FDA must, upon the written request of the applicant, meet with that party within 100 days of receipt of the filed PMA application to discuss the review status of the application. With the concurrence of the applicant, a different schedule may be established. Prior to this meeting, FDA must inform the applicant in writing of any identified deficiencies and what information is required to correct those deficiencies. FDA must also promptly notify the applicant if FDA identifies additional deficiencies or of any additional information required to complete Agency review.

Recordkeeping

Section 814.82(a)(5) and (6)—Maintenance of Records. The recordkeeping burden under this section requires the maintenance of records used to trace patients, and the organization and indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These records are required of all applicants who have an approved PMA.

PMAs have been required since 1976, and there are 801 active PMAs that could be subject to these requirements, based on actual FDA data, and approximately 39 new PMAs are approved every year. The aggregate burden for the estimated 446 PMA holders of approved original PMAs for the next few years is estimated to be 7,582 hours.

The applicant determines which records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation (part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions of

approval to ensure the device's continuing safety and effectiveness.

In the **Federal Register** of October 24, 2019 (84 FR 57030), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR or FD&C Act section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Research conducted outside the United States (814.15(b))	25	1	25	2	50
PMA application (814.20)	46	1	46	668	30,728
Information on clinical investigations conducted outside the United States (814.20(b)(6)(ii)(C))	10	1	10	0.5 (30 minutes)	5
PMA amendments and resubmitted PMAs (814.37(a)–(c) and (e))	1,528	1	1,528	167	255,176
PMA supplements (814.39(a))	777	1	777	60	46,620
Special PMA supplement—changes being affected (814.39(d))	75	1	75	6	450
30-day notice (814.39(f))	1,722	1	1,722	16	27,552
Postapproval requirements (814.82(a)(9))	121	1	121	135	16,335
Periodic reports (814.84(b))	764	1	764	10	7,640
Agreement meeting (520(g)(7))	1	1	1	50	50
Breakthrough Devices Program (515(B) of the FD&C Act)	11	1	11	10	110
Determination Meeting (513(1)(3)(D) of the FD&C Act)	1	1	1	50	50
Panel meeting (515(c)(3) of the FD&C Act)	1	1	1	30	30
Day 100 meeting (515(d)(3) of the FD&C Act)	14	1	14	10	140
Total					384,936

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Maintenance of records (814.82(a)(5) and (6))	446	1	446	17	7,582

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We made the following changes to the information collection:

- Added the burden estimate for ''Information on clinical investigations conducted outside the United States (§ 814.20(b)(6)(ii)(C)),'' which is associated with the ''Human Subject Protection; Acceptance of Data from Clinical Investigations for Medical Devices'' final rule as described previously in this document.
- Revised the burden description and table to reflect that the Expedited Access Pathway and Priority Review have been superseded by the Breakthrough Devices Program.
- Updated our burden estimate with FYs 2016 through 2018 data.

These adjustments resulted in an overall increase of 34,782 hours to the estimated burden.

Dated: January 31, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02481 Filed 2–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5270]

Biosimilars and Interchangeable Biosimilars: Licensure for Fewer Than All Conditions of Use for Which the Reference Product Has Been Licensed; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Biosimilars and Interchangeable Biosimilars: Licensure for Fewer Than All Conditions of Use for Which the Reference Product Has Been Licensed.'' When finalized, this draft guidance will provide recommendations to applicants seeking licensure under the Public Health Service Act (the PHS Act) of a proposed biosimilar or proposed interchangeable biosimilar for fewer than all of the reference product's licensed conditions of use. Additionally, when finalized, this draft guidance will also provide recommendations on the submission of a supplement to a licensed biologics license application (BLA) seeking to add a condition of use that previously has been licensed for the reference product to the labeling of a licensed biosimilar or interchangeable product, including considerations related to the timing of such submissions.

DATES: Submit either electronic or written comments on the draft guidance by April 7, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include Docket No. FDA–2019–D–5270 for ''Biosimilars and Interchangeable Biosimilars: Licensure for Fewer Than All Conditions of Use for Which the Reference Product Has Been Licensed.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 1132, Silver Spring, MD 20993–0002, 301–796–1042; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Biosimilars and Interchangeable Biosimilars: Licensure for Fewer Than All Conditions of Use for Which the Reference Product Has Been Licensed.'' When finalized, this draft guidance will provide recommendations to applicants seeking licensure under section 351(k) of the PHS Act (42 U.S.C. 262(k)) of a proposed biosimilar or proposed interchangeable biosimilar for fewer than all of the reference product's licensed conditions of use. Additionally, when finalized, this draft guidance will also provide recommendations on the submission of a supplement to a licensed 351(k) BLA seeking to add a condition of use that previously has been licensed for the reference product to the labeling of a licensed biosimilar or interchangeable product, including considerations related to the timing of such submissions.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Biosimilars and Interchangeable Biosimilars: Licensure for Fewer Than All Conditions of Use for Which the Reference Product Has Been Licensed.'' It does not establish any rights for any person and is not binding on FDA or the public. An alternative approach can be used if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information for BLAs submitted under section 351(k) of the PHS Act have been approved under OMB control number 0910–0719. The collections of information in 21 CFR 201.56 and 21 CFR 201.57 have been

approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *https://www.regulations.gov.*

Dated: February 3, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02421 Filed 2–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Nurse Faculty Loan Program—Program Specific Data Form and Annual Performance Report Financial Data Form, OMB No. 0915–0314—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than April 7, 2020.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Nurse Faculty Loan Program—Program Specific Data Form and Annual Performance Report Financial Data Form OMB No. 0915–0314—Revision.

Abstract: This clearance request is for approval of both the Nurse Faculty Loan Program (NFLP) Program Specific Data Form and the Annual Performance Report (APR) Financial Data Form. The APR Financial Data Form is currently approved under OMB Approval No. 0915–0314 and the Program Specific Data Form is currently approved under OMB Approval No. 0915–0378, both with the expiration date of July 31, 2020. For program efficiency, HRSA is combining these previously separate ICRs under OMB No. 0915–0314 and will be discontinuing OMB No. 0915–0378.

Need and Proposed Use of the Information: Section 846A of the Public Health Service Act provides the Secretary of HHS with the authority to enter into an agreement with schools of nursing for the establishment and operation of a student loan fund to increase the number of qualified nurse faculty.

Under the agreement, HRSA makes awards to the school for the NFLP loan fund, which schools must maintain in a distinct account. The school of nursing makes loans from the NFLP account to students enrolled full-time or, at the discretion of the Secretary, part-time, in a master's or doctoral nursing education program that will prepare them to become qualified nursing faculty. Following graduation from the NFLP-lending school, loan recipients may receive up to 85 percent NFLP loan cancellation over a 4-year period in exchange for service as full-time faculty at a school of nursing. The NFLP-lending school collects any portion of the loan that it has not cancelled and any loans that go into repayment due to default and deposits these monies into the NFLP loan fund to make additional NFLP loans.

The NFLP Program Specific Data Form is a required electronic attachment within the NFLP application materials. The data provided in the form is essential for the formula-based criteria used to determine the award amount to the applicant schools. The form collects application-related data from applicants such as the amount requested, number of students the school will fund, tuition information, and projected unused loan fund balance. Approval of the NFLP Program Specific Data Form allows HRSA to continue to capture data to generate the formula-based awards for the NFLP program. This data collection assists HRSA in streamlining the application submission process, enabling an efficient award determination process, and facilitating reporting on the use of funds and analysis of program outcomes.

The NFLP–APR Financial Data Form is an online form that exists in the HRSA Electronic Handbooks Performance Report module. The NFLP–APR Financial Data Form collects outcome and financial data to capture the NFLP loan fund account activity related to financial receivables, disbursements, and borrower account data related to employment status, loan cancellation, loan repayment, and collections. Participating schools provide HHS with current and cumulative information on: (1) NFLP loan funds received, (2) number and amount of NFLP loans made, (3) number and amount of loans cancelled, (4) number and amount of loans in repayment, (5) loan default rate percent, (6) number of NFLP graduates employed as nurse faculty, and (7) other related loan fund costs and activities.

The school of nursing must keep records of all NFLP loan fund transactions. HRSA uses the NFLP–APR Financial Data Form to monitor grantee performance by collecting information related to the NFLP loan fund operations and financial activities for a specified reporting period (July 1 through June 30 of the academic year). Participating schools are required to complete and submit the NFLP–APR Financial Data Form annually.

The data provided in the form is essential for HRSA to monitor the school's use of NFLP funds in accordance with the statute and program guidelines. Approval of the NFLP–APR Financial Data Form extension will allow HRSA to continue to monitor program performance and program outcome.

Likely Respondents: Participating NFLP schools and applicants to the NFLP program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to

transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Nurse Faculty Loan Program—Program Specific Data Form	90	1	90	8	720
Nurse Faculty Loan Program—Annual Performance Report Financial Data Form	260	1	260	6	1,560
Total Burden	350		350		2,280

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–02408 Filed 2–6–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Determination of Public Health Emergency

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) is issuing this notice pursuant to section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act. On February 4, 2020, the Secretary determined pursuant to his authority under section 564 of the FD&C Act that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves a novel (new) coronavirus (nCoV) first detected in Wuhan City, Hubei Province, China in 2019 (2019-nCoV). On the basis of this determination, he also declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of this novel coronavirus (2019-nCoV) pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section.

DATES: The determination and declaration took effect February 4, 2020.

FOR FURTHER INFORMATION CONTACT: Robert P. Kadlec, M.D., MTM&H, MS, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 564 of the FD&C Act, 21 U.S.C. 360bbb–3, the Commissioner of the Food and Drug Administration (FDA), acting under delegated authority from the Secretary of HHS, may issue an Emergency Use Authorization (EUA) authorizing (1) the emergency use of an unapproved drug, an unapproved or uncleared device, or an unlicensed biological product; or (2) an unapproved use of an approved drug, approved or cleared device, or licensed biological product. Before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of four determinations: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a, chemical, biological, radiological, or nuclear (''CBRN'') agent or agents; (2) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act [1] sufficient to affect national security or the health and security of United States citizens living abroad; (3) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces, including personnel operating under the authority of title 10 or title 50, of attack with (i) a biological, chemical, radiological, or nuclear agent or agents; or (ii) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to United States military forces; or (4) a determination by the Secretary that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad, and that involves a CBRN agent or agents, or a disease or condition that may be attributable to such agent or agents.[2]

Based on any of these four determinations, the Secretary of HHS may then declare that circumstances exist that justify the EUA, at which point the FDA Commissioner may issue an EUA if the criteria for issuance of an authorization under section 564 of the FD&C Act are met.

The determination of a public health emergency, and the declaration that circumstances exist justifying emergency use of in vitro diagnostics for detection and/or diagnosis of the novel coronavirus (2019-nCoV) by the Secretary of HHS, as described below, enable the FDA Commissioner to issue EUAs for certain in vitro diagnostics for emergency use under section 564 of the FD&C Act. The Centers for Disease Control and Prevention (CDC) requested that the FDA issue an EUA for its in

[1] 42 U.S.C. 247d–6b.

[2] As amended by the Pandemic and All-Hazards Preparedness Reauthorization Act, Public Law 113–5, the Secretary may make determination of a public health emergency, or a significant potential for a public health emergency, under section 564 of the FD&C Act. The Secretary is no longer required to make a determination of a public health emergency in accordance with section 319 of the PHS Act, 42 U.S.C. 247d to support a determination or declaration made under section 564 of the FD&C Act.

vitro diagnostic for detection of 2019-nCoV to allow the Department to take preparedness measures based on information currently available about 2019-nCoV.

II. Determination by the Secretary of Health and Human Services

On February 4, 2020, pursuant to section 564 of the FD&C Act, I determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves a novel (new) coronavirus (nCoV) first detected in Wuhan City, Hubei Province, China in 2019 (2019-nCoV).

III. Declaration of the Secretary of Health and Human Services

Also on February 4, 2020, on the basis of my determination of a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves the novel (new) coronavirus (2019-nCoV), I declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the novel coronavirus (2019-nCoV) pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section.

Notice of any EUAs issued by the FDA Commissioner pursuant to this determination and declaration will be provided promptly in the **Federal Register** as required under section 564 of the FD&C Act.

Alex M. Azar II,

Secretary.

[FR Doc. 2020–02496 Filed 2–6–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, April 16, 4:00 p.m. to April 17, 2020, 5:00 p.m., Bethesda North Marriott Hotel & Conference Hotel, 5701 Marinelli Road, Rockville, MD, 20850 which was published in the **Federal Register** on January 30, 2020, 85 FR 5456.

This meeting notice is amended to change the meeting dates and start and end times. The meeting will now be held on April 15, 2020, 3:00 p.m. to April 16, 2020, 6:00 p.m. The meeting is closed to the public.

Dated: February 3, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02402 Filed 2–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review the U01 Diversity Program Consortium—Dissemination and Translation Award applications.

Date: March 25, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—Chevy Chase Pavilion, Conference Room Chevy Chase Ballroom, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, 45 Center Drive, Bethesda, MD 20892, (301) 594–2771, *johnsonrh@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 3, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02406 Filed 2–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 27, 2020, 11:00 a.m. to 3:00 p.m., National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W108, Rockville, MD 20850 which was published in the **Federal Register** on December 30, 2019, 84 FR 71964.

This meeting notice is amended to change the meeting start time from 11:00 a.m. to 10:00 a.m. on February 27, 2020. The meeting is closed to the public.

Dated: February 3, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02401 Filed 2–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular, Molecular and Integrative Reproduction Study Section, February 19, 2020, 8:00 a.m. to February 20, 2020, 5:00 p.m. at the Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314, which was published in the **Federal Register** on January 27, 2020, 85 FR 4672.

The Contact Person for this meeting has been changed to Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Phone (301) 435–1053, email: *riverase@csr.nih.gov.* The meeting date and time remain the same. The meeting is closed to the public.

Dated: February 3, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02400 Filed 2–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Evaluation of the Enhancing Diversity of the NIH-Funded Workforce Program (National Institute of General Medical Sciences)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Dr. Alison Gammie, Director, Division of Training, Workforce Development, and Diversity, NIGMS, 45 Center Drive, Room 2AS43J, Bethesda, MD 20892, or call non-toll-free number (301) 594–2662, or Email your request, including your address to: *alison.gammie@nigms.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on December 3, 2019, pages 66207–66209 (84 FR 66207–66209) and allowed 60 days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of General Medical Sciences (NIGMS), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Evaluation of the Enhancing the Diversity of the NIH-funded Workforce Program Consortium (DPC), 0925–0747-Reinstatement with Change, exp., date 11/30/2019, National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH).

Need and Use of Information Collection: The goal of the DPC is to address a unique and compelling need identified by NIH, namely to enhance the diversity of well-trained biomedical research scientists who can successfully compete for NIH research funding and/or otherwise contribute to the NIH-funded scientific workforce. The DPC is a national collaborative through which awardee institutions, in partnership with NIH, aim to enhance diversity in the biomedical research workforce through the development, implementation, assessment and dissemination of innovative and effective approaches to: (a) Student outreach, engagement, training, and mentoring, (b) faculty development, and (c) institutional research training infrastructure. The Coordination and Evaluation Center (CEC) will evaluate the efficacy of the training and mentoring approaches implemented across a variety of contexts and populations and will disseminate information to the broader research community. The planned consortium-wide data collection and evaluation will provide comprehensive information about the multi-dimensional factors (individual, institutional, and faculty/mentor) that influence student and faculty success, professional development, and persistence within biomedical research career paths across a variety of contexts. The planned data collection, and the resulting findings, is projected to have a sustained, transformative effect on biomedical research training and mentoring nationwide.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 55,132.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
2019 CIRP Freshman Survey (Attachment 12).	BUILD and Non-BUILD Student.	15,000	1	45/60	11,250
Student Annual Follow-up survey (Attachment 13).	BUILD and Non-BUILD Student.	15,000	1	45/60	11,250
2019 College Senior Survey (Attachment 14).	BUILD and Non-BUILD Student.	15,000	1	45/60	11,250
Student Annual Follow-up Survey (Attachment 13).	2020 Student Cohort	5,000	3	25/60	6,250
Student Annual Follow-up Survey (Attachment 13).	2021 Student Cohort	5,000	2	25/60	4,167
Student Annual Follow-up Survey (Attachment 13).	2022 Student Cohort	5,000	1	25/60	2,083
2019–20 HERI Faculty Survey Core National Instrument (Attachment 15).	BUILD and Non-BUILD Faculty Survey.	500	1	25/60	208
Faculty Annual Follow-up survey (Attachment 16).	BUILD Faculty Annual Follow-up survey.	500	2	25/60	417

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
BUILD Institutional Research & Program Data Requests (Attachment 19).	Personnel and Administrators at BUILD Institutions.	10	3	16	480
BUILD Site Visits (Attachment 18)	BUILD Students, Faculty, and Institution.	120	1	24	2,880
BUILD Case Studies Preparation (Attachment 18).	BUILD Students, Faculty, and Institutions.	24	1	40	960
BUILD Case Study Interviews (Attachment 18).	Undergraduate BUILD Students.	170	1	90/60	255
BUILD Case Study Interviews (Attachment 18).	Graduate/post-doctoral BUILD students.	70	1	90/60	105
BUILD Case Study Interviews (Attachment 18).	BUILD PI's, Program Managers/Directors, & Faculty.	162	1	90/60	243
NRMN Annual Follow-up Surveys (Attachment 17).	NRMN 2020 mentee cohort	500	3	25/60	625
NRMN Annual Follow-up Surveys (Attachment 17).	NRMN 2021 mentee cohort	500	3	25/60	625
NRMN Annual Follow-up Surveys (Attachment 17).	NRMN 2022 mentee cohort	500	2	25/60	417
NRMN Annual Follow-up Surveys (Attachment 17).	NRMN 2020 mentor cohort	500	3	25/60	625
NRMN Annual Follow-up Surveys (Attachment 17).	NRMN 2021 mentor cohort	500	3	25/60	625
NRMN Annual Follow-up Surveys (Attachment 17).	NRMN 2022 mentor cohort	500	2	25/60	417
Total	.....	64,556	85,076	.....	55,132

Dated: January 28, 2020.

Richard A. Aragon,

Project Clearance Liaison, National Institute of General Medical Sciences, National Institutes of Health.

[FR Doc. 2020–02457 Filed 2–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—B Review of Predoctoral Training Grant Applications.

Date: March 9, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—Chevy Chase Pavilion, Conference room Chevy Chase ballroom, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18A, Bethesda, MD 20814, (301) 435–0965, *newmanla2@mail.nih.gov.*

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—A.

Date: March 20, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, Conference room Grand Ballroom B & C, 10 Thomas Circle, NW Washington, DC 20005.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, (301) 594–2773, *laffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 3, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02404 Filed 2–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Leveraging Big Data Science to Elucidate the

Mechanisms of HIV Activity and Interaction with Substance Use Disorder.

Date: March 5, 2020.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Science Center, 6001 Executive Boulevard, Room 4238, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Core and Research Center of Excellence Grant Program (P30/50 Clinical Trial Optional).

Date: March 9–10, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Bethesda Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 4234, Bethesda, MD 20892, 301–402–7371, *yvonne.ferguson@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Pathway to Independence Award (K99/R00).

Date: March 19, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Science Center, 6001 Executive Boulevard, Room 4229, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 4245, Rockville, MD 20852, 301–435–1426, *mcguireso@mail.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Alcohol and Other Substance Use Research Education Programs for Health Professionals (R25 Clinical Trial Not Allowed).

Date: April 6, 2020.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Science Center, 6001 Executive Boulevard, Room 4229, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer Office, of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 4245, Rockville, MD 20852, 301–435–1426, *mcguireso@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 3, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02403 Filed 2–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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 General Medical Sciences Special Emphasis Panel; To review NIH Pathway to Independence Award (K99/R00) Applications.

Date: March 25, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, Conference room: Congressional, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Saraswathy Seetharam, Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, (301) 594–2763, *seetharams@nigms.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS MOSAIC UE5 Applications.

Date: March 27, 2020.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room Embassy, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, (301) 594–3907, *pikebr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 3, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02405 Filed 2–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Molecular and Cellular Endocrinology, February 6, 2020, 11:30 a.m. to February 6, 12:30 p.m., which was published in the **Federal Register** on January 13, 2020, 85 FR 1816.

The meeting location is being changed to Melrose Hotel, 2430 Pennsylvania Ave NW, Washington, DC 20037. Meeting dates and time remain the same. The meeting is closed to the public.

Dated: February 3, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02456 Filed 2–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability of the Bog Creek Road Project Final Records of Decision

AGENCY: U.S. Customs and Border Protection, Department of Homeland

Security and U.S. Forest Service, U.S. Department of Agriculture.

ACTION: Notice of Availability of Final Records of Decision concerning the repair and maintenance of Bog Creek Road and closure of certain roads within the Blue-Grass Bear Management Unit to comply with the Land Management Plan for the Idaho Panhandle National Forests (Forest Plan) for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones in the Selkirk Mountains in Boundary County, Idaho.

SUMMARY: U.S. Customs and Border Protection (CBP) and the U.S. Forest Service (Forest Service) Idaho Panhandle National Forests announce the availability of the Bog Creek Road Project Final Records of Decision (ROD). The CBP ROD addresses the decision to approve the funding for and implement the repair and maintenance of Bog Creek Road. The Forest Service ROD addresses the decisions to: Approve CBP's repair and maintenance of Bog Creek Road for administrative use; and, implement actions to establish grizzly bear core area habitat within the Blue-Grass Bear Management Unit and to meet the objectives of the Land Management Plan for the Idaho Panhandle National Forests (Forest Plan) for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones.

ADDRESSES: Electronic copies of the CBP ROD and Forest Service ROD are available at *https://www.cbp.gov/document/environmental-assessments/bog-creek-road-project-environmental-impact-statement* and *https://www.fs.usda.gov/project/?project=41296.*

FOR FURTHER INFORMATION CONTACT: Joseph Zidron, Real Estate and Environmental Branch Chief, CBP, Border Patrol and Air and Marine Program Management Office, by telephone at 949–643–6392, or email at *joseph.zidron@cbp.dhs.gov* or Kim Pierson, Deputy Forest Supervisor, Forest Service, IPNF, by telephone at 208–765–7220, or email at *kim.pierson@usda.gov.* Persons who require assistance accessing information should contact the U.S. Department of Agriculture's (USDA) Target Center at 202–720–2600 (voice and TDD) or contact USDA through the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) and the U.S. Forest Service (Forest Service) Idaho Panhandle National Forests have decided to implement a road repair, maintenance, and motorized closure project in the Continental Mountain area of the Idaho Panhandle National Forests within the Bonners Ferry and Priest Lake Ranger Districts (the Bog Creek Road Project).[1] The Bog Creek Road Project has two objectives: (1) To provide improved east-west access for administrative use to this section of the U.S.–Canada border across the Selkirk Mountains, and (2) to meet grizzly bear motorized access standards within the Blue-Grass Bear Management Unit (BMU) of the Selkirk Grizzly Bear Recovery Zone in order to comply with the Land Management Plan for the Idaho Panhandle National Forests (Forest Plan) for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones.

A Final Environmental Impact Statement (EIS) for the Bog Creek Road Project was issued on February 15, 2019. The Final EIS identified and assessed potential impacts upon the environment of: Repairing and maintaining an approximately 5.6-mile section of the existing Bog Creek Road, which is located in the Selkirk Mountains in Boundary County, Idaho, within approximately two miles of the Canadian border, on land within the Blue-Grass BMU that is managed by the Forest Service; and to manage roads within the Blue-Grass BMU to reduce total road density and provide core habitat in order to comply with the Land Management Plan for the Idaho Panhandle National Forests (Forest Plan) for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones.

Forest Service Pre-Decisional Administrative Review (''Objection'') Process

This project is subject to 36 CFR part 218, subparts A and B of the Forest Service's Project-level Pre-decisional Administrative Review Process. Pursuant to these regulations, those who provided timely and specific written comments regarding the proposed project during a comment period were eligible to file an objection to the Final EIS and the Forest Service's Draft ROD with the Forest Service. On February 15, 2019, the Forest Service published a legal notice in the newspaper of record, the *Coeur d'Alene Press,* announcing the commencement of the objection filing period and providing instructions for filing objections. The objection filing period began on February 15, 2019, and ended on April 2, 2019.

Ten valid objections were received during the objection filing period. The Forest Service responsible official and objection review officer met with objectors between May 28, 2019 and June 4, 2019. On June 14, 2019, the Forest Service objection review officer issued written responses to persons who filed objections. The objections raised multiple issues and these were discussed and addressed during the administrative review process. Ultimately, the objection review officer found the Bog Creek Road Project to be in compliance with all applicable laws and the Idaho Panhandle National Forests Plan.

The Final Records of Decisions

The Final RODs, summarized below, were developed through collaboration among CBP, the Forest Service, stakeholders, and the public. They meet the goals and objectives established for the project and other resource needs.

The CBP ROD addresses the decision to approve the funding for and implement the repair and maintenance of Bog Creek Road. The Forest Service Final ROD consists of three components: (1) Road repair and maintenance of Bog Creek Road and change in motorized use designation; (2) change in motorized use designation for Blue Joe Creek Road and roads along the eastern approach to Bog Creek Road to accommodate some seasonal public access and to provide for private landowner and livestock grazing permittee access; and (3) motorized closure of selected seasonally restricted Forest Service roads. Detailed descriptions of the elements of the final decisions can be found in the Final CBP ROD and the Final Forest Service ROD. Information about how to review these decisions is set forth in the **ADDRESSES** section above.

Dated: February 4, 2020.

Robert Janson,

Acting Assistant Commissioner, Office of Facilities and Asset Management, Office of Enterprise Services, U.S. Customs and Border Protection.

Jeanne Higgins,

Forest Supervisor, Idaho Panhandle National Forests, U.S. Forest Service.

[FR Doc. 2020–02466 Filed 2–6–20; 8:45 am]

BILLING CODE 9111–14–P

[1] These decisions are being made pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* the President's Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500–1508), DHS Directive 023–01, Revision 01, and Instruction 023–01–001–01, Revision 01, and CBP and Forest Service NEPA guidelines.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2008]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Arapahoe	City of Aurora (19–08–0550P).	The Honorable Bob LeGare, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Engineering Department, 15151 East Alameda Parkway, Aurora, CO 80012.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2020	080002
Arapahoe	City of Aurora (19–08–0618P).	The Honorable Bob LeGare, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Engineering Department, 15151 East Alameda Parkway, Aurora, CO 80012.	*https://msc.fema.gov/portal/advanceSearch.*	May 15, 2020	080002
Arapahoe	City of Centennial (19–08–0550P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Englewood, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2020	080315

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arapahoe	City of Centennial (19–08–0618P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Englewood, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	May 15, 2020	080315
Arapahoe	Unincorporated areas of Arapahoe County (19–08–0550P).	The Honorable Jeff Baker, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2020	080011
Arapahoe	Unincorporated areas of Arapahoe County (19–08–0618P).	The Honorable Jeff Baker, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	May 15, 2020	080011
Douglas	Unincorporated areas of Douglas County (19–08–0888P).	The Honorable Roger A. Partridge, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Public Works Engineering Division, 100 3rd Street, Castle Rock, CO 80104.	*https://msc.fema.gov/portal/advanceSearch.*	May 15, 2020	080049
Connecticut: Fairfield.	City of Stamford (19–01–1380P).	The Honorable David Martin, Mayor, City of Stamford, 888 Washington Boulevard, Stamford, CT 06901.	City Hall, 888 Washington Boulevard, Stamford, CT 06901.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 13, 2020	090015
Florida:						
Hillsborough	City of Tampa (19–04–6204P).	The Honorable Jane Castor, Mayor, City of Tampa, 306 East Jackson Street, Tampa, FL 33602.	Development Services Center, 1400 North Boulevard, Tampa, FL 33607.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2020	120114
Monroe	Unincorporated areas of Monroe County (20–04–0041P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 27, 2020	125129
Monroe	Unincorporated areas of Monroe County (20–04–0057P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2020	125129
Louisiana: St. Tammany.	Unincorporated areas of St. Tammany Parish (19–06–0185P).	Mr. Michael B. Cooper, St. Tammany Parish President, 21490 Koop Drive, Mandeville, LA 70471.	St. Tammany Parish Department of Inspections and Enforcement, 21454 Koop Drive, Mandeville, LA 70471.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 16, 2020	225205
North Carolina:						
Durham	City of Durham (19–04–5407P).	The Honorable Steve Schewel, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	Durham City-County Hall, 101 City Hall Plaza, Durham, NC 27701.	*https://msc.fema.gov/portal/advanceSearch.*	May 13, 2020	370086
Durham	Unincorporated areas of Durham County (19–04–5407P).	The Honorable Wendy Jones, Chair, Durham County Board of Commissioners, 200 East Main Street, Durham, NC 27701.	Durham City-County Hall, 101 City Hall Plaza, Durham, NC 27701.	*https://msc.fema.gov/portal/advanceSearch.*	May 13, 2020	370085
Guilford	City of High Point (19–04–4081P).	The Honorable Jay W. Wagner, Mayor, City of High Point , P.O. Box 230, High Point, NC 27261.	City Hall, 211 South Hamilton Street, High Point, NC 27261.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2020	370113
Oklahoma: Canadian.	City of Oklahoma City (19–06–3335P).	The Honorable David Holt, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, OK 73102.	Department of Public Works, 420 West Main Street, Suite 700, Oklahoma City, OK 73102.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 7, 2020	405378
South Carolina:						
Charleston ...	City of Isle of Palms (19–04–6832P).	Ms. Desiree Fragoso, City of Isle of Palms Administrator, 1207 Palm Boulevard, Isle of Palms, SC 29451.	Building and Planning Department, 1207 Palm Boulevard, Isle of Palms, SC 29451.	*https://msc.fema.gov/portal/advanceSearch.*	May 4, 2020	455416

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Georgetown	Unincorporated areas of Georgetown County (19–04–6806P).	Mr. Sel Hemingway, Georgetown County Administrator, 716 Prince Street, Georgetown, SC 29440.	Georgetown County Building Department, 129 Screven Street, Georgetown, SC 29440.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 30, 2020	450085
Texas:						
Bexar	City of Live Oak (19–06–2060P).	The Honorable Mary M. Dennis, Mayor, City of Live Oak, 8001 Shin Oak Drive, Live Oak, TX 78233.	Public Works Department, 8001 Shin Oak Drive, Live Oak, TX 78233.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 20, 2020	480043
Bexar	City of San Antonio (18–06–1183P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 20, 2020	480045
Collin	City of Allen (19–06–3850P).	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, 1st Floor, Allen, TX 75013.	Engineering and Traffic Department, 305 Century Parkway, Allen, TX 75013.	*https://msc.fema.gov/portal/advanceSearch.*	May 8, 2020	480131
Collin	City of Celina (19–06–2325P).	The Honorable Sean Terry, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009.	City Hall, 142 North Ohio Street, Celina, TX 75009.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2020	480133
Collin	Unincorporated areas of Collin County (19–06–2325P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2020	480130
Harris	Unincorporated areas of Harris County (19–06–1115P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Engineering Department, 1001 Preston Street, 7th Floor, Houston, TX 77002.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 27, 2020	480287
Tarrant	City of Keller (19–06–3734P).	The Honorable Pat McGrail, Mayor, City of Keller, P.O. Box 770, Keller, TX 76244.	City Hall, 1100 Bear Creek Parkway, Keller, TX 76248.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 16, 2020	480602
Waller	Unincorporated areas of Waller County (19–06–1115P).	The Honorable Carbett ''Trey'' J. Duhon, III, Waller County Judge, 836 Austin Street, Suite 203, Hempstead, TX 77445.	Waller County Engineering Department, 775 Business Highway 290 East, Hempstead, TX 77445.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 27, 2020	480640

[FR Doc. 2020–02459 Filed 2–6–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2010]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA

Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Pima	City of Tucson (19–09–1100P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, 255 West Alameda Street, Tucson, AZ 85701.	Planning and Development Services, Public Works Building, 201 North Stone Avenue, Tucson, AZ 85701.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 21, 2020	040076
Pima	Unincorporated Areas of Pima County (19–09–1762P).	The Honorable Richard Elías, Chairman, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 20, 2020	040073
Pima	Unincorporated Areas of Pima County (19–09–2213P).	The Honorable Richard Elías, Chairman, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 24, 2020	040073
California:						
San Luis Obispo.	City of Morro Bay (18–09–0960P).	The Honorable John Headding, Mayor, City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442.	City Hall, 595 Harbor Street, Morro Bay, CA 93442.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 21, 2020	060307
Shasta	City of Redding (19–09–0032P).	The Honorable Julie Winter, Mayor, City of Redding, 777 Cypress Avenue, 3rd Floor, Redding, CA 96001.	Permit Center Division, 777 Cypress Avenue, 1st Floor, Redding, CA 96001.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2020	060360
Shasta	Unincorporated Areas of Shasta County (19–09–0032P).	The Honorable Leonard Moty, Chairman, Board of Supervisors, Shasta County, 1450 Court Street, Suite 308B, Redding, CA 96001.	Shasta County, Public Works Department, 1855 Placer Street, Redding, CA 96001.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2020	060358
Florida: St. Johns	Unincorporated Areas of St. Johns County (19–04–5378P).	The Honorable Jeb S. Smith, Chair, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	May 5, 2020	125147
Illinois:						
Will	Unincorporated Areas of Will County (19–05–4930P).	The Honorable Lawrence M. Walsh, County Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 24, 2020	170695

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Will	Village of Mokena (19–05–4930P).	The Honorable Frank Fleischer, Village President, Village of Mokena, 11004 Carpenter Street, Mokena, IL 60448.	Village Hall, 11004 Carpenter Street, Mokena, IL 60448.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 24, 2020	170705
Indiana:						
Hancock	Unincorporated Areas of Hancock County (19–05–3686P).	Mr. John Jessup, Commissioner, Hancock County, 111 South American Legion Place, Suite 219 Greenfield, IN 46140.	Hancock County Government Building, 111 South American Legion Place, Greenfield, IN 46140.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 24, 2020	180419
Marion	City of Lawrence (19–05–3686P).	The Honorable Steve Collier Mayor, City of Lawrence, 9001 East 59th Street, Lawrence, IN 46216.	City Hall, 9001 East 59th Street, Lawrence, IN 46216.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 24, 2020	180160
Kansas: Leavenworth.	Unincorporated Areas of Leavenworth County (19–07–1449P).	The Honorable Doug Smith, Chairman, Board of Leavenworth County Commissioners, County Courthouse, 300 Walnut Street, Suite 225, Leavenworth, KS 66048.	City Hall, 100 North 5th Street, Leavenworth, KS 66048.	*https://msc.fema.gov/portal/advanceSearch.*	May 8, 2020	200186
Nevada: Washoe	City of Reno (19–09–0890P).	The Honorable Hillary Schieve, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	City Hall, 1 East 1st Street, Reno, NV 89501.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2020	320020
New York: Onondaga.	Town of Camillus (19–02–0665P).	Ms. Mary Ann Coogan Supervisor, Town of Camillus, 4600 West Genesee Street, Syracuse, NY 13219.	Town Hall, 4600 West Genesee Street, Syracuse, NY 13219.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 19, 2020	360570
Texas:						
Tarrant	City of Fort Worth (19–06–1628P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2020	480596
Tarrant	City of Fort Worth (19–06–4087P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2020	480596
Washington: King	City of Auburn (19–10–0993P).	The Honorable Nancy Backus, Mayor, City of Auburn, 25 West Main Street, Auburn, WA 98001.	City Hall, 25 West Main Street, Auburn, WA 98001.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2020	530073

[FR Doc. 2020–02460 Filed 2–6–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2007]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 7, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2007, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Forrest County, Mississippi and Incorporated Areas Project: 16–04–8534S Preliminary Date: June 28, 2019	
City of Hattiesburg	City Hall, 200 Forrest Street, Hattiesburg, MS 39401.
City of Petal	Building Department, 101 West 8th Avenue, Petal, MS 39465.
Unincorporated Areas of Forrest County	Forrest County Chancery Building, 641 Main Street, Hattiesburg, MS 39401.
Greene County, Mississippi and Incorporated Areas Project: 16–04–8534S Preliminary Date: June 28, 2019	
Town of McLain	Town Hall, 106 South Church Avenue, McLain, MS 39456.
Unincorporated Areas of Greene County	Greene County Emergency Management, 401 McInnis Avenue, Leakesville, MS 39451.
Jones County, Mississippi and Incorporated Areas Project: 16–04–8534S Preliminary Date: June 28, 2019	
City of Ellisville	City Hall, 110 North Court Street, Ellisville, MS 39437.
City of Laurel	City Hall, 401 North 5th Avenue, Laurel, MS 39440.
Unincorporated Areas of Jones County	Jones County Circuit Court, 415 North 5th Avenue, Laurel, MS 39440.
Perry County, Mississippi and Incorporated Areas Project: 16–04–8534S Preliminary Date: June 28, 2019	
Town of Richton	City Hall, 206 Dogwood Avenue East, Richton, MS 39476.
Unincorporated Areas of Perry County	Perry County Board of Supervisors Administration Building, 101 Main Street, New Augusta, MS 39462.

[FR Doc. 2020–02461 Filed 2–6–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2019–N171; FXES11130600000–201–FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments by March 9, 2020.

ADDRESSES: *Document availability and comment submission:* Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TE123456):

- *Email: permitsR6ES@fws.gov.*
- *U.S. Mail:* Marjorie Nelson, Chief, Division of Ecological Services, U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 670, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Recovery Permits Coordinator, Ecological Services, 303–236–4224 (phone), or *permitsR6ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Take activity	Permit action
TE00670A–5	South Dakota Department Game Fish and Parks, Pierre, SD.	• Topeka shiner (*Notropis topeka*).	SD	Capture, handle, mark, insert PIT tags, clip fins, and release.	Renew.
TE26376D–0	Steven C. Forrest, Truckee, CA.	• Black-footed ferret (*Mustela nigripes*).	AZ, CO, KS, MT, NM, SD, UT, WY	Pursue for presence/absence surveys, capture, mark, vaccinate, release, reintroduce, and monitor populations.	New.
TE06665B–0	Utah Division of Wildlife Resources.	• Woundfin (*Plagopterus argentissimus*).	UT	Capture, handle, measure, reintroduce, insert VIE tags, tissue sample for genetic analysis, and release.	New.
TE069300–2	Nebraska Game and Parks Commission.	• Pallid sturgeon (*Scaphirhynchus albus*).	NE, SD, IA, KS, MO	Capture, handle, measure, insert PIT tags, tissue sample for genetic analysis, and release.	Amend.
TE207946–3	Bureau of Reclamation, Denver Federal Center.	• New Mexico meadow jumping mouse (*Zapus hudsonius luteus*).	CO	Capture, handle, measure	Renew.
TE56902B–1	Bureau of Reclamation, Denver, CO.	• Pallid sturgeon (*Scaphirhynchus albus*).	MT, ND	Capture, handle, measure, insert PIT tags, tissue sample for genetic analysis, release, broodstock collection, and translocation.	Renew.
TE66335D–0	Martin & Nicholson Environmental Consultants, LLC.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CO, UT	Pursue for presence/absence surveys.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Small,

Assistant Regional Director, U.S. Fish and Wildlife Service Department of the Interior Unified Regions 5 and 7.

[FR Doc. 2020–02384 Filed 2–6–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF02000.L51100000.GL0000. LVEMC1700600.17X]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Competitive Mineral Materials Sale at Parkdale, Fremont County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Royal Gorge Field Office, Cañon City, Colorado, has prepared a Draft Environmental Impact Statement (EIS), for the Proposed Competitive Mineral Materials Sale (COC–078119) at Parkdale, Fremont County, CO and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases and the BLM National NEPA Register at: *https://eplanning.blm.gov/.*

ADDRESSES: Comments related to the Proposed Competitive Mineral Materials Sale (COC–078119) at Parkdale, Fremont County, Colorado, must be submitted by any of the following methods:

- Electronic comments must be submitted via the BLM ePlanning website at *https://go.usa.gov/xy6tn.*
- Hard copy comments must be submitted via mail or hand-delivered to BLM Royal Gorge Field Office, 3028 East Main Street, Canon City, CO 81212.

Copies of the Draft EIS are available at this same street address or on the BLM ePlanning website at *https://go.usa.gov/xy6tn.* Click the ''Documents & Reports'' link on the left side of the screen to find the electronic version of the document.

FOR FURTHER INFORMATION CONTACT: Stephanie Carter, Geologist, 719–269–8551; 3028 East Main Street, Canon City, CO 81212; email: *sscarter@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Carter during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has prepared a Draft EIS to evaluate an application submitted by Martin Marietta Materials, Inc. for a contract to mine 400-million net tons of aggregate reserves located on BLM-managed lands, adjacent to their existing hard rock quarry northwest of Cañon City, Colorado. The aggregate reserves consist of a granodiorite bedrock that will be mined utilizing blasting, crushing, and screening methods. The mining activity would be conducted on up to approximately 700 acres of BLM lands for up to 100 years, at a production of 4-million tons annually. The aggregate would be used in the production of asphalt and concrete, as well as for a source of railroad ballast. The current mine is the only rail-served aggregate mine in Colorado. The BLM mineral material reserves would sustain uninterrupted supplies of aggregate to meet future demands in southern Colorado and adjacent areas.

The formal public scoping process for the Draft EIS began July 31, 2019, with the publication of a Notice of Intent in the **Federal Register** (84 FR 37334). The BLM held one open-house scoping meeting in Cañon City, Colorado, on August 15, 2019. The public-scoping comments helped the BLM identify relevant issues and frame the scope of analysis in the Draft EIS.

Relevant issues considered in the Draft EIS include understanding the types and amounts of air pollutants that would be emitted and the potential effects to public health and the environment. In addition, the analysis focused on the proposal and its possible effects on the inventoried wilderness characteristics, water (quality and quantity), visual resources, as well as local and regional economies in the area. Evaluating the availability and quality of key wildlife and plant habitat, as possibly impacted by the proposal was also a key issue in the Draft EIS.

The Draft EIS does not have a preferred alternative and evaluates in detail the Proposed Action (Alternative A), the No Action Alternative (Alternative B) and one action alternative (Alternative C). A preferred alternative will be identified after reviewing public comments and input from cooperating agencies. After the public comment period closes, the BLM will prepare the Final EIS, which may reflect changes or adjustments based on information received during public comment on the Draft EIS, new information, or changes in BLM policies or priorities. The Final EIS may include objectives and actions described in any of the alternatives analyzed in the Draft EIS.

The requested sale is for aggregate material consisting of a granite bedrock that would be mined utilizing blasting, crushing, and screening methods. Reclamation would be ongoing, following mining activity in an area, as soon as conditions would be feasible. Details of Alternative A include: Mined material would be used for concrete, asphalt and railroad ballast products and would take place on approximately 700 acres of BLM-administered public lands for up to 100 years; the southwestern boundary of the proposed mining area would border the Arkansas River Canyonlands Areas of Critical Environmental Concern (ACEC); surface mining would progress in five phases; mining direction for each phase would be from northwest to southeast, creating a ''mine from behind'' visual scenario from the Highway 50 corridor. Alternative B involves the continuation of surface mining on the existing private aggregate reserves, anticipated to last 15–30 years, with aggregate produced only for concrete and asphalt products. Alternative B consists of three phases, with the mining direction for phases 1 and 2 being west to east and phase 3 being north to south. Details on Alternative C include: Mined material would be used for concrete, asphalt and railroad ballast products and would take place on approximately 633 acres of BLM-administered public lands for up to 100 years; the boundary of this footprint would not border the Arkansas River Canyonlands ACEC; surface mining would progress in six phases; mining direction for each phase would vary, so a ''mine from behind'' visual scenario from the Highway 50 corridor may not always be achieved.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the address listed previously during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Jamie E. Connell,

Colorado State Director.

[FR Doc. 2020–02341 Filed 2–6–20; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1465 (Preliminary)]

4th Tier Cigarettes From Korea

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 there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of 4th tier cigarettes from Korea, provided for in subheading 2402.20.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'').[2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigation. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On December 18, 2019, the Coalition Against Korean Cigarettes, Xcaliber International, Pryor, Oklahoma, and Cheyenne International, Grover, North Carolina filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 4th Tier Cigarettes from Korea. Accordingly, effective December 18, 2019, the Commission instituted antidumping duty investigation No. 731–TA–1465 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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** on December 26, 2019 (84 FR 70997). The conference was held in Washington, DC, on January 8, 2020, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determination in this investigation on February 3, 2020. The views of the Commission are contained in USITC Publication 5016 (February 2020), entitled *4th Tier Cigarettes from Korea: Investigation No. 731–TA–1465 (Preliminary).*

By order of the Commission.

Issued: February 4, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–02451 Filed 2–6–20; 8:45 am]

BILLING CODE 7020–02–P

[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] *4th Tier Cigarettes from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation;* 85 FR 2390, January 15, 2020.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–632–635 and 731–TA–1466–1468 (Preliminary)]

Fluid End Blocks From China, Germany, India, and Italy

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fluid end blocks from Germany, India, and Italy, provided for in subheadings 7218.91.00, 7218.99.00, 7224.90.00, 7326.19.00, 7326.90.86, and 8413.91.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the Governments of China, Germany, India, and Italy.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[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] 85 FR 2385 and 85 FR 2394 (January 15, 2020).

Background

On December 19, 2019, Ellwood City Forge Company, Ellwood Quality Steels Company, and Ellwood National Steel Company, Ellwood City, Pennsylvania; A. Finkl & Sons, Chicago, Illinois; and FEB Fair Trade Coalition, Cleveland, Ohio, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of fluid end blocks from China, Germany, India, and Italy and LTFV imports of fluid end blocks from Germany, India, and Italy. Accordingly, effective December 19, 2019, the Commission instituted countervailing duty investigation Nos. 701–TA–632–635 and antidumping duty investigation Nos. 731–TA–1466–1468 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 December 27, 2019 (84 FR 71462). The conference was held in Washington, DC, on January 9, 2020, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on February 3, 2020. The views of the Commission are contained in USITC Publication 5017 (February 2020), entitled *Fluid End Blocks from China, Germany, India, and Italy: Investigation Nos. 701–TA–632–635 and 731–TA–1466–1468 (Preliminary).*

By order of the Commission.

Issued: February 3, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–02420 Filed 2–6–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0000]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Contractor Drug Use Statement

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 7, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Sean Vereault, Deputy Chief Inspector, Office of Security Programs, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This information Collection

1. *Type of Information Collection:* Proposed collection.

2. *The Title of the Form/Collection:* Contractor Drug Use Statement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is the DEA–344. The sponsoring component is the Drug Enforcement Administration.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public is Drug Enforcement Administration contractors and Task Force Officers. DEA enforces compliance with the National Security Adjudicative Guidelines and Homeland Presidential Directive–12 (HSPD–12) through the use of the ''Contractor Drug use Statement''.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2250 respondents will complete the application in approximately 5 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 187.5 hours. It is estimated that applicants will take 5 minutes to complete the questionnaire. The burden hours for collecting respondent data sum to 187.5 hours (2250 respondents × 5 minutes = 11,250 hours. 11,250/60 seconds = 187.5).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: February 4, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–02475 Filed 2–6–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed; Amended Consent Decree Under the Clean Air Act

On February 3, 2020, the Department of Justice lodged a proposed Amended Consent Decree with the United States District Court for the Western District of Arkansas in the lawsuit entitled *United States, et al.* v. *Georgia Pacific Chemicals LLC, Georgia Pacific Consumer Operations LLC,* Case No. 1:18–cv–01076–SOH.

The proposed Amended Consent Decree resolves the United States' and the Arkansas Department of Environmental Quality's (''ADEQ'') claims under Sections 113(b)(2) and 112(r) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b)(2) and 7412(r), as well as Arkansas Code Annotated §§ 8–4–103 *et seq.,* that Settling Defendants violated the New Source Performance Standards, National Emission Standards for

Hazardous Air Pollutants and the Chemical and Accident Prevention Provisions for Air Programs at their chemical and paper/pulp plants located in Crossett, Arkansas. Under the proposed Amended Consent Decree, which amends the Consent Decree that was lodged originally on December 14, 2018, Settling Defendants have agreed to pay a penalty of $600,000, and implement three substitute Supplemental Environmental Projects valued at $1.8 million to resolve the governments' claims.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *Georgia Pacific Chemicals LLC, Georgia Pacific Consumer Operations LLC,* Case No. 1:18–cv–01076–SOH, D.J. Ref. No. 90–5–2–1–11705. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* 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 $13.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–02419 Filed 2–6–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Announcing Elimination of Electronic Devices in the DOL Lock-Up Facility for Participating News Media Organizations With Pre-Release Access to Statistical Information

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) plans to eliminate use of all electronic devices in the lock-up facility and continue to rely on transmission sources readily available to the general public to provide simultaneous data access to all interested users. These sources include agency websites, social media channels, and email subscription lists.

FOR FURTHER INFORMATION CONTACT: Michael Trupo, Deputy Assistant Secretary, Office of Public Affairs, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC; 202–693–4676; *trupo.michael@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Management and Budget (OMB) is responsible for the development and oversight of Government-wide policies, principles, standards, and guidelines concerning statistical information presentation and dissemination, as well as the timely release of statistical data. OMB has issued a series of Statistical Policy Directives (SPDs) to guide agencies in their dissemination of statistical products. Each of these SPDs describes the fundamental statistical-system principle of equitable and timely dissemination of statistical information to the public. See, *e.g.,* SPD No. 1, Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units (Dec. 2, 2014) (''the objectivity of the information released to the public is maximized by making information available on an equitable, policy-neutral, transparent, timely, and punctual basis''); SPD No. 3, Compilation, Release, and Evaluation of Principal Federal Economic Indicators (Sept. 25, 1985) (emphasizing the importance of releasing Principal Federal Economic Indicators (PFEIs) to the public in a fair and orderly manner); SPD No. 4, Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies (Mar. 7, 2008) (''Statistical agencies must ensure that all users have equitable and timely access to data that are disseminated to the public''). In short, equitable and timely dissemination of statistical information is a core principle of Federal statistical policy.

For many years, consistent with these Statistical Policy Directives, the news media have aided BLS and ETA in disseminating their statistical data. Since the mid-1980s, DOL agencies have provided pre-release data access to news organizations under strict embargoes (known as ''lock-ups'') for PFEIs, which are a set of designated economic data series (*e.g.,* the Employment Situation and Consumer Price Index) that have significant commercial value and may affect the movement of commodity and financial markets upon release. In addition, DOL has employed lock-ups for the release of limited non-PFEI data (*i.e.,* Unemployment Insurance Weekly Claims). Although not required to do so, the Department of Labor (DOL) in 1988 constructed a special lock-up facility to provide pre-release access to news media organizations. Steps were taken to enhance the security of the lock-up facility in 1992 and again in 2011–2012. The lock-ups provide participating media organizations 30 minutes before official release time to digest PFEI data (and potentially longer in the case of non-PFEIs). At the official release time, the communication lines within the facility are opened, allowing the press to transmit their articles or tables of data to the public.

For many years, dissemination through the lock-up process was a highly effective method to get information to the public. But today, it is no longer the best means to ensure the equitable and timely dissemination of statistical information consistent with OMB's guidance. Continuing security concerns also outweigh any continuing benefits of the current process.

DOL's Inspector General has noted concerns with the current press lock-up process, including in reports dated January 2, 2014 (17–14–001–03–315) and March 25, 2016 (17–16–001–01–001). Specifically, DOL Inspector General Report 17–14–001–03–315 states that the lock-up ''unintentionally creates an unfair competitive advantage for certain news organizations and their clients'':

> Pre-release access of DOL-generated economic data is intended to serve the general public by ensuring that news reports about the data are accurate. To that end, the media are given access to the data in advance of the public release to facilitate their ability to analyze and ask questions about the data as they prepare their news stories. However, the intended purpose of ensuring accurate news reports must be weighed against the inequitable trading advantage that a lock-up

can potentially create. Several news organizations that participate in the DOL press lock-up are able to profit from their presence in the lock-up by selling, to traders, high speed data feeds of economic data formatted for computerized algorithmic trading. Because these news organizations have pre-release access, they are able to pre-load the data . . . allowing their clients to get this information faster than the general public, which has to wait to download the data after it gets posted to the Department of Labor websites.

The aforementioned report further recommends that BLS and ETA, ''. . . implement a strategy designed to eliminate any competitive advantage that news organizations present in the lock-up and/or their clients may have; or, absent a viable solution, consider discontinuing the use of the press lock-up that provides news organizations pre-release access.''

It remains DOL's policy to ensure the media are given time to prepare informed summaries and analysis of economic data for the general public. However, to protect the integrity of our data and promote wide dissemination of key economic data in an equitable, timely, secure, and cost-effective manner, as of March 1, 2020, DOL will eliminate use of all electronic devices in the lock-up facility. The change to eliminate use of all electronic devices in the lock-up facility seeks to minimize the risk of premature disclosure of the data and the risk of providing an unfair monetary advantage over the rest of the public due to the preparation time provided by their early access to the data. Specifically, this change will minimize the advantage of allowing lock-up participants to prepare electronic data tables that may be used for algorithmic trading ventures. The BLS and ETA will continue to make their data available to the general public immediately upon their 8:30 release through the Web and other sources.

II. Action

In an effort to protect the integrity of our data and ensure fairness in the dissemination of statistical information, DOL plans to eliminate use of all electronic devices in the DOL lock-up facility starting on March 1, 2020. After that date, credentialed press will continue to be allowed into the facility 30 minutes prior to release time, following existing security protocols. BLS and ETA staff will be present in the lock-up facility; will provide paper copies of releases and related material; and will be available to answer questions. Credentialed press will be allowed to take notes on paper. At release time, credentialed press will be able to leave the lock-up facility. DOL staff will continue to escort TV press to their camera stations a few minutes before release time, following existing procedures. The purpose of these changes is to ''ensure that all users have equitable and timely access to data that are disseminated to the public'' as noted in OMB Statistical Policy Directive No. 4.

BLS and ETA will provide access to the official news releases at their scheduled release times on the agency websites. In addition, the agencies will continue to announce the releases through social media channels and send the news releases to email subscribers. Agencies will continue to respond to questions about the data from the public following the release as well as questions from the media attending the lock-ups during and after the lock-up time period.

III. Necessity of Action

When DOL began providing embargoed data releases in the mid-1980s, media dissemination was an equitable and timely method to get data to the public. Today, technology and the internet permits the public and interested data users to obtain releases for themselves. Unlike media organizations in the lock-up facility, however, internet users do not have 30 minutes before the official release time to digest the data, and are disadvantaged relative to lock-up participants to the extent that internet postings may lag slightly behind lock-up transmissions. Furthermore, developments in high-speed algorithmic trading technology have also raised concerns about the possible impact of unequal access to sensitive economic data. As discussed above, DOL's Inspector General has issued multiple reports with findings that maintaining the current press lock-up ''creates an unfair competitive advantage for certain news organizations and their clients.''

In the time since the OIG recommendations were issued, BLS and ETA have devoted significant resources to introducing improved technologies that strengthen our infrastructure and ensure data are posted to the BLS or DOL websites immediately following the official release time. With the introduction of these improved technologies, DOL is positioned to eliminate the use of all electronic devices in the lock-up facility while still ensuring that all parties, including the media, commercial entities, and the general public, will have equitable and timely access to our most sensitive data.

Continuing use of electronic devices in the lock-up process also raises considerations of security and cost-efficiency. Given the sensitive nature of DOL's PFEI and limited non-PFEI data, we have devoted significant attention over the years to safeguarding embargoed data to prevent its release out of the lock-up facility prematurely. This has included establishing a secure technical and physical infrastructure, monitoring participants' adherence to the rules, and continually upgrading security as cyber threats have evolved. Despite all these precautions, however, the risk of a premature data release is inherent in the nature of lock-ups and will be present as long as lock-ups exist. Discontinuing the use of electronic devices in the lock-up facility will significantly reduce our risk of premature release from this source.

IV. Result

The intended result of this notice of DOL's planned elimination of the use of electronic devices in the lock-up facility as of March 1, 2020, is to protect the integrity of our data and preserve the public benefit from the informed products produced by the media shortly after release. In addition, it enables DOL to widely disseminate the DOL PFEI and non-PFEI news releases in an equitable, secure, and cost-effective manner so that all data release information is available to the public and the media, simultaneously at the official release time.

The Commerce Department's Bureau of Economic Analysis and U.S. Census Bureau are also committed to the secure, timely, and equitable release of all Principal Federal Economic Indicators. As such, both Bureaus will continue to conduct embargoed media lock-ups at the Department of Labor's facility and will align their procedures with the new process and timeline.

We are advising stakeholders now of this action planned in 2020 to facilitate a predictable and orderly process for stakeholders in the DOL lock-up facility.

Signed at Washington, DC, this 3rd day of February 2020.

William W. Beach,

Commissioner of Labor Statistics.

[FR Doc. 2020–02383 Filed 2–6–20; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Submission for Office of Management and Budget Review: Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, will submit the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA95): Application for International Indemnification. Copies of this ICR, with applicable supporting documentation, may be obtained at *www.reginfo.gov*.

DATES: Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 (202/395–4718), within thirty days of this publication in the **Federal Register**. Copies of any comments should be provided to Patricia Loiko (National Endowment for the Arts, 400 7th Street SW, Washington, DC 20506–0001, email *loikop@arts.gov,* telephone (202/682–5541—this is not a toll-free number; fax (202/682–5721).

The OMB is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION:

The Endowment requests the review of its application guidelines. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Application for International Indemnification.

OMB Number: 3135–0094.

Frequency: Renewed every three years.

Affected Public: Non-profit, tax exempt organizations, and governmental units.

Number of Respondents: 40 per year.

Estimated Time per Respondent: 45 hours.

Estimate Cost per Respondent: $2,097.

Total Burden Hours: 1800.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $121,200.

Description: This application form is used by non-profit, tax-exempt organizations (primarily museums), and governmental units to apply to the Federal Council on the Arts and the Humanities (through the National Endowment for the Arts) for indemnification of eligible works of art and artifacts, borrowed from lenders abroad for exhibition in the United States, from within the United States when the foreign works of art are integral to the exhibition, or sent from the United States for exhibition abroad. The indemnity agreement is backed by the full faith and credit of the United States. In the event of loss or damage to an indemnified object, the Federal Council on the Arts and the Humanities certifies the validity of the claim and requests payment from Congress. 20 U.S.C. 973 *et seq.* requires such an application and specifies information which must be supplied. This statutory requirement is implemented by regulation at 45 CFR ll60.4.

Dated: February 4, 2020.

Gregory Gendron,

Director, Administrative Services Office, National Endowment for the Arts.

[FR Doc. 2020–02463 Filed 2–6–20; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Submission for Office of Management and Budget Review: Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, will submit the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA95): Application for Domestic Indemnification. Copies of this ICR, with applicable supporting documentation, may be obtained at *www.reginfo.gov.*

DATES: Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 (202/395–4718), within thirty days of this publication in the **Federal Register**. Copies of any comments should be provided to Patricia Loiko (National Endowment for the Arts, 400 7th Street SW, Washington, DC 20506–0001, email *loikop@arts.gov,* telephone (202/682–5541—this is not a toll-free number; fax (202/682–5721).

The OMB is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of its application guidelines. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Application for Domestic Indemnification.

OMB Number: 3135–0123.

Frequency: Renewed every three years.

Affected Public: Non-profit, tax exempt organizations, and governmental units.

Number of Respondents: 18 per year.

Estimated Time per Respondent: 40 hours.

Estimate Cost per Respondent: $2,097.

Total Burden Hours: 720.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $121,200.

Description: This application form is used by non-profit, tax-exempt organizations (primarily museums), and governmental units to apply to the Federal Council on the Arts and the Humanities (through the National Endowment for the Arts) for indemnification of eligible works of art and artifacts, borrowed from lenders in the United States for exhibition in United States. The indemnity agreement is backed by the full faith and credit of the United States. In the event of loss or damage to an indemnified object, the Federal Council on the Arts and the Humanities certifies the validity of the claim and requests payment from Congress. 20 U.S.C. 973 *et seq.* requires such an application and specifies information which must be supplied. This statutory requirement is implemented by regulation at 45 CFR ll60.4.

Dated: February 4, 2020.

Gregory Gendron,

Director, Administrative Services Office, National Endowment for the Arts.

[FR Doc. 2020–02462 Filed 2–6–20; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366; NRC–2020–0043]

Southern Nuclear Operating Company: Edwin I. Hatch Nuclear Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a December 16, 2019, request from Southern Nuclear Operating Company to allow periodic updates of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, Updated Final Safety Analysis Reports by August 31 of every even-numbered year and not to exceed 24-months between successive updates.

DATES: The exemption was issued on January 30, 2019.

ADDRESSES: Please refer to Docket ID NRC–2020–0043 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–2020–0043. 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(s) 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 ''Request for Exemption from 10 CFR50.71(e)(4) Final Safety Analysis Report Update Schedule'' is available in ADAMS under Accession No. ADAMS ML19350C266.
- *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: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3100, email: *John.Lamb@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated at Rockville, Maryland, this 3rd day of February 2020.

For the Nuclear Regulatory Commission.

John G. Lamb,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption from UFSAR Schedule for HNP, Units 1 and 2

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–321 and 50–366

Southern Nuclear Operating Company

Edwin I. Hatch Nuclear Plant, Units 1 and 2

Exemption

I. Background

Southern Nuclear Operating Company (SNC, the licensee) is the holder of Facility Operating License Nos. DPR–57 and NPF–5, for the Edwin I. Hatch Nuclear Plant (HNP), Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The HNP facility consists of two boiling-water reactors located at the licensee's site in Appling County, Georgia.

II. Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.71, ''Maintenance of records, making of reports,'' paragraph (e)(4) states, in part, that ''Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided that the interval between successive updates [to the UFSAR] does not exceed 24 months.'' By letter dated December 16, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19350C266), SNC requested that the due date for submittal of HNP, Unit 1, and HNP, Unit 2, UFSARs be by August 31 of every even-numbered year, provided the interval between successive updates does not exceed 24 months.

III. Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR 50.71(e)(4) when: (1) The exemptions are authorized by law, will not present an undue risk to the public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule.

A. The Exemption is Authorized by Law

In accordance with 10 CFR 50.12, the NRC may grant an exemption from the requirements of 10 CFR part 50 if the exemption is authorized by law. The exemption requested in this instance is authorized by law, because no other

prohibition of law exists to preclude the activities which would be authorized by the exemption. Additionally, even with the granting of the exemption, the underlying purpose of the regulation will continue to be served. The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically update their UFSARs to assure that the UFSARs remain up-to-date such that they accurately reflect the plant design and operation. The rule does not require that licensees review all of the information contained in the UFSAR for each periodic update. Rather, the intent of the rule is for licensees to update only those portions of the UFSAR that have been affected by licensee activities since the previous update. As required by 10 CFR 50.71(e)(4), UFSAR updates shall be submitted within 6 months after each refueling outage provided that the intervals between successive updates do not exceed 24 months. Submitting updates to the HNP, Units 1 and 2, UFSARs by August 31 of even-numbered years and not exceeding 24 months between successive updates continues to meet the intent of the regulation from the perspective of regulatory burden reduction and maintaining UFSAR information up-to-date. Therefore, this exemption request is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically update their UFSARs to assure that the UFSARs remain up-to-date such that they accurately reflect the plant design and operation. The NRC has determined by rule that an update frequency not exceeding 24 months between successive updates is acceptable for maintaining UFSAR content up-to-date. The requested exemption provides an equivalent level of protection to the existing requirements, because it ensures that updates to the HNP, Units 1 and 2, UFSARs are submitted with no greater than 24 months between successive updates. The requested exemption also meets the intent of the rule for regulatory burden reduction. Additionally, based on the nature of the requested exemption and the fact that updates will not exceed 24 months from the last submittal as described above, no new accident precursors are created by the exemption; therefore, neither the probability nor the consequences of postulated accidents are increased. In conclusion, the requested exemption does not result in any undue risk to the public health and safety.

C. The Exemption is Consistent With the Common Defense and Security

The requested exemption from 10 CFR 50.71(e)(4) would allow SNC to submit its periodic updates to the HNP, Units 1 and 2, UFSARs by August 31 of even-numbered years, and not to exceed 24 months from the last submittal. Neither the regulation nor the proposed exemption has any relation to security issues. Therefore, the common defense and security is not impacted by the exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The rule change promulgated in August 1992 (57 FR 39358; August 31, 1992) was intended to provide a reduction in regulatory burden by providing licensees with the option to submit UFSAR updates once per refueling outage, not to exceed 24 months between successive updates, instead of annually. HNP is a two-unit plant, with different refueling outage schedules, and each unit has its own UFSAR. However, the Unit 1 UFSAR extensively references the Unit 2 UFSAR. Therefore, the Unit 1 UFSAR cannot stand alone and the two UFSARs effectively function as a common UFSAR, such that a single schedule for UFSAR updates is appropriate. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii) in that application of the requirements of 10 CFR 50.71(e)(4) in these particular circumstances would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule.

E. Environmental Considerations

With respect to its impact on the quality of the human environment, the NRC has determined that the issuance of the exemption discussed herein meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of 10 CFR chapter I (which includes 10 CFR 50.71(e)(4)) is an action that qualifies for a categorical exclusion.

The NRC staff's determination that all of the criteria for this categorical exclusion are met is as follows:

I. 10 CFR 51.22(c)(25)(i): There is no significant hazards consideration.

Staff Analysis: The criteria for determining whether an action involves a significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the UFSAR. Therefore, there are no significant hazard considerations because granting the exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

II. 10 CFR 51.22(c)(25)(ii): There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

Staff Analysis: The proposed action involves only a schedule change, which is administrative in nature, and does not involve any changes in the types or significant increase in the amounts of any effluents that may be released offsite.

III. 10 CFR 51.22(c)(25)(iii): There is no significant increase in individual or cumulative public or occupational radiation exposure.

Staff Analysis: Since the proposed action involves only a schedule change, which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

IV. 10 CFR 51.22(c)(25)(iv): There is no significant construction impact.

Staff Analysis: Since the proposed action involves only a schedule change, which is administrative in nature, it does not involve any construction impact.

V. 10 CFR 51.22(c)(25)(v): There is no significant increase in the potential for or consequences from radiological accidents.

Staff Analysis: The proposed action involves only a schedule change, which is administrative in nature and does not impact the potential for or consequences from accidents.

VI. 10 CFR 51.22(c)(25)(vi): The requirements from which the exemption is sought involve scheduling requirements and other requirements of an administrative, managerial, or organizational nature.

Staff Analysis: The proposed action involves scheduling requirements and other requirements of an administrative, managerial, or organizational nature because it is associated with the submittal schedule requirements contained in 10 CFR 50.71(e)(4), which stipulate that revisions to the UFSAR must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months.

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption.

IV. Conclusions

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present. Therefore, the NRC hereby grants SNC an exemption from the requirements of 10 CFR 50.71(e)(4) to allow SNC to file its periodic updates to the HNP, Units 1 and 2, UFSAR by August 31 of even-numbered years, and not to exceed 24 months from the last submittal.

Dated at Rockville, Maryland, this 30th day of January, 2020.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–02382 Filed 2–6–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Update to Tier 1 Figure for Steam Generator System and Main Steam System

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 164 and 162 to Combined Licenses (COLs), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on September 27, 2019.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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 *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. 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 *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was designated License Amendment Request (LAR) 19–004 and submitted by letter dated March 29, 2019, and is available in ADAMS under Accession No. ML19088A126.
- *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: Cayetano Santos, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7270; email: *Cayetano.Santos@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing License Amendment Nos. 164 and 162 to COLs NPF–91 and NPF–92, respectively, and is granting an exemption from Tier 1 information in the plant-specific DCD for the AP1000. The AP1000 DCD is incorporated by reference in appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). The exemption, granted pursuant to paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' of 10 CFR part 52, appendix D, allows the licensee to depart from the Tier 1 information. With the requested amendment, SNC sought to change COL Appendix C Figure 2.2.4–1 (Sheet 3) to relocate the auxiliary steam header isolation valve from the same header as the turbine bypass valves to a new header.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML19238A352.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML19238A351 and ML19239A089, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML19238A346 and ML19238A347, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated March 29, 2019, Southern Nuclear Operating Company requested from the Nuclear Regulatory Commission an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in 10 CFR part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 19–004, ''Update to Tier 1 Figure for Steam Generator System and Main Steam System.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found at ADAMS Accession Number ML19238A352, the Commission finds that, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the facility Combined License, as described in the licensee's request dated March 29, 2019. This exemption is related to, and necessary for, the granting of License Amendment No. 164 [for unit 3, 162 for Unit 4], which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession Number ML19238A352), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated March 29, 2019 (ADAMS Accession No. ML19088A126), SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on June 4, 2019 (84 FR 25832). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that SNC requested on March 29, 2019.

The exemptions and amendments were issued on September 27, 2019, as part of a combined package to SNC (ADAMS Accession No. ML19238A345).

Dated at Rockville, Maryland, this 3rd day of February 2020.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Chief, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–02437 Filed 2–6–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–87 and CP2020–86; MC2020–88 and CP2020–87; MC2020–89 and CP2020–88; MC2020–90 and CP2020–89; MC2020–91 and CP2020–90; MC2020–92 and CP2020–91]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 10, 2020 and February 11, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The February 10, 2020 comment due date applies to Docket Nos. MC2020–87 and CP2020–86; MC2020–88 and CP2020–87; MC2020–89 and CP2020–88; MC2020–90 and CP2020–89; MC2020–91 and CP2020–90.

The February 11, 2020 comment due date applies to Docket Nos. MC2020–92 and CP2020–91.

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–87 and CP2020–86; *Filing Title:* USPS Request to Add Priority Mail Contract 588 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 31, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* February 10, 2020.

2. *Docket No(s).:* MC2020–88 and CP2020–87; *Filing Title:* USPS Request to Add Priority Mail Contract 589 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 31, 2020;

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Filing Authority: 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 10, 2020.

3. *Docket No(s).:* MC2020–89 and CP2020–88; *Filing Title:* USPS Request to Add Priority Mail Contract 590 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 31, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* February 10, 2020.

4. *Docket No(s).:* MC2020–90 and CP2020–89; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 140 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 31, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* February 10, 2020.

5. *Docket No(s).:* MC2020–91 and CP2020–90; *Filing Title:* USPS Request to Add Priority Mail Contract 591 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 31, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 10, 2020.

6. *Docket No(s).:* MC2020–92 and CP2020–91; *Filing Title:* USPS Request to Add Priority Mail Contract 592 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 31, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 11, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–02399 Filed 2–6–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88110; File No. SR–CboeEDGX–2020–003]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 14.11 To Permit the Trading, Pursuant to Unlisted Trading Privileges, of Managed Portfolio Shares, Which Are Shares of Actively Managed Exchange-Traded Funds for Which the Portfolio Is Disclosed in Accordance With Standard Mutual Fund Disclosure Rules

February 3, 2020.

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 January 21, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to adopt Rule 14.11 to permit the trading, pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Managed Portfolio Shares and proposed Rule 14.11, where applicable. 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://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), 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

The Exchange proposes to adopt Rule 14.11 to permit the trading, pursuant to unlisted trading privileges (''UTP''), of Managed Portfolio Shares,[5] which substantially conforms to Cboe BZX Exchange, Inc. (''BZX'') Rule 14.11(k).[6] Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Managed Portfolio Shares and proposed Rule 14.11, where applicable.

The Exchange does not currently list any securities as a primary listing market. Consistent with this fact, Exchange Rule 14.1(a) currently states that all securities traded on the Exchange are traded pursuant to UTP and that the Exchange will not list any securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rules 10A–3[7] (''Rule 10A–3'') and 10C–1[8] (''Rule 10C–1'') under the Act. Therefore, the provisions of existing Rules 14.2

[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).

[5] Managed Portfolio Shares are actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

[6] *See* Securities and Exchange Act Release No. 87759 (December 16, 2019) 84 FR 70223 (December 20, 2019) (SR–CboeBZX–2019–047) (the ''BZX Approval Order'').

[7] Rule 10A–3 obligates the Exchange to prohibit the initial or continued listing of any security of an issuer that is not in compliance with certain required standards. *See* 17 CFR 240.10A–3.

[8] Rule 10C–1 obligates the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the issuer's board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. *See* 17 CFR 240.10C–1.

through 14.9 and proposed Rule 14.11 that permit the listing of certain Equity Securities [9] will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A–3 and 10C–1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Considering the foregoing, the Exchange proposes to adopt Rule 14.11 as set forth below.

Proposed Listing Rules

Proposed Rule 14.11(a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Managed Portfolio Shares that meet the criteria of Rule 14.11.[10]

Proposed Rule 14.11(b) provides that Rule 14.11 is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 14.11, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.11(b) provides further that Managed Portfolio Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares.

Proposed Rule 14.11(b)(2) provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.[11]

Proposed Rule 14.11(b)(3) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

Proposed Rule 14.11(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Rule 14.11(b)(5) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

Proposed Rule 14.11(c)(1) defines the term ''Managed Portfolio Share'' as a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N–1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.[12]

Proposed Rule 14.11(c)(2) defines the term ''Verified Intraday Indicative Value'' (''VIIV'') as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours by the Reporting Authority.

Proposed Rule 14.11(c)(3) defines the term ''AP Representative'' as an unaffiliated broker-dealer with which an

[9] As provided in Rule 14.1(a), the term ''Equity Security'' means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts and Equity-Linked Debt Securities. Further, the Exchange now proposes to include the term ''Managed Portfolio Shares'' to the definition of Equity Security.

[10] The Exchange notes that the unique components of Managed Portfolio Shares were addressed in an amended application for exemptive relief that was filed on April 4, 2019 (the ''Application'') and for which public notice was issued on April 8, 2019 (the ''Notice'') (File No. 812–14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC (''Precidian''); Precidian ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the ''Order'' and, collectively, with the Application and the Notice, the ''Exemptive Order''). Specifically, the Notice stated that the Commission ''believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV. The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are larger than those of comparable, fully transparent ETFs. Nonetheless, as long as arbitrage continues to keep the ActiveShares ETF's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.'' *See* Investment Company Act Release Nos. 33440.

[11] As defined in Rule 1.5(y), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[12] For purposes of this filing, references to a series of Managed Portfolio Shares are referred to interchangeably as a series of Managed Portfolio Shares or as a ''Fund'' and shares of a series of Managed Portfolio Shares are generally referred to as the ''Shares''.

Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

Proposed Rule 14.11(c)(4) defines the term ''Confidential Account'' as an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Proposed Rule 14.11(c)(5) defines the term ''Creation Basket'' as on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Proposed Rule 14.11(c)(6) defines the term ''Creation Unit'' as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

Proposed Rule 14.11(c)(7) defines the term ''Redemption Unit'' as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an AP in return for a portfolio of instruments and/or cash.

Proposed Rule 14.11(c)(8) defines the term ''Reporting Authority'' in respect of a particular series of Managed Portfolio Shares as the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to UTP), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value (the ''NAV''), the VIIV, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(c)(9) provides that the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(d)(1) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 14.11(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Rule 14.11(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.11(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(d)(2)(B) provides that the Exchange will consider the suspension of trading in or removal from listing of or termination of UTP for a series of Managed Portfolio Shares under any of the following circumstances: (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Rule 14.11(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940 (the ''1940 Act''), or such holdings are not made available to all market participants at the same time pursuant to Rule 14.11(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to 14.11(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Rule 14.11 are not continuously maintained; or (vii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[13]

[13] The Exchange notes that the Application provides that the Investment Company or their

Continued

Proposed Rule 14.11(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

Proposed Rule 14.11(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

Proposed Rule 14.11(e), which relates to limitation of Exchange liability, provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 14.11(f), which relates to disclosures, provides that the provisions of paragraph (f) apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).''

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, similar to Investment Company Units (as defined in Rule 14.2), and more specifically managed fund shares.[14] Managed Portfolio Shares differ from managed fund shares in the following important respects.[15] The primary listing market

agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Application and Notice, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during Regular Trading Hours in order to ensure the accuracy of the Verified Intraday Indicative Value.

[14] ''Managed fund shares'' are a type of Investment Company Unit. While not defined by Exchange Rules, BZX Rule 14.11(i) defines a managed fund share as ''a security that (i) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.''

[15] The Exchange notes that these unique components of Managed Portfolio Shares were addressed in an amended application for exemptive relief that was filed on April 4, 2019 (the ''Application'') and for which public notice was issued on April 8, 2019 (the ''Notice'') (File No. 812–14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC (''Precidian''); Precidian ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the ''Order'' and, collectively, with the Application and the Notice, the ''Exemptive Order''). Specifically, the Notice stated that the Commission ''believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV. The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are larger than those of comparable, fully transparent ETFs. Nonetheless, as long as arbitrage continues to

for a series of managed fund shares generally requires daily dissemination of the ''disclosed portfolio''.[16] In contrast to managed fund shares, the portfolio for a series of Managed Portfolio Shares will be disclosed at least quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.[17] The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described further below in ''Creation and Redemption of Shares'') without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, an estimated value—the VIIV—that reflects an estimated intraday value of a fund's portfolio will be disseminated. Specifically, the VIIV will be based upon all of a series' holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value as long as a VIIV is disseminated in one second intervals,[18] and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[19] For Managed Portfolio Shares, market makers may use the knowledge of a Fund's means of achieving its investment objective, as described in the applicable Fund registration statement (the ''Registration Statement''), to construct a hedging proxy for a Fund to manage a market maker's quoting risk in connection with trading Fund Shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge[20] of a fund's underlying portfolio.[21] This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, *i.e.* the Deposit Instruments or ''Redemption Instruments'' and the estimated ''Balancing Amount'' (if any),[22] for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a Fund, as described below.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected

keep the ActiveShares ETF's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.'' *See* Investment Company Act Release Nos. 33440 and 33477.

[16] *See e.g.,* BZX Rule 14.11(i)(3)(B) which defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the business day. BZX Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[17] Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[18] The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: ''The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV.'' *See* the Notice at 19.

[19] Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Managed Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

[20] Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund's portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem Shares on its behalf.

[21] APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3–1, will be disclosed daily on each Fund's website.

[22] The Balancing Amount is the cash amount necessary for the applicable Fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

through a Confidential Account [23] with an AP Representative,[24] which will be a broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.[25] An AP must be a Depository Trust Company (''DTC'') Participant that has executed a ''Participant Agreement'' with the applicable distributor (the ''Distributor'') with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP. The Funds will offer and redeem Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. In order to keep costs low and permit Funds to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances required or determined permissible by the Fund, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and APs redeeming their Shares will receive an in-kind transfer of Redemption Instruments through the AP Representative in their Confidential Account.[26]

In the case of a creation, the AP [27] would enter into an irrevocable creation order with a Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable Fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a Fund. Rather, if other market participants wish to create or redeem Shares in a Fund, they will have to do so through an AP.

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund's prospectus or Statement of Additional Information (''SAI''). The NAV of each Fund is expected to be determined once each business day at a time determined by the board of the Investment Company (''Board''), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the ''Valuation Time''). Each Fund will establish a cut-off time (''Order Cut-Off Time'') for purchase orders in proper form. To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time.

Purchases of Shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per Share purchased plus applicable ''Transaction Fees,'' as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of Regular Trading Hours on the date such order is placed (''Transmittal Date'') in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.[28]

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (''AP Redemption Order''). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase

[23] Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a Fund's Creation Basket or portfolio securities, such as a Fund's custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the Fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

[24] Each AP shall enter into its own separate Confidential Account with an AP Representative.

[25] Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund's Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

[26] Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

[27] An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during Regular Trading Hours.

[28] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e–2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) Any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.[29] Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a Fund's custodian (''Custodian'') will typically deliver securities to the Confidential Account with a value approximately equal to the value of the Shares [30] tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a Fund will deliver cash equal to the value of that security. APs will provide the AP Representative with a list of restricted securities applicable to the AP on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares plus or minus any cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Managed Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Managed Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements.

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Rule 14.11(b)(3), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily portfolio holdings of any series of Managed Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Managed Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

The Exchange notes that the Exemptive Order restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.[31] As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or a substantively identical exemptive order would trade on markets that are a member of Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[32] While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 14.11(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any

[29] The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with the Fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

[30] If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable Fund will receive or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

[31] As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could invest in directly, or in the case of an index future, based on an index of a type of asset that the Fund could invest in directly. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e–4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions. *See* Notice at 12, footnote 24.

[32] For a list of the current members of ISG, see *www.isgportal.com.* The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (i) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares) (collectively, ''Availability of Information Halts''). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

Availability of Information

As noted above, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the VIIV, as defined in proposed Rule 14.11(c)(2), will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours.

Trading Rules

The Exchange deems Managed Portfolio Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Managed Portfolio Shares will trade on the Exchange only during Regular Trading Hours as provided in proposed Rule 14.11(b)(2). As provided in Exchange Rule 11.6(i), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Information Circular

Prior to the commencement of trading of a series of Managed Portfolio Shares, the Exchange will inform its members in an Information Circular (''Circular'') of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) EDGX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the VIIV is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

Proposed Amendments to Rule 14.1(a)

Based on the Exchange's proposal to adopt Rule 14.11, the Exchange also seeks to make corresponding changes to Rule 14.1(a). Specifically, Rule 14.1(a) currently provides that the provisions of Rules 14.2 through 14.9 that permit the listing of certain Equity Securities will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A–3 and 10C–1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Therefore, the Exchange proposes to amend Rule 14.1(a) to include Rule 14.11 in the aforementioned provision.[33] The Exchange proposes to amend Rule 14.1(a) to include Managed Portfolio Shares in the list of specified Equity Securities.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[34] in general and Section 6(b)(5) of the Act[35] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11 will remove impediments to and perfect the mechanism of a free and open market a national market system. Specifically, the proposed amendment raises no substantive issues that have not otherwise been considered by the Commission in the BZX Approval Order, because this proposal is substantively identical to that proposal, with the exception that the Exchange is only proposing to trade series of Managed Portfolio Shares pursuant to unlisted trading privileges, while BZX is proposing to both list and trade series of Managed Portfolio Shares.

The Exchange also believes that proposed Rule 14.11 is designed to

[33] All relevant securities are listed under Exchange Rule 14.1(a).

[34] 15 U.S.C. 78f.

[35] 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.[36] Proposed Rule 14.11(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 14.11(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Rule 14.11(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(d)(2)(B) provides that the Exchange will consider the suspension of trading in or removal of listing of or termination of UTP for a series of Managed Portfolio Shares under any of the following circumstances: (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 14.11(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 14.11(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 14.11(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Rule 14.11 are not continuously maintained; or (vii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in the series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[37]

Proposed Rule 14.11(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the net asset value, or the holdings are available, as required. Proposed Rule 14.11(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 14.11(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or Statement of Additional Information. The Exchange also notes that the Notice provides that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Managed Portfolio Shares.[38]

Proposed Rule 14.11(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket

[36] Proposed Rule 14.11(d)(2)(C)(ii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

[37] The Exchange notes that the Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted.

[38] *See* Notice at 15.

must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Proposed Rule 14.11(b)(5) provides that, any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.[39]

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 14.11(b)(5)[40] will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund's portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material nonpublic information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal ''fire wall'' requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a Fund's means of achieving its investment objective, even without daily disclosure of a fund's underlying portfolio.[41] The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Market makers also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by market makers were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or

[39] The Exchange notes that the Order dismissed concerns raised by a third party related to potential violation of Section 10(b) of the Act, stating that ''Contrary to the contentions advanced in the third-party submissions, the provision of the basket composition information to the AP Representative or use of that information by the AP Representative as provided for in the Application should not give rise to insider trading violations under section 10(b) of the Exchange Act.'' The notice goes on to say that an AP Representative ''acting as an agent of another broker-dealer (''AP'') will be given information concerning the identity and weightings of the basket of securities that the ETF would exchange for its shares (but not information concerning the issuers of those underlying securities). The AP Representative is provided this information by the ETF so that, pursuant to instructions received from an AP, the AP Representative may undertake the purchase or redemption of the ETF's Shares (in the form of creation units) and the purchase or sale of the basket of securities that are exchanged for creation units. The ETFs will provide this information to an AP Representative on a confidential basis, the AP Representative is subject to a duty of non-disclosure (which includes an obligation not to provide this information to an AP), and the AP Representative may not use the information in any way except to facilitate the operation of the ETF by purchasing or selling the basket of securities and to exchange it with the ETF to complete an AP's orders to purchase or redeem the ETF's Shares. Furthermore, section 15(g) of the Exchange Act requires an AP Representative, as a registered broker, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the AP Representative or any person associated with the AP Representative.'' The Order goes on to say ''For the foregoing reasons, it is found that granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.'' *See* Order at 2, 3, and 4.

[40] As described above, proposed Rule 14.11(b)(5) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

[41] The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: ''The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV.'' *See* the Notice at 19.

redeem in redemption unit size through an AP.

The real-time dissemination of a Fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the Shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets [42] or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.[43]

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which a Fund plans to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.[44]

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for ''free riding'' or ''front-running,'' while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout Regular Trading Hours by the Reporting Authority and/or one or more major market data vendors. The website for each Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in a Circular of the special characteristics and risks associated with trading the Shares.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares and to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange would halt trading under certain circumstances under which trading in the shares of a Fund may be inadvisable. Specifically, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or

[42] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

[43] With respect to trading in the Shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (*e.g.,* general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge—buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

[44] The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and APs, are based on statements in the Exemptive Order, representations by Precidian, and review by the Exchange.

(b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

The Exchange is proposing to retain discretion to halt trading in a series of Managed Portfolio Shares based on market conditions or where the Exchange determines that trading in such series is inadvisable (each a ''Discretionary Halt'') and is also proposing the four Availability of Information Halts described above. The Exchange believes that retaining discretion to implement a Discretionary Halt as specified is consistent with the Act. The proposed rule retaining discretion related to halts is designed to ensure the maintenance of a fair and orderly market and protect investors and the public interest in that it provides the Exchange with the ability to halt when it determines that trading in the shares is inadvisable. This could be based on the Exchange's own analysis of market conditions being detrimental to a fair and orderly market and/or information provided by the Investment Company or its agent. There are certain circumstances related to the trading and dissemination of information related to the underlying holdings of a series of Managed Portfolio Shares, such as the extent to which trading is not occurring in the securities and/or financial instruments composing the portfolio, that the Exchange may not be in a position to know or become aware of as expeditiously as the Investment Company or its agent. Also, as noted above, there are certain circumstances in which the Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares.[45] Upon receipt of information and/or a request from the Investment Company, the Exchange would consider the information and/or circumstances leading to the request as well as other factors both specific to such issue of Managed Portfolio Shares and the broader market in determining whether trading in the series of Managed Portfolio Shares is inadvisable and that halting trading is necessary in order to maintain a fair and orderly market. As such, the Exchange believes that the proposal to provide the Exchange with discretion to implement a Discretionary Halt is consistent with the Act.

The Exchange believes that the proposed Availability of Information Halts to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) The Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate;[46] (ii) the other Availability of Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that Rule 14.1(c)(4)(B) related to trading halts in managed fund shares[47] is intended to address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and orderly market in Managed Portfolio Shares;[48] and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of the funds and to monitor how closely trading in the funds is tracking the value of the underlying portfolio and when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading. The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exemptive Order also restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.[49] As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or substantively identical exemptive order would trade

[45] Specifically, such circumstances include where: (i) The intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations.

[46] *See* Application at 4 and Notice at 11.

[47] Rule 14.1(c)(4)(B) provides that ''For a UTP Derivative Security where a net asset value (and, in the case of managed fund shares or actively managed exchange-traded funds, a ''disclosed portfolio'') is disseminated, the Exchange will immediately halt trading in such security upon notification by the listing market that the net asset value and, if applicable, such disclosed portfolio, is not being disseminated to all market participants at the same time. The Exchange may resume trading in the UTP Derivative Security only when trading in the UTP Derivative Security resumes on the listing market.''

[48] *See, e.g.,* Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017); Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR–AMEX–2006–78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that ''the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities'' and that ''the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs'' and that ''by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs''); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR–NASD–2006–001) (approving generic listing standards for Index-Linked Securities and stating that ''[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities'').

[49] As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could invest in directly, or in the case of an index future, based on an index of a type of asset that the Fund could invest in directly. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e–4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions.

on markets that are a member of Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[50] While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 14.11(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares. The Exchange believes that the proposed amendments to Rule 14.1(a) is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will clarify that the provisions of proposed Rule 14.11 that permit the listing of Equity Securities will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A–3 and 10C–1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Further, the proposed amendment will clarify that Managed Portfolio Shares meets the definition of Equity Security under Exchange Rules.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the trading, pursuant to UTP, of a new type of actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

[50] The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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 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[51] and Rule 19b–4(f)(6) thereunder.[52]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[53] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[54] 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 proposal may become operative upon filing. The Exchange states that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow for the immediate trading, pursuant to UTP, of Managed Portfolio Shares on the Exchange and therefore would provide investors with an additional trading venue option. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[55]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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.

[51] 15 U.S.C. 78s(b)(3)(A).

[52] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–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.

[53] 17 CFR 240.19b–4(f)(6).

[54] 17 CFR 240.19b–4(f)(6)(iii).

[55] 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–CboeEDGX–2020–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2020–003 and should be submitted on or before February 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02415 Filed 2–6–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88112; File No. SR–CboeBYX–2020–003]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 14.11 To Permit the Trading, Pursuant to Unlisted Trading Privileges, of Managed Portfolio Shares, Which Are Shares of Actively Managed Exchange-Traded Funds for Which the Portfolio Is Disclosed in Accordance With Standard Mutual Fund Disclosure Rules

February 3, 2020.

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 January 21, 2020, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to adopt Rule 14.11 to permit the trading, pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Managed Portfolio Shares and proposed Rule 14.11, where applicable. 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://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), 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

The Exchange proposes to adopt Rule 14.11 to permit the trading, pursuant to unlisted trading privileges (''UTP''), of Managed Portfolio Shares,[5] which substantially conforms to Cboe BZX Exchange, Inc. (''BZX'') Rule 14.11(k).[6] Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Managed Portfolio Shares and proposed Rule 14.11, where applicable.

The Exchange does not currently list any securities as a primary listing market. Consistent with this fact, Exchange Rule 14.1(a) currently states that all securities traded on the Exchange are traded pursuant to UTP and that the Exchange will not list any securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rules 10A–3[7] (''Rule 10A–3'') and 10C–1[8] (''Rule 10C–1'') under the Act. Therefore, the provisions of existing Rules 14.2 through 14.9 and proposed Rule 14.11 that permit the listing of certain Equity Securities[9] will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A–3 and 10C–1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Considering the foregoing, the Exchange proposes to adopt Rule 14.11 as set forth below.

Proposed Listing Rules

Proposed Rule 14.11(a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Managed Portfolio Shares that meet the criteria of Rule 14.11.[10]

[56] 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).

[5] Managed Portfolio Shares are actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

[6] *See* Securities and Exchange Act Release No. 87759 (December 16, 2019) 84 FR 70223 (December 20, 2019) (SR–CboeBZX–2019–047) (the ''BZX Approval Order'').

[7] Rule 10A–3 obligates the Exchange to prohibit the initial or continued listing of any security of an issuer that is not in compliance with certain required standards. *See* 17 CFR 240.10A–3.

[8] Rule 10C–1 obligates the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the issuer's board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. *See* 17 CFR 240.10C–1.

[9] As provided in Rule 14.1(a), the term ''Equity Security'' means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts and Equity-Linked Debt Securities. Further, the Exchange now proposes to include the term ''Managed Portfolio Shares'' to the definition of Equity Security.

[10] The Exchange notes that the unique components of Managed Portfolio Shares were addressed in an amended application for exemptive relief that was filed on April 4, 2019 (the ''Application'') and for which public notice was issued on April 8, 2019 (the ''Notice'') (File No. 812–14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC (''Precidian''); Precidian ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the ''Order'' and, collectively, with the Application and the Notice, the ''Exemptive Order''). Specifically, the Notice stated that the Commission ''believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV. The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are

Proposed Rule 14.11(b) provides that Rule 14.11 is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 14.11, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.11(b) provides further that Managed Portfolio Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares.

Proposed Rule 14.11(b)(2) provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.[11]

Proposed Rule 14.11(b)(3) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

Proposed Rule 14.11(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Rule 14.11(b)(5) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

Proposed Rule 14.11(c)(1) defines the term ''Managed Portfolio Share'' as a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N–1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.[12]

Proposed Rule 14.11(c)(2) defines the term ''Verified Intraday Indicative Value'' (''VIIV'') as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours by the Reporting Authority.

Proposed Rule 14.11(c)(3) defines the term ''AP Representative'' as an unaffiliated broker-dealer with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

Proposed Rule 14.11(c)(4) defines the term ''Confidential Account'' as an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Proposed Rule 14.11(c)(5) defines the term ''Creation Basket'' as on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Proposed Rule 14.11(c)(6) defines the term ''Creation Unit'' as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a

larger than those of comparable, fully transparent ETFs. Nonetheless, as long as arbitrage continues to keep the ActiveShares ETF's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.'' *See* Investment Company Act Release Nos. 33440.

[11] As defined in Rule 1.5(w), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[12] For purposes of this filing, references to a series of Managed Portfolio Shares are referred to interchangeably as a series of Managed Portfolio Shares or as a ''Fund'' and shares of a series of Managed Portfolio Shares are generally referred to as the ''Shares''.

designated portfolio of instruments and/or cash.

Proposed Rule 14.11(c)(7) defines the term ''Redemption Unit'' as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an AP in return for a portfolio of instruments and/or cash.

Proposed Rule 14.11(c)(8) defines the term ''Reporting Authority'' in respect of a particular series of Managed Portfolio Shares as the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to UTP), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value (the ''NAV''), the VIIV, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(c)(9) provides that the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(d)(1) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 14.11(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Rule 14.11(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.11(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(d)(2)(B) provides that the Exchange will consider the suspension of trading in or removal from listing of or termination of UTP for a series of Managed Portfolio Shares under any of the following circumstances: (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Rule 14.11(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940 (the ''1940 Act''), or such holdings are not made available to all market participants at the same time pursuant to Rule 14.11(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to 14.11(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Rule 14.11 are not continuously maintained; or (vii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[13]

Proposed Rule 14.11(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

Proposed Rule 14.11(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company

[13] The Exchange notes that the Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Application and Notice, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during Regular Trading Hours in order to ensure the accuracy of the Verified Intraday Indicative Value.

prospectus and/or statement of additional information.

Proposed Rule 14.11(e), which relates to limitation of Exchange liability, provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 14.11(f), which relates to disclosures, provides that the provisions of paragraph (f) apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).''

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, similar to Investment Company Units (as defined in Rule 14.2), and more specifically managed fund shares.[14] Managed Portfolio Shares differ from managed fund shares in the following important respects.[15] The primary listing market for a series of managed fund shares generally requires daily dissemination of the ''disclosed portfolio''.[16] In contrast to managed fund shares, the portfolio for a series of Managed Portfolio Shares will be disclosed at least quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.[17] The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described further below in ''Creation and Redemption of Shares'') without disclosing the identity of such securities to the AP.

[14] ''Managed fund shares'' are a type of Investment Company Unit. While not defined by Exchange Rules, BZX Rule 14.11(i) defines a managed fund share as ''a security that (i) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.''

[15] The Exchange notes that these unique components of Managed Portfolio Shares were addressed in an amended application for exemptive relief that was filed on April 4, 2019 (the ''Application'') and for which public notice was issued on April 8, 2019 (the ''Notice'') (File No. 812–14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC (''Precidian''); Precidian ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the ''Order'' and, collectively, with the Application and the Notice, the ''Exemptive Order''). Specifically, the Notice stated that the Commission ''believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV. The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are larger than those of comparable, fully transparent ETFs. Nonetheless, as long as arbitrage continues to keep the ActiveShares ETF's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.'' *See* Investment Company Act Release Nos. 33440 and 33477.

[16] *See e.g.,* BZX Rule 14.11(i)(3)(B) which defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the business day. BZX Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[17] Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

For each series of Managed Portfolio Shares, an estimated value—the VIIV—that reflects an estimated intraday value of a fund's portfolio will be disseminated. Specifically, the VIIV will be based upon all of a series' holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value as long as a VIIV is disseminated in one second intervals,[18] and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[19] For Managed Portfolio Shares, market makers may use the knowledge of a Fund's means of achieving its investment objective, as described in the applicable Fund registration statement (the ''Registration Statement''), to construct a hedging proxy for a Fund to manage a market maker's quoting risk in connection with trading Fund Shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge[20] of a fund's underlying portfolio.[21] This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, *i.e.,* the Deposit Instruments or ''Redemption Instruments'' and the estimated ''Balancing Amount'' (if any),[22] for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a Fund, as described below.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a Confidential Account[23] with an AP Representative,[24] which will be a broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.[25] An AP must be a Depository Trust Company (''DTC'') Participant that has executed a ''Participant Agreement'' with the applicable distributor (the ''Distributor'') with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP. The Funds will offer and

[18] The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: ''The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV.'' *See* the Notice at 19.

[19] Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Managed Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

[20] Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund's portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem Shares on its behalf.

[21] APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3–1, will be disclosed daily on each Fund's website.

[22] The Balancing Amount is the cash amount necessary for the applicable Fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

[23] Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a Fund's Creation Basket or portfolio securities, such as a Fund's custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the Fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

[24] Each AP shall enter into its own separate Confidential Account with an AP Representative.

[25] Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund's Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

redeem Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. In order to keep costs low and permit Funds to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances required or determined permissible by the Fund, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and APs redeeming their Shares will receive an in-kind transfer of Redemption Instruments through the AP Representative in their Confidential Account.[26]

In the case of a creation, the AP [27] would enter into an irrevocable creation order with a Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable Fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a Fund. Rather, if other market participants wish to create or redeem Shares in a Fund, they will have to do so through an AP.

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund's prospectus or Statement of Additional Information (''SAI''). The NAV of each Fund is expected to be determined once each business day at a time determined by the board of the Investment Company (''Board''), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the ''Valuation Time''). Each Fund will establish a cut-off time (''Order Cut-Off Time'') for purchase orders in proper form. To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time.

Purchases of Shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per Share purchased plus applicable ''Transaction Fees,'' as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of Regular Trading Hours on the date such order is placed (''Transmittal Date'') in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.[28]

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (''AP Redemption Order''). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e–2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) Any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.[29] Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a Fund's custodian (''Custodian'') will typically deliver securities to the Confidential Account with a value

[26] Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

[27] An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during Regular Trading Hours.

[28] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

[29] The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with the Fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

approximately equal to the value of the Shares [30] tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a Fund will deliver cash equal to the value of that security. APs will provide the AP Representative with a list of restricted securities applicable to the AP on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares plus or minus any cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Managed Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Managed Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements.

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Rule 14.11(b)(3), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily portfolio holdings of any series of Managed Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Managed Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

The Exchange notes that the Exemptive Order restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.[31] As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or a substantively identical exemptive order would trade on markets that are a member of Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[32] While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 14.11(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (i) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares) (collectively,

[30] If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable Fund will receive or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

[31] As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could invest in directly, or in the case of an index future, based on an index of a type of asset that the Fund could invest in directly. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e–4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions. *See* Notice at 12, footnote 24.

[32] For a list of the current members of ISG, see *www.isgportal.com*. The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

''Availability of Information Halts''). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

Availability of Information

As noted above, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the VIIV, as defined in proposed Rule 14.11(c)(2), will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours.

Trading Rules

The Exchange deems Managed Portfolio Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Managed Portfolio Shares will trade on the Exchange only during Regular Trading Hours as provided in proposed Rule 14.11(b)(2). As provided in Exchange Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Information Circular

Prior to the commencement of trading of a series of Managed Portfolio Shares, the Exchange will inform its members in an Information Circular (''Circular'') of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) BYX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the VIIV is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

Proposed Amendments to Rule 14.1(a)

Based on the Exchange's proposal to adopt Rule 14.11, the Exchange also seeks to make corresponding changes to Rule 14.1(a). Specifically, Rule 14.1(a) currently provides that the provisions of Rules 14.2 through 14.9 that permit the listing of certain Equity Securities will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A–3 and 10C–1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Therefore, the Exchange proposes to amend Rule 14.1(a) to include Rule 14.11 in the aforementioned provision.[33] The Exchange proposes to amend Rule 14.1(a) to include Managed Portfolio Shares in the list of specified Equity Securities.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [34] in general and Section 6(b)(5) of the Act [35] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11 will remove impediments to and perfect the mechanism of a free and open market a national market system. Specifically, the proposed amendment raises no substantive issues that have not otherwise been considered by the Commission in the BZX Approval Order, because this proposal is substantively identical to that proposal, with the exception that the Exchange is only proposing to trade series of Managed Portfolio Shares pursuant to unlisted trading privileges, while BZX is proposing to both list and trade series of Managed Portfolio Shares.

The Exchange also believes that proposed Rule 14.11 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.[36] Proposed Rule 14.11(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 14.11(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Rule 14.11(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours and will be disseminated to all

[33] All relevant securities are listed under Exchange Rule 14.1(a).

[34] 15 U.S.C. 78f.

[35] 15 U.S.C. 78f(b)(5).

[36] Proposed Rule 14.11(d)(2)(C)(ii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

market participants at the same time. Proposed Rule 14.11(d)(2)(B) provides that the Exchange will consider the suspension of trading in or removal of listing of or termination of UTP for a series of Managed Portfolio Shares under any of the following circumstances: (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 14.11(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 14.11(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 14.11(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Rule 14.11 are not continuously maintained; or (vii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in the series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[37]

Proposed Rule 14.11(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the net asset value, or the holdings are available, as required. Proposed Rule 14.11(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 14.11(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or Statement of Additional Information. The Exchange also notes that the Notice provides that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Managed Portfolio Shares.[38]

Proposed Rule 14.11(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Proposed Rule 14.11(b)(5) provides that, any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.[39]

[37] The Exchange notes that the Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted.

[38] *See* Notice at 15.

[39] The Exchange notes that the Order dismissed concerns raised by a third party related to potential violation of Section 10(b) of the Act, stating that ''Contrary to the contentions advanced in the third-party submissions, the provision of the basket composition information to the AP Representative or use of that information by the AP Representative as provided for in the Application should not give rise to insider trading violations under section 10(b) of the Exchange Act.'' The notice goes on to say that an AP Representative ''acting as an agent of another broker-dealer (''AP'') will be given information concerning the identity and weightings of the basket of securities that the ETF would exchange for its shares (but not information concerning the issuers of those underlying securities). The AP Representative is provided this information by the ETF so that, pursuant to instructions received from an AP, the AP Representative may undertake the purchase or redemption of the ETF's Shares (in the form of creation units) and the purchase or sale of the basket of securities that are exchanged for creation units. The ETFs will provide this information to an AP Representative on a

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 14.11(b)(5)[40] will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund's portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material nonpublic information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal ''fire wall'' requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a Fund's means of achieving its investment objective, even without daily disclosure of a fund's underlying portfolio.[41] The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Market makers also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by market makers were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a Fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the Shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets[42] or by

confidential basis, the AP Representative is subject to a duty of non-disclosure (which includes an obligation not to provide this information to an AP), and the AP Representative may not use the information in any way except to facilitate the operation of the ETF by purchasing or selling the basket of securities and to exchange it with the ETF to complete an AP's orders to purchase or redeem the ETF's Shares. Furthermore, section 15(g) of the Exchange Act requires an AP Representative, as a registered broker, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the AP Representative or any person associated with the AP Representative.'' The Order goes on to say ''For the foregoing reasons, it is found that granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.'' *See* Order at 2, 3, and 4.

[40] As described above, proposed Rule 14.11(b)(5) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

[41] The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: ''The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV.'' *See* the Notice at 19.

[42] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once

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netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.[43]

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which a Fund plans to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.[44]

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for ''free riding'' or ''front-running,'' while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout Regular Trading Hours by the Reporting Authority and/or one or more major market data vendors. The website for each Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in a Circular of the special characteristics and risks associated with trading the Shares.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares and to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange would halt trading under certain circumstances under which trading in the shares of a Fund may be inadvisable. Specifically, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

The Exchange is proposing to retain discretion to halt trading in a series of Managed Portfolio Shares based on market conditions or where the Exchange determines that trading in such series is inadvisable (each a ''Discretionary Halt'') and is also proposing the four Availability of Information Halts described above. The Exchange believes that retaining discretion to implement a Discretionary Halt as specified is consistent with the Act. The proposed rule retaining discretion related to halts is designed to ensure the maintenance of a fair and orderly market and protect investors and the public interest in that it provides the Exchange with the ability

a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

[43] With respect to trading in the Shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (*e.g.,* general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge—buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

[44] The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and APs, are based on statements in the Exemptive Order, representations by Precidian, and review by the Exchange.

to halt when it determines that trading in the shares is inadvisable. This could be based on the Exchange's own analysis of market conditions being detrimental to a fair and orderly market and/or information provided by the Investment Company or its agent. There are certain circumstances related to the trading and dissemination of information related to the underlying holdings of a series of Managed Portfolio Shares, such as the extent to which trading is not occurring in the securities and/or financial instruments composing the portfolio, that the Exchange may not be in a position to know or become aware of as expeditiously as the Investment Company or its agent. Also, as noted above, there are certain circumstances in which the Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares.[45] Upon receipt of information and/or a request from the Investment Company, the Exchange would consider the information and/or circumstances leading to the request as well as other factors both specific to such issue of Managed Portfolio Shares and the broader market in determining whether trading in the series of Managed Portfolio Shares is inadvisable and that halting trading is necessary in order to maintain a fair and orderly market. As such, the Exchange believes that the proposal to provide the Exchange with discretion to implement a Discretionary Halt is consistent with the Act.

The Exchange believes that the proposed Availability of Information Halts to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) The Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate; [46] (ii) the other Availability of Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that Rule 14.1(c)(4)(B) related to trading halts in managed fund shares [47] is intended to address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and orderly market in Managed Portfolio Shares; [48] and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of the funds and to monitor how closely trading in the funds is tracking the value of the underlying portfolio and when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading. The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exemptive Order also restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.[49] As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or substantively identical exemptive order would trade on markets that are a member of Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[50] While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 14.11(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares. The Exchange believes that the proposed amendments to Rule 14.1(a) is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will clarify that the provisions of proposed Rule 14.11 that permit the listing of Equity Securities will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A–3 and 10C–1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Further, the proposed amendment will clarify that Managed Portfolio Shares meets the definition of Equity Security under Exchange Rules.

For the above reasons, the Exchange believes that the proposed rule change

[45] Specifically, such circumstances include where: (i) The intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations.

[46] *See* Application at 4 and Notice at 11.

[47] Rule 14.1(c)(4)(B) provides that ''For a UTP Derivative Security where a net asset value (and, in the case of managed fund shares or actively managed exchange-traded funds, a ''disclosed portfolio'') is disseminated, the Exchange will immediately halt trading in such security upon notification by the listing market that the net asset value and, if applicable, such disclosed portfolio, is not being disseminated to all market participants at the same time. The Exchange may resume trading in the UTP Derivative Security only when trading in the UTP Derivative Security resumes on the listing market.''

[48] *See, e.g.,* Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017); Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR–AMEX–2006–78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that ''the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities'' and that ''the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs'' and that ''by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs''); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR–NASD–2006–001) (approving generic listing standards for Index-Linked Securities and stating that ''[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities'').

[49] As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could invest in directly, or in the case of an index future, based on an index of a type of asset that the Fund could invest in directly. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e–4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions.

[50] The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the trading, pursuant to UTP, of a new type of actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

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 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[51] and Rule 19b–4(f)(6) thereunder.[52]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[53] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[54] 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 proposal may become operative upon filing. The Exchange states that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow for the immediate trading, pursuant to UTP, of Managed Portfolio Shares on the Exchange and therefore would provide investors with an additional trading venue option. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[55]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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–CboeBYX–2020–003 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–CboeBYX–20–20–003. 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–CboeBYX–2020–003 and should be submitted on or before February 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[51] 15 U.S.C. 78s(b)(3)(A).

[52] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–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.

[53] 17 CFR 240.19b–4(f)(6).

[54] 17 CFR 240.19b–4(f)(6)(iii).

[55] 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).

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88111; File No. SR–CboeEDGA–2020–001]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 14.11 To Permit the Trading, Pursuant to Unlisted Trading Privileges, of Managed Portfolio Shares, Which Are Shares of Actively Managed Exchange-Traded Funds for Which the Portfolio Is Disclosed in Accordance With Standard Mutual Fund Disclosure Rules

February 3, 2020.

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 January 21, 2020, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to adopt Rule 14.11 to permit the trading, pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Managed Portfolio Shares and proposed Rule 14.11, where applicable. 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://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), 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

The Exchange proposes to adopt Rule 14.11 to permit the trading, pursuant to unlisted trading privileges (''UTP''), of Managed Portfolio Shares,[5] which substantially conforms to Cboe BZX Exchange, Inc. (''BZX'') Rule 14.11(k).[6] Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Managed Portfolio Shares and proposed Rule 14.11, where applicable.

The Exchange does not currently list any securities as a primary listing market. Consistent with this fact, Exchange Rule 14.1(a) currently states that all securities traded on the Exchange are traded pursuant to UTP and that the Exchange will not list any securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rules 10A–3 [7] (''Rule 10A–3'') and 10C–1 [8] (''Rule 10C–1'') under the Act. Therefore, the provisions of existing Rules 14.2 through 14.9 and proposed Rule 14.11 that permit the listing of certain Equity Securities [9] will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A–3 and 10C–1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Considering the foregoing, the Exchange proposes to adopt Rule 14.11 as set forth below.

Proposed Listing Rules

Proposed Rule 14.11(a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Managed Portfolio Shares that meet the criteria of Rule 14.11.[10]

Proposed Rule 14.11(b) provides that Rule 14.11 is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 14.11, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.11(b) provides further that Managed Portfolio Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares.

Proposed Rule 14.11(b)(2) provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.[11]

Proposed Rule 14.11(b)(3) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

Proposed Rule 14.11(b)(4) provides that, if the investment adviser to the

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[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Managed Portfolio Shares are actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

[6] *See* Securities and Exchange Act Release No. 87759 (December 16, 2019) 84 FR 70223 (December 20, 2019) (SR–CboeBZX–2019–047) (the ''BZX Approval Order'').

[7] Rule 10A–3 obligates the Exchange to prohibit the initial or continued listing of any security of an issuer that is not in compliance with certain required standards. *See* 17 CFR 240.10A–3.

[8] Rule 10C–1 obligates the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the issuer's board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. *See* 17 CFR 240.10C–1.

[9] As provided in Rule 14.1(a), the term ''Equity Security'' means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts and Equity-Linked Debt Securities. Further, the Exchange now proposes to include the term ''Managed Portfolio Shares'' to the definition of Equity Security.

[10] The Exchange notes that the unique components of Managed Portfolio Shares were addressed in an amended application for exemptive relief that was filed on April 4, 2019 (the ''Application'') and for which public notice was issued on April 8, 2019 (the ''Notice'') (File No. 812–14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC (''Precidian''); Precidian ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the ''Order'' and, collectively, with the Application and the Notice, the ''Exemptive Order''). Specifically, the Notice stated that the Commission ''believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV. The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are larger than those of comparable, fully transparent ETFs. Nonetheless, as long as arbitrage continues to keep the ActiveShares ETF's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.'' *See* Investment Company Act Release Nos. 33440.

[11] As defined in Rule 1.5(y), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Rule 14.11(b)(5) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

Proposed Rule 14.11(c)(1) defines the term ''Managed Portfolio Share'' as a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N–1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.[12]

Proposed Rule 14.11(c)(2) defines the term ''Verified Intraday Indicative Value'' (''VIIV'') as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours by the Reporting Authority.

Proposed Rule 14.11(c)(3) defines the term ''AP Representative'' as an unaffiliated broker-dealer with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

Proposed Rule 14.11(c)(4) defines the term ''Confidential Account'' as an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Proposed Rule 14.11(c)(5) defines the term ''Creation Basket'' as on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Proposed Rule 14.11(c)(6) defines the term ''Creation Unit'' as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

Proposed Rule 14.11(c)(7) defines the term ''Redemption Unit'' as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an AP in return for a portfolio of instruments and/or cash.

Proposed Rule 14.11(c)(8) defines the term ''Reporting Authority'' in respect of a particular series of Managed Portfolio Shares as the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to UTP), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value (the ''NAV''), the VIIV, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(c)(9) provides that the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(d)(1) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the

[12] For purposes of this filing, references to a series of Managed Portfolio Shares are referred to interchangeably as a series of Managed Portfolio Shares or as a ''Fund'' and shares of a series of Managed Portfolio Shares are generally referred to as the ''Shares''.

Exchange. In addition, proposed Rule 14.11(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 14.11(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Rule 14.11(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.11(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(d)(2)(B) provides that the Exchange will consider the suspension of trading in or removal from listing of or termination of UTP for a series of Managed Portfolio Shares under any of the following circumstances: (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Rule 14.11(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940 (the ''1940 Act''), or such holdings are not made available to all market participants at the same time pursuant to Rule 14.11(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to 14.11(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Rule 14.11 are not continuously maintained; or (vii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[13]

Proposed Rule 14.11(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

Proposed Rule 14.11(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

Proposed Rule 14.11(e), which relates to limitation of Exchange liability, provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 14.11(f), which relates to disclosures, provides that the provisions of paragraph (f) apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the

[13] The Exchange notes that the Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Application and Notice, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during Regular Trading Hours in order to ensure the accuracy of the Verified Intraday Indicative Value.

Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).''

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, similar to Investment Company Units (as defined in Rule 14.2), and more specifically managed fund shares.[14] Managed Portfolio Shares differ from managed fund shares in the following important respects.[15] The primary listing market for a series of managed fund shares generally requires daily dissemination of the ''disclosed portfolio''.[16] In contrast to managed fund shares, the portfolio for a series of Managed Portfolio Shares will be disclosed at least quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.[17] The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described further below in ''Creation and Redemption of Shares'') without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, an estimated value—the VIIV—that reflects an estimated intraday value of a fund's portfolio will be disseminated. Specifically, the VIIV will be based upon all of a series' holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value as long as a VIIV is disseminated in one second intervals,[18] and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[19] For

[14] ''Managed fund shares'' are a type of Investment Company Unit. While not defined by Exchange Rules, BZX Rule 14.11(i) defines a managed fund share as ''a security that (i) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.''

[15] The Exchange notes that these unique components of Managed Portfolio Shares were addressed in an amended application for exemptive relief that was filed on April 4, 2019 (the ''Application'') and for which public notice was issued on April 8, 2019 (the ''Notice'') (File No. 812–14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC (''Precidian''); Precidian ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the ''Order'' and, collectively, with the Application and the Notice, the ''Exemptive Order''). Specifically, the Notice stated that the Commission ''believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV. The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are larger than those of comparable, fully transparent ETFs. Nonetheless, as long as arbitrage continues to keep the ActiveShares ETF's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.'' *See* Investment Company Act Release Nos. 33440 and 33477.

[16] *See e.g.,* BZX Rule 14.11(i)(3)(B) which defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the business day. BZX Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[17] Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[18] The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: ''The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV.'' *See* the Notice at 19.

[19] Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price

Managed Portfolio Shares, market makers may use the knowledge of a Fund's means of achieving its investment objective, as described in the applicable Fund registration statement (the ''Registration Statement''), to construct a hedging proxy for a Fund to manage a market maker's quoting risk in connection with trading Fund Shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge [20] of a fund's underlying portfolio.[21] This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, *i.e.* the Deposit Instruments or ''Redemption Instruments'' and the estimated ''Balancing Amount'' (if any),[22] for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a Fund, as described below.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a Confidential Account [23] with an AP Representative,[24] which will be a broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.[25] An AP must be a Depository Trust Company (''DTC'') Participant that has executed a ''Participant Agreement'' with the applicable distributor (the ''Distributor'') with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP. The Funds will offer and redeem Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. In order to keep costs low and permit Funds to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances required or determined permissible by the Fund, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and APs redeeming their Shares will receive an in-kind transfer of Redemption Instruments through the AP Representative in their Confidential Account.[26]

In the case of a creation, the AP [27] would enter into an irrevocable creation order with a Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities.

deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Managed Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

[20] Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund's portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem Shares on its behalf.

[21] APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3–1, will be disclosed daily on each Fund's website.

[22] The Balancing Amount is the cash amount necessary for the applicable Fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

[23] Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a Fund's Creation Basket or portfolio securities, such as a Fund's custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the Fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

[24] Each AP shall enter into its own separate Confidential Account with an AP Representative.

[25] Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund's Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

[26] Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

[27] An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during Regular Trading Hours.

The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable Fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a Fund. Rather, if other market participants wish to create or redeem Shares in a Fund, they will have to do so through an AP.

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund's prospectus or Statement of Additional Information (''SAI''). The NAV of each Fund is expected to be determined once each business day at a time determined by the board of the Investment Company (''Board''), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the ''Valuation Time''). Each Fund will establish a cut-off time (''Order Cut-Off Time'') for purchase orders in proper form. To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time.

Purchases of Shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per Share purchased plus applicable ''Transaction Fees,'' as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of Regular Trading Hours on the date such order is placed (''Transmittal Date'') in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.[28]

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (''AP Redemption Order''). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e–2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) Any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.[29] Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a Fund's custodian (''Custodian'') will typically deliver securities to the Confidential Account with a value approximately equal to the value of the Shares [30] tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a Fund will deliver cash equal to the value of that security. APs will provide the AP Representative with a list of restricted securities applicable to the AP on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares plus or minus any

[28] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

[29] The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with the Fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

[30] If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable Fund will receive or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Managed Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Managed Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements.

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Rule 14.11(b)(3), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily portfolio holdings of any series of Managed Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Managed Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

The Exchange notes that the Exemptive Order restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.[31] As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or a substantively identical exemptive order would trade on markets that are a member of Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[32] While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 14.11(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (i) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares) (collectively, ''Availability of Information Halts''). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

Availability of Information

As noted above, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the VIIV, as defined in proposed Rule 14.11(c)(2), will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours.

Trading Rules

The Exchange deems Managed Portfolio Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Managed Portfolio Shares

[31] As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could invest in directly, or in the case of an index future, based on an index of a type of asset that the Fund could invest in directly. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e–4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions. *See* Notice at 12, footnote 24.

[32] For a list of the current members of ISG, see *www.isgportal.com.* The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

will trade on the Exchange only during Regular Trading Hours as provided in proposed Rule 14.11(b)(2). As provided in Exchange Rule 11.6(i), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Information Circular

Prior to the commencement of trading of a series of Managed Portfolio Shares, the Exchange will inform its members in an Information Circular (''Circular'') of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) EDGA Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the VIIV is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

Proposed Amendments to Rule 14.1(a)

Based on the Exchange's proposal to adopt Rule 14.11, the Exchange also seeks to make corresponding changes to Rule 14.1(a). Specifically, Rule 14.1(a) currently provides that the provisions of Rules 14.2 through 14.9 that permit the listing of certain Equity Securities will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A–3 and 10C–1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Therefore, the Exchange proposes to amend Rule 14.1(a) to include Rule 14.11 in the aforementioned provision.[33] The Exchange proposes to amend Rule 14.1(a) to include Managed Portfolio Shares in the list of specified Equity Securities.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [34] in general and Section 6(b)(5) of the Act [35] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11 will remove impediments to and perfect the mechanism of a free and open market a national market system. Specifically, the proposed amendment raises no substantive issues that have not otherwise been considered by the Commission in the BZX Approval Order, because this proposal is substantively identical to that proposal, with the exception that the Exchange is only proposing to trade series of Managed Portfolio Shares pursuant to unlisted trading privileges, while BZX is proposing to both list and trade series of Managed Portfolio Shares.

The Exchange also believes that proposed Rule 14.11 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.[36] Proposed Rule 14.11(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 14.11(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Rule 14.11(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(d)(2)(B) provides that the Exchange will consider the suspension of trading in or removal of listing of or termination of UTP for a series of Managed Portfolio Shares under any of the following circumstances: (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 14.11(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 14.11(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 14.11(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the

[33] All relevant securities are listed under Exchange Rule 14.1(a).

[34] 15 U.S.C. 78f.

[35] 15 U.S.C. 78f(b)(5).

[36] Proposed Rule 14.11(d)(2)(C)(ii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Rule 14.11 are not continuously maintained; or (vii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in the series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[37]

Proposed Rule 14.11(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the net asset value, or the holdings are available, as required. Proposed Rule 14.11(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 14.11(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or Statement of Additional Information. The Exchange also notes that the Notice provides that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Managed Portfolio Shares.[38]

Proposed Rule 14.11(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Proposed Rule 14.11(b)(5) provides that, any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.[39]

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 14.11(b)(5)[40] will

[37] The Exchange notes that the Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted.

[38] *See* Notice at 15.

[39] The Exchange notes that the Order dismissed concerns raised by a third party related to potential violation of Section 10(b) of the Act, stating that ''Contrary to the contentions advanced in the third-party submissions, the provision of the basket composition information to the AP Representative or use of that information by the AP Representative as provided for in the Application should not give rise to insider trading violations under section 10(b) of the Exchange Act.'' The notice goes on to say that an AP Representative ''acting as an agent of another broker-dealer (''AP'') will be given information concerning the identity and weightings of the basket of securities that the ETF would exchange for its shares (but not information concerning the issuers of those underlying securities). The AP Representative is provided this information by the ETF so that, pursuant to instructions received from an AP, the AP Representative may undertake the purchase or redemption of the ETF's Shares (in the form of creation units) and the purchase or sale of the basket of securities that are exchanged for creation units. The ETFs will provide this information to an AP Representative on a confidential basis, the AP Representative is subject to a duty of non-disclosure (which includes an obligation not to provide this information to an AP), and the AP Representative may not use the information in any way except to facilitate the operation of the ETF by purchasing or selling the basket of securities and to exchange it with the ETF to complete an AP's orders to purchase or redeem the ETF's Shares. Furthermore, section 15(g) of the Exchange Act requires an AP Representative, as a registered broker, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the AP Representative or any person associated with the AP Representative.'' The Order goes on to say ''For the foregoing reasons, it is found that granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.'' *See* Order at 2, 3, and 4.

[40] As described above, proposed Rule 14.11(b)(5) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such

Continued

act as a strong safeguard against any misuse and improper dissemination of information related to a Fund's portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material nonpublic information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal ''fire wall'' requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a Fund's means of achieving its investment objective, even without daily disclosure of a fund's underlying portfolio.[41] The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Market makers also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by market makers were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a Fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the Shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets[42] or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.[43]

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable,

person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

[41] The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: ''The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV.'' *See* the Notice at 19.

[42] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

[43] With respect to trading in the Shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (*e.g.,* general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge—buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which a Fund plans to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.[44]

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for ''free riding'' or ''front-running,'' while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout Regular Trading Hours by the Reporting Authority and/or one or more major market data vendors. The website for each Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in a Circular of the special characteristics and risks associated with trading the Shares.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares and to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange would halt trading under certain circumstances under which trading in the shares of a Fund may be inadvisable. Specifically, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

The Exchange is proposing to retain discretion to halt trading in a series of Managed Portfolio Shares based on market conditions or where the Exchange determines that trading in such series is inadvisable (each a ''Discretionary Halt'') and is also proposing the four Availability of Information Halts described above. The Exchange believes that retaining discretion to implement a Discretionary Halt as specified is consistent with the Act. The proposed rule retaining discretion related to halts is designed to ensure the maintenance of a fair and orderly market and protect investors and the public interest in that it provides the Exchange with the ability to halt when it determines that trading in the shares is inadvisable. This could be based on the Exchange's own analysis of market conditions being detrimental to a fair and orderly market and/or information provided by the Investment Company or its agent. There are certain circumstances related to the trading and dissemination of information related to the underlying holdings of a series of Managed Portfolio Shares, such as the extent to which trading is not occurring in the securities and/or financial instruments composing the portfolio, that the Exchange may not be in a position to know or become aware of as expeditiously as the Investment Company or its agent. Also, as noted above, there are certain circumstances in which the Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares.[45] Upon receipt of information and/or a request from the Investment Company, the Exchange would consider the information and/or circumstances leading to the request as well as other factors both specific to such issue of Managed Portfolio Shares and the broader market in determining whether trading in the series of Managed Portfolio Shares is inadvisable and that halting trading is necessary in order to maintain a fair and orderly market. As such, the Exchange believes that the proposal to provide the Exchange with discretion to implement a Discretionary Halt is consistent with the Act.

The Exchange believes that the proposed Availability of Information Halts to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) The

[44] The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and APs, are based on statements in the Exemptive Order, representations by Precidian, and review by the Exchange.

[45] Specifically, such circumstances include where: (i) The intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations.

Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate; [46] (ii) the other Availability of Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that Rule 14.1(c)(4)(B) related to trading halts in managed fund shares [47] is intended to address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and orderly market in Managed Portfolio Shares; [48] and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of the funds and to monitor how closely trading in the funds is tracking the value of the underlying portfolio and when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading. The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exemptive Order also restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.[49] As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or substantively identical exemptive order would trade on markets that are a member of Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[50] While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 14.11(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares. The Exchange believes that the proposed amendments to Rule 14.1(a) is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will clarify that the provisions of proposed Rule 14.11 that permit the listing of Equity Securities will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A–3 and 10C–1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Further, the proposed amendment will clarify that Managed Portfolio Shares meets the definition of Equity Security under Exchange Rules.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the trading, pursuant to UTP, of a new type of actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

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 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 [51] and Rule 19b–4(f)(6) thereunder.[52]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [53] normally does not become operative for 30 days after the date of its

[46] *See* Application at 4 and Notice at 11.

[47] Rule 14.1(c)(4)(B) provides that ''For a UTP Derivative Security where a net asset value (and, in the case of managed fund shares or actively managed exchange-traded funds, a ''disclosed portfolio'') is disseminated, the Exchange will immediately halt trading in such security upon notification by the listing market that the net asset value and, if applicable, such disclosed portfolio, is not being disseminated to all market participants at the same time. The Exchange may resume trading in the UTP Derivative Security only when trading in the UTP Derivative Security resumes on the listing market.''

[48] *See, e.g.,* Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017); Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR–AMEX–2006–78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that ''the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities'' and that ''the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs'' and that ''by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs''); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR–NASD–2006–001) (approving generic listing standards for Index-Linked Securities and stating that ''[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities'').

[49] As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could invest in directly, or in the case of an index future, based on an index of a type of asset that the Fund could invest in directly. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e–4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions.

[50] The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[51] 15 U.S.C. 78s(b)(3)(A).

[52] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–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.

[53] 17 CFR 240.19b–4(f)(6).

filing. However, Rule 19b–4(f)(6)(iii) [54] 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 proposal may become operative upon filing. The Exchange states that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow for the immediate trading, pursuant to UTP, of Managed Portfolio Shares on the Exchange and therefore would provide investors with an additional trading venue option. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[55]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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–CboeEDGA–2020–001 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–CboeEDGA–2020–001. 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–CboeEDGA–2020–001 and should be submitted on or before February 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02416 Filed 2–6–20; 8:45 am]

BILLING CODE 8011–01–P

[54] 17 CFR 240.19b–4(f)(6)(iii).

[55] 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).

[56] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reallocation of Unused Fiscal Year 2020 Tariff-Rate Quota Volume for Raw Cane Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the U.S. Trade Representative (USTR) is announcing the country-by-country reallocations of the fiscal year (FY) 2020 in-quota quantity of the World Trade Organization (WTO) tariff-rate quota (TRQ) for imported raw cane sugar.

DATES: This notice is applicable on February 7, 2020.

FOR FURTHER INFORMATION CONTACT: Dylan Daniels, Office of Agricultural Affairs at 202–395–6095 or *Dylan.T.Daniels@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the United States maintains WTO TRQs for imports of raw cane and refined sugar.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

On June 27, 2019, the Secretary of Agriculture established the FY 2020 TRQ for imported raw cane sugar at the minimum to which the United States committed pursuant to the WTO Uruguay Round Agreements (1,117,195 metric tons raw value (MTRV)). On July 15, 2019, USTR provided notice of country-by-country allocations of the FY 2020 in-quota quantity of the WTO TRQ for imported raw cane sugar. Based on consultation with quota holders, USTR has determined to reallocate 78,071 MTRV of the original TRQ quantity from those countries that stated they do not plan to fill their FY 2020 allocated raw cane sugar quantities. USTR is allocating the 78,071 MTRV to the following countries in the amounts specified below:

Country	FY 2020 raw sugar unused reallocation (MTRV)
Argentina	4,006
Australia	7,733
Barbados	652
Belize	1,025
Bolivia	745
Brazil	13,509
Colombia	2,236
Costa Rica	1,397
Dominican Republic	16,397
Ecuador	1,025
El Salvador	2,422
Eswatini (Swaziland)	1,490
Fiji	838
Guatemala	4,472
Guyana	1,118
Honduras	932
India	745
Jamaica	1,025
Malawi	932
Mauritius	1,118

Country	FY 2020 raw sugar unused reallocation (MTRV)
Mozambique	1,211
Nicaragua	1,956
Panama	2,702
Peru	3,820
South Africa	2,143
Thailand	1,304
Zimbabwe	1,118

USTR based these allocations on the countries' historical shipments to the United States. The allocations of the raw cane sugar WTO TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin and certificates for quota eligibility must accompany imports from any country for which an allocation has been provided.

Conversion factor: 1 metric ton = 1.10231125 short tons.

Gregory Doud,

Chief Agricultural Negotiator, Office of the United States Trade Representative.

[FR Doc. 2020–02411 Filed 2–6–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–05]

Petition for Exemption; Summary of Petition Received; ArgenTech Solutions, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 27, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0024 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 28, 2020.

Giles Strickler,

Acting Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0024.

Petitioner: ArgenTech Solutions, Inc.

Section(s) of 14 CFR Affected: §§ 61.113; 91.7; 91.103(b)(2); 91.109; 91.119(b) & (c); 91.121; 91.151; 91.203(a) & (b); 91.405; 91.407; 91.409; & 91.417.

Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner to operate its AgTS FireEye vertical takeoff and landing unmanned aircraft system, with a maximum gross takeoff weight of 71 pounds, for the commercial purpose of conducting aerial data acquisition and training over certain rural aeras of the United States. Operations will be conducted within visual line of sight and under 400 feet above ground level.

[FR Doc. 2020–02487 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–73]

Petition for Exemption; Summary of Petition Received; American Airlines

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 27, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0796 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records

notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wendy Johnson (202) 267–8624, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 3, 2020.

Giles Strickler,

Acting Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0796.

Petitioner: American Airlines.

Section(s) of 14 CFR Affected: § 121.915(b)(2)(ii).

Description of Relief Sought: American Airlines request an exemption from § 121.915(b)(2)(ii) to receive credit for Line Observation Safety Audit (LOSA) observations on a one for one basis in lieu of random line checks required by the regulation. The substitute of a LOSA observation in lieu of a random line check is limited to twenty-five percent of the required line checks.

[FR Doc. 2020–02488 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Bridge Replacement in Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final. The actions relate to the Farrington Highway, Replacement of Makaha Bridges No. 3 and No. 3A project located in Makaha, in the State of Hawai'i. These actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1). A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before July 6, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Ralph Rizzo, Division Administrator, Federal Highway Administration, 300 Ala Moana Boulevard, Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700; or Marshall Ando, Highways Administrator, State of Hawaii Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813, Telephone: (808) 587–2220;

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following: The Farrington Highway, Replacement of Makaha Bridges No. 3 and No. 3A involves the replacement of two existing wooden bridges along Farrington Highway, Route 93, between milepost markers 13.95 and 14.21 in Makaha on the Waianae Coast of Oahu. The existing bridges, which were constructed in 1937, support two 11-foot lanes with a 2-foot shoulder on one side and 1-foot shoulder on the other. The new bridges will support two 12-foot lanes and 10-foot wide shoulders to accommodate pedestrians and bicyclists.

These actions by the Federal agencies, and the laws under which such actions were taken, are described in the Categorical Exclusion (CE), and in other documents in the FHWA administrative record. The CE and other documents in the FHWA administrative record are available by contacting the Hawaii Department of Transportation or FHWA at the addresses provided above.

This notice applies to all Federal agency decisions on the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109, as amended by FAST Act Section 1404(a), Public Law 114–94, and 23 U.S.C. 128]. Council on Environmental Quality regulations (40 CFR 1500 *et seq*, 23 CFR 771].

2. *Air:* Clean Air Act, as amended [(42 U.S.C. 7401 *et seq.* (Transportation Conformity, 40 CFR part 93)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303 and 23 U.S.C. 138; 23 CFR part 774]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq*.].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [(54 U.S.C. 306108 *et seq*.]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470(aa)–470mm]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001 *et seq*.].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq*.]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251 *et seq*.); Coastal Zone Management Act [16 U.S.C. 1451–1464]; Land and Water Conservation Fund Act [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300G)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wetlands Mitigation [23 U.S.C. 119(g)].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 and 13690, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(1)(1).

Issued on: January 22, 2020.

Ralph Rizzo,

Division Administrator, Honolulu, HI.

[FR Doc. 2020–02007 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0030]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SOUTHERN CROSS (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 9, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0030 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0030, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SOUTHERN CROSS is:

—*Intended Commercial Use of Vessel:* ''I intend to use the vessel for short charters such as sunset cruises or exploratory trips to introduce and educate the large number of new residents of my area about old hickory and the Cumberland river''

—*Geographic Region Including Base of Operations:* ''Tennessee'' (Base of Operations: Cherokee Marina, Lebanon TN)

—*Vessel Length and Type:* 40′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0030 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0030 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 3, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02394 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0011]

Deepwater Port License Application—SPOT Terminal Services LLC

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice of availability; Notice of public meeting; Request for comments.

SUMMARY: The Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) announce the availability of the Draft Environmental Impact Statement (DEIS) for the SPOT Terminal Services LLC (SPOT) deepwater port license application for the export of oil from the United States to nations abroad. A Notice of Application that summarized the SPOT deepwater port license application was published in the **Federal Register** on March 4, 2019 (84 FR 7413). A Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Public Meetings was published in the **Federal Register** on March 7, 2019 (84 FR 8401). This Notice of Availability incorporates the aforementioned **Federal Register** notices by reference. The application describes a project that would be located approximately 27.2 to 30.8 nautical miles off the coast of Brazoria County, Texas. Publication of this notice begins a 45-day comment period, requests public participation in the environmental impact review process, provides information on how to participate in the environmental impact review process and announces an informational open house and public meeting in Lake Jackson, Texas.

DATES: MARAD and USCG will hold one public meeting in connection with the SPOT DEIS. The public meeting will be held in Lake Jackson, Texas, on February 26, 2020, from 6 p.m. to 8 p.m. The public meeting will be preceded by an open house from 4 p.m. to 6 p.m. The public meeting may end later than the stated time, depending on the number of persons who wish to make a comment on the record. Additionally, materials submitted in response to this request for comments on the DEIS must be submitted to the *www.regulations.gov* website or the Federal Docket Management Facility as detailed in the **ADDRESSES** section below by the close of business on March 23, 2020.

ADDRESSES: The open house and public meeting in Lake Jackson, Texas will be held at the Courtyard Marriott Lake Jackson, 159 State Highway 288, Lake Jackson, Texas, 77566, phone: (979) 297–7300, web address: *https://www.marriott.com/hotels/travel/ljncy-courtyard-lakejackson/.* Free parking is available at the venue.

The SPOT deepwater port license application, comments, supporting information and the DEIS are available for viewing at the *Regulations.gov* website: *http://www.regulations.gov* under docket number MARAD–2019–0011. The Final EIS (FEIS), when published, will be announced and available at this site as well.

The public docket for the SPOT deepwater port license application is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. Comments on the DEIS may be submitted to this address and must include the docket number for this project, which is MARAD–2019–0011. The Federal Docket Management Facility's telephone number is 202–366–9317 or 202–366–9826, the fax number is 202–493–2251.

We encourage you to submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* If you submit your comments electronically, it is not necessary to also submit a hard copy by mail. If you cannot submit material using *http://www.regulations.gov,* please contact either Mr. William Nabach, USCG, or Ms. Yvette M. Fields, MARAD, as listed in the following **FOR FURTHER INFORMATION CONTACT** section of this document. This section provides alternate instructions for submitting written comments. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. William Nabach, Project Manager, USCG, telephone: 202–372–1437, email: *William.A.Nabach2@uscg.mil;* or Ms. Yvette Fields, Director, Office of Deepwater Ports and Port Conveyance, MARAD, telephone: 202–366–0926, email: *Yvette.Fields@dot.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

We request public comments or other relevant information related to the DEIS for the proposed SPOT deepwater port. These comments will inform our preparation of the FEIS. We encourage attendance at the open house and public meeting; however, you may submit comments electronically, and it is preferred that comments be submitted electronically. Regardless of the method you use to submit comments or material, all submissions will be posted, without change, to the Federal Docket Management Facility website (*http://www.regulations.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Use Notice that is available on the *www.regulations.gov* website, and the Department of Transportation (DOT) Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see PRIVACY ACT. You may view docket submissions at the DOT Docket Management Facility or electronically at the *www.regulations.gov* website.

Public Meeting and Open House

You are invited to learn about the proposed SPOT deepwater port at the subject informational open house and public meeting. You are also encouraged to provide comments on the proposed action and the environmental impact analysis contained in the DEIS for the proposed SPOT deepwater port. Speakers may register upon arrival and will be recognized in the following order: Elected officials, public agency representatives, then individuals or groups in the order in which they registered. In order to accommodate all speakers, speaker time may be limited, meeting hours may be extended, or both. Speakers' transcribed remarks will be included in the public docket. You may also submit written material for inclusion in the public docket. Written material must include the author's name. We ask attendees to respect the meeting procedures in order to ensure a constructive information-gathering session. Please do not bring signs or banners inside the meeting venue. The presiding officer will use his/her discretion to conduct the meeting in an orderly manner.

Public meeting locations are wheelchair accessible; however, attendees who require special assistance such as sign language interpretation or other reasonable accommodation, please notify the USCG (see **FOR FURTHER INFORMATION CONTACT**) at least five (5) business days in advance. Please include contact information as well as information about specific needs.

Background

On January 31, 2019, MARAD and USCG received a license application from SPOT for all Federal authorizations required for a license to construct, own, and operate a deepwater port for the export of oil. The proposed deepwater port would be located in Federal waters approximately 27.2 to

30.8 nautical miles off the coast of Brazoria County, Texas. Texas was designated as the Adjacent Coastal State (ACS) for the SPOT license application.

The Federal agencies involved held a public scoping meeting in connection with the SPOT license application. The public scoping meeting was held in Lake Jackson, Texas on March 20, 2019. Transcripts of the scoping meetings are included on the public docket located at *www.regulations.gov* under docket number MARAD–2019–0011–0019.

MARAD and USCG issued a regulatory ''stop-clock'' letter to SPOT on May 31, 2019, which remained in effect until October 23, 2019, when MARAD and USCG determined the agencies received sufficient information to continue the Federal review process.

The purpose of the DEIS is to analyze reasonable alternatives to, and the direct, indirect and cumulative environmental impacts of, the proposed action. The DEIS is currently available for public review at the Federal docket website: *www.regulations.gov* under docket number MARAD–2019–0011.

Summary of the License Application

SPOT is proposing to construct, own, and operate a deepwater port terminal in the Gulf of Mexico to export domestically produced crude oil. Use of the deepwater port would include the loading of various grades of crude oil at flow rates of up to 85,000 barrels per hour (bph). The SPOT deepwater port would allow for up to two (2) Very Large Crude Carriers (VLCCs) or other crude oil carriers to moor at single point mooring (SPM) buoys and connect with the deepwater port via floating connecting crude oil hoses and a floating vapor recovery hose. The maximum frequency of loading VLCCs or other crude oil carriers would be 2 million barrels per day, 365 days per year.

The overall project would consist of offshore and marine components as well as onshore components as described below.

The SPOT deepwater port offshore and marine components would consist of the following:

• One (1) fixed offshore platform with eight (8) piles in Galveston Area Outer Continental Shelf lease block 463, approximately 27.2 to 30.8 nautical miles off the coast of Brazoria County, Texas in a water depth of approximately 115 feet. The fixed offshore platform would be comprised of four (4) decks including: A sump deck with shut-down valves and open drain sump; a cellar deck with pig launchers and receivers, generators, and three (3) vapor combustion units; a main deck with a lease automatic custody transfer (LACT) unit, oil displacement prover loop, living quarters, electrical and instrument building, and other ancillary equipment; and a laydown deck with a crane laydown area.

• Two (2) single point mooring buoys (SPMs), each having: Two (2) 24-inch inside diameter crude oil underbuoy hoses interconnecting with the crude oil pipeline end manifold (PLEM); two (2) 24-inch inside diameter floating crude oil hoses connecting the moored VLCC or other crude oil carrier for loading to the SPM buoy; one (1) 24-inch inside diameter vapor recovery underbuoy hose interconnecting with the vapor recovery PLEM; and one (1) 24-inch inside diameter floating vapor recovery hose to connect to the moored VLCC or other crude oil carrier for loading. The floating hoses would be approximately 800 feet in length and rated for 300 psig (21-bar). Each floating hose would contain an additional 200 feet of 16-inch ''tail hose'' that is designed to be lifted and robust enough for hanging over the edge railing of the VLCC or other crude oil vessels. The underbuoy hoses would be approximately 160 feet in length and rated for 300 psig (21-bar).

• Four (4) PLEMs would provide the interconnection between the pipelines and the SPM buoys. Each SPM buoy would have two (2) PLEMs—one (1) PLEM for crude oil and one (1) PLEM for vapor recovery. Each crude oil loading PLEM would be supplied with crude oil by two (2) 30-inch outside diameter pipelines, each approximately 0.66 nautical miles in length. Each vapor recovery PLEM would route recovered vapor from the VLCC or other crude oil carrier through the PLEM to the three (3) vapor combustion units located on the platform topside via two (2) 16-inch outside diameter vapor recovery pipelines, each approximately 0.66 nautical miles in length.

• Two (2) co-located 36-inch outside diameter, 40.8-nautical mile long crude oil pipelines would be constructed from the shoreline crossing in Brazoria County, Texas, to the SPOT deepwater port for crude oil delivery. These pipelines, in conjunction with 12.2 statute miles of new-build onshore pipelines (described below), would connect the onshore crude oil storage facility and pumping station (Oyster Creek Terminal) to the offshore SPOT deepwater port. The crude oil would be metered at the offshore platform. Pipelines would be bi-directional for the purposes of maintenance, pigging, changing crude oil grades, or evacuating the pipeline with water.

The SPOT deepwater port onshore storage and supply components would consist of the following:

• New equipment and piping at the existing Enterprise Crude Houston (ECHO) Terminal to provide interconnectivity with the crude oil supply network for the SPOT Project. This would include the installation of four (4) booster pumps, one (1) measurement skid, and four (4) crude oil pumps.

• An interconnection between the existing Rancho II pipeline and the proposed ECHO to Oyster Creek pipeline consisting of a physical connection as well as ultrasonic measurement capability for pipeline volumetric balancing purposes.

• The proposed Oyster Creek Terminal located in Brazoria County, Texas, on approximately 140 acres of land consisting of seven (7) aboveground storage tanks, each with a total storage capacity of 685,000 barrels (600,000 barrels working storage capacity), for a total onshore storage capacity of approximately 4.8 million barrels (4.2 million barrels working storage) of crude oil. The Oyster Creek Terminal also would include: Six (6) electric-driven mainline crude oil pumps; four (4) electric-driven booster crude oil pumps (two (2) per pipeline), working in parallel to move crude oil from the storage tanks through the measurement skids; two (2) crude oil pipeline pig launchers/receivers; one (1) crude oil pipeline pig receiver; two (2) measurement skids for measuring incoming crude oil—one (1) skid located at the incoming pipeline from the existing Enterprise Crude Houston (ECHO) Terminal, and one (1) skid installed and reserved for a future pipeline connection; two (2) measurement skids for measuring departing crude oil; three (3) vapor combustion units—two (2) permanent and one (1) portable; and ancillary facilities to include electrical substation, office, and warehouse buildings.

• Three onshore crude oil pipelines would be constructed onshore to support the SPOT deepwater port. These would include: One (1) 50.1 statute mile long 36-inch crude oil pipeline from the existing ECHO Terminal to the Oyster Creek Terminal. This pipeline would be located in Harris County and Brazoria County, Texas; two (2) 12.2 statute mile long, co-located 36-inch crude oil export pipelines from the Oyster Creek Terminal to the shore crossing where these would join the above described subsea pipelines supplying the SPOT deepwater port. These pipelines would be located in Brazoria County, Texas.

Privacy Act

Regardless of the method used for submitting comments or materials, all submissions will be posted, without change to *www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Security Notice, as well as the User Notice, that is available on the *www.regulations.gov* website. The Privacy Act notice regarding the Federal Docket Management System is available in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

(Authority: 33 U.S.C. 1501 *et seq.,* 49 CFR 1.93(h))

* * * * *

Dated: February 4, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02430 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0031]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PELICAN II (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 9, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0031 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0031 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0031, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PELICAN II is:

—*Intended Commercial Use of Vessel:* ''Carrying of passengers for sightseeing and sunset cruises''

—*Geographic Region Including Base of Operations:* ''Virginia'' (Base of Operations: Charlottesville, VA)

—*Vessel Length and Type:* 33′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0031 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0031 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 3, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02390 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2020–0032]

Request for Comments on the Renewal of a Previously Approved Information Collection: Shipbuilding Orderbook and Shipyard Employment

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected from the shipbuilding and ship repair industry will be used primarily to determine if an adequate mobilization base exists for national defense and for use in a national emergency. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before April 7, 2020.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2020–0032] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gearhart, 202–366–1867, Office of Shipyards and Marine Engineering, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Shipbuilding Orderbook and Shipyard Employment.

OMB Control Number: 2133–0029.

Type of Request: Renewal of a Previously Approved Information Collection.

Form Numbers: MA–832.

Abstract: In compliance with 46 U.S.C. 50102 (2007), the Merchant Marine Act of 1936, as amended, MARAD conducts this survey to obtain information from the shipbuilding and ship repair industry to be used primarily to determine, if an adequate mobilization base exists for national defense and for use in a national emergency.

Respondents: Owners of U.S. shipyards who agree to complete the requested information.

Affected Public: Owners of U.S. shipyards who agree to complete the requested information.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 200.

Estimated Hours per Response: 30 minutes.

Annual Estimated Total Annual Burden Hours: 100.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

By Order of the Maritime Administrator.

Dated: February 3, 2020.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02391 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0033]

Request for Comments on the Approval of a Previously Approved Information Collection: Information To Determine Seamen's Reemployment Rights—National Emergency

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information is needed to determine if U.S. civilian mariners are eligible for re-employment rights under the Maritime Security Act of 1996. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before April 7, 2020.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2020–0033] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Rodney McFadden, 202–366–2647, Office of Maritime Labor and Training, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Information to Determine Seamen's Reemployment Rights—National Emergency.

OMB Control Number: 2133–0526,

Type of Request: Renewal of a previously approved collection.

Abstract: This collection is needed in order to implement provisions of the Maritime Security Act of 1996. These provisions grant re-employment rights and other benefits to certain merchant seamen serving aboard vessels used by

the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary MARAD certification for re-employment rights and other benefits.

Respondents: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking re-employment with a prior employer.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Hours per Response: 1 hr.

Annual Estimated Total Annual Burden Hours: 10.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: February 3, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02392 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0028]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MAGIC (Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 9, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0028 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0028 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0028, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MAGIC is:

—*Intended Commercial Use of Vessel:* ''Private vessel charters, sport fishing charters''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Key West, FL)

—*Vessel Length and Type:* 42′ catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0028 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0028 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide

comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 3, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02393 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0027]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OUTSIDERS (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 9, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0027 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0027 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0027, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OUTSIDERS is:

—*Intended Commercial Use of Vessel:* ''Private recreational vessel charters, sightseeing and harbor tours''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: Marina Del Rey, CA)

—*Vessel Length and Type:* 53′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0027 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0027 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 3, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02389 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0029]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CONTESSA II (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 9, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0029 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0029 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0029, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CONTESSA II is:

—*Intended Commercial Use of Vessel:* ''Pleasure cruises. San Francisco Bay experience and sightseeing. California Delta tours. Photo shoots on the S.F Bay.''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: Sausalito, CA)

—*Vessel Length and Type:* 45′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0029 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0029 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 3, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02388 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0207]

Pipeline Safety: Request for Special Permit; Gulf South Pipeline Company, LP

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit from Gulf South Pipeline Company, LP (GSPC). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by March 9, 2020.

ADDRESSES: Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of **Federal Register** (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Joshua Johnson by telephone at 816–329–3825, or by email at *joshua.johnson@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from the GSPC, a subsidiary of Boardwalk Pipeline Partners, LP, seeking a waiver from the requirements of 49 CFR 192.611, Change in class location: Confirmation or revision of maximum allowable operating pressure. The Class 1 to Class 3 location change occurred in May of 2019. This special permit is being requested in lieu of pipe replacement or pressure reduction for one (1) 42-inch diameter pipe special permit segment of 214 feet in length on the Index 817 Pipeline located in Madison Parish, Louisiana. The proposed special permit will allow operation of the original Class 1 pipe in the Class 3 location.

The Index 817 Pipeline is a 240-mile pipeline on the GSPC system that begins at a connection on the Index 816 Pipeline near Keatchie, Louisiana. The Index 817 Pipeline runs east from Keatchie, Louisiana to the GSPC Harrisville Compressor Station in Mississippi, where it connects to the GSPC Index 818 Pipeline. The Index 817 Pipeline was installed in 2007. The maximum allowable operating pressure for the Index 817 Pipeline in the proposed special permit segment is 1,456 pounds per square inch gauge.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the Index 817 Pipeline segment are available for review and public comment in Docket No. PHMSA–2019–0207. We invite interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny this request.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2020–02483 Filed 2–6–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Periodic Meetings of the U.S. Department of the Treasury Tribal Advisory Committee

AGENCY: Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: This notice announces that the U.S. Department of the Treasury Tribal Advisory Committee (TTAC) will convene two public meetings, one on Tuesday, March 31, 2020, and one on Wednesday, September 16, 2020, each of which will be held from 9 a.m.–1 p.m. Eastern Time in the Cash Room of the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC 20220. Both meetings are open to the public, and the Treasury building is

accessible to individuals with differing abilities.

DATES: Both the meeting on Tuesday, March 31, 2020, and the meeting on Wednesday, September 16, 2020, will be held from 9 a.m.–1 p.m. Eastern Time.

ADDRESSES: The meetings will be held in the Cash Room at the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC 20220. Both meetings will be open to the public. Because each meeting will be held in a secured facility, members of the public who plan to attend the meetings must register online or by telephone by 5 p.m. Eastern Time on Wednesday, March 25, 2020, for the meeting on March 31, 2020, and by 5 p.m. Eastern Time on Thursday, September 10, 2020, for the meeting on September 16, 2020. For the meeting on March 31, 2020, attendees with a valid email address may visit *http://www.cvent.com/d/8hqrcm* to complete a secure online registration form. For the meeting on September 16, 2020, attendees with a valid email address may visit *http://www.cvent.com/d/8nhqf20* to complete a secure online registration form. All other attendees may contact Marie Vazquez Lopez at *marie.vazquezlopez@treasury.gov.* If you require a reasonable accommodation, please contact Lisa Jones at *lisa.jones@treasury.gov* or 202–622–0315. To request a sign language interpreter, please make your request five days prior to the event, if possible, by contacting Lillian Wright at *lillian.wright@treasury.gov.* For all other inquiries concerning the TTAC meeting, please contact *TTAC@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Montoya, Policy Analyst, Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 1426G, Washington, DC 20220, or at (202) 622–2031 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Further information may also be found at: *https://home.treasury.gov/policy-issues/tribal-affairs/treasury-tribal-advisory-committee.*

SUPPLEMENTARY INFORMATION:

Background

Section 3 of the Tribal General Welfare Exclusion Act of 2014, Public Law 113–68, 128 Stat. 1883, enacted on September 26, 2014 (TGWEA), directs the Secretary of the Treasury (Secretary) to establish a seven member Tribal Advisory Committee to advise the Secretary on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers.

Pursuant to Section 3 of the TGWEA and in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1 *et seq.,* the TTAC was established on February 10, 2015, as the ''U.S. Department of the Treasury Tribal Advisory Committee.'' The TTAC's Charter provides that it shall operate under the provisions of the FACA and shall advise and report to the Secretary on:

(1) Matters related to the taxation of Indians;

(2) The establishment of training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Indian tribes of Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian tribal governments; and

(3) The establishment of training of such internal revenue field agents, and provisions of training and technical assistance to tribal financial officers, about implementation of the TGWEA and any amendments.

Fourth and Fifth Periodic Meetings

In accordance with section 10(a)(2) of the FACA and implementing regulations at 41 CFR 102–3.150, Krishna P. Vallabhaneni, the Tax Legislative Counsel and Designated Federal Officer of the TTAC, has ordered publication of this notice to inform the public that the TTAC will convene its fourth periodic meeting on Tuesday, March 31, 2020, from 9 a.m.–1 p.m. Eastern Time in the Cash Room of the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC 20220. Further, in accordance with section 10(a)(2) of the FACA and implementing regulations at 41 CFR 102–3.150, Krishna P. Vallabhaneni, the Tax Legislative Counsel and Designated Federal Officer of the TTAC, has ordered publication of this notice to inform the public that the TTAC will convene its fifth periodic meeting on Wednesday, September 16, 2020, from 9:00 a.m.–1:00 p.m. Eastern Time in the Cash Room of the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Summary of Agenda and Topics To Be Discussed

During these periodic meetings, the seven members of the TTAC will approve meeting minutes, provide updates on TTAC and subcommittee activities, review the TTAC's priority issues matrix, review and receive public comments, and take other actions necessary to fulfill the Committee's mandate.

Public Comments

Members of the public wishing to comment on the business of the TTAC are invited to submit written statements 15 calendar days in advance of each Public Meeting by any of the following methods:

Electronic Statements

- Send electronic comments to *TTAC@treasury.gov.*

Paper Statements

- Send paper statements in triplicate to the Treasury Tribal Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 1426G, Washington, DC 20220.

The TTAC will post all statements on the Department of the Treasury's website at *https://home.treasury.gov/policy-issues/tribal-affairs/treasury-tribal-advisory-committee* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Krishna P. Vallabhaneni,

Tax Legislative Counsel.

[FR Doc. 2020–02442 Filed 2–6–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled, ''Veterans Canteen Service (VCS) Payroll Deduction

Program (PDP)—VA'' (117VA103) as set forth in the **Federal Register** 75 FR 26851. VA is amending the system of records by revising the System Name; System Number; System Location; System Manager; Purpose of the System; Categories of Individuals Covered by the System; Categories of the Records in the System; Record Source Categories; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Storage of Records; Policies and Practices for Retrievability of Records; Policies and Practices For Retention and Disposal of Records; Physical, Procedural, and Administrative Safeguards; Record Access Procedure; and Notification Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than March 9, 2020. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the new system will become effective March 9, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (Note: Not a toll-free number). Comments should indicate they are submitted in response to ''Veterans Canteen Service (VCS) Payroll Deduction Program (PDP)—VA'' (117VA103). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (Note: Not a toll-free number). In addition, comments may be viewed online at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The System Name is being changed from ''Veterans Canteen Service (VCS) Payroll Deduction Program (PDP)—VA'' to ''Veterans Canteen Service (VCS) Payroll Deduction Program (PDP), Point of Sale (POS) Help Desk and eCommerce—VA.''

The System Number will be changed from 117VA103 to 117VA10NA6 to reflect the current organizational alignment.

The System Location is being amended to replace Austin Automation Center (AAC) with Austin Information Technology Center (AITC). This section will add POS Help Desk and VCS eCommerce Site information, which is maintained on a contractor-owned data center located in their Service Desk Online (SDO) system in Coventry, United Kingdom (UK) and Phoenix, Arizona, respectively.

The System Manager has been amended to add the POS Help Desk and eCommerce Site official responsible for policies and procedures: Office of the Business Operations and Support, Veterans Canteen Service (103), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Addresses for VA facilities are listed in VA Appendix 1.

Purpose of the System is being amended to add for the POS Help Desk and eCommerce Site. The VCS records allow authorized VCS contractors to collect relevant data to the end of providing operational support to maintain both cash register systems and the eCommerce Site. User data will be used for incident reporting and help desk activities, site personalization, Email communication, product recommendations, order management and payment processing. The VCS system of records allows authorized VCS employees and contractors to collect VCS canteen addresses, VCS canteen phone numbers, VCS system users first and last name and VCS employee's VA Email addresses through an incident management system for the purposes of in-taking, troubleshooting and triaging VCS call tickets. The operations and maintenance portions must be reported by the end user to a VCS contracted designated help desk who has been designated to resolve the issue. Records would be used to identify issues, conduct follow-up on unresolved issues, perform trend analyses on types of call ticket issues, generate reports and analytics on call ticket trends and notify VCS management of call ticket volume and trends. The additional functions serve to provide a modern system as an eCommerce platform that is comparable to commercial eCommerce sites.

The Categories of Individuals Covered by the System is being amended to define the types of user data covered by the POS Help Desk and eCommerce Site.

The Categories of Records in the System is being amended to include the POS Help Desk and eCommerce Site records include the following identification information:

—User First and Last Name, Prefix, Suffix
—User Email address
—User Gender
—User Date of Birth
—User Address, City, State, and Postal Zip Code
—User Military Affiliation
—User Site Behavioral Patterns
—User Site Purchase History
—User Phone Number
—User PDP Account Number
—User PDP Account Balance
—User Date of Purchase
—User Purchase Amount
—User Identification Control Number (ICN)
—User Security ID
—User Assurance Level
—User Credential Service Identifier
—User Identifier
—User Hash
—User Authentication Time
—Credit Card Number
—Credit Card CVV
—Credit Card Date of Expiration
—PayPal credentials
—VCS Canteen location including Address, City, State and Postal Zip Code
—VCS Canteen Phone Number; and
—Description of System or Application Issue.

Record Source Categories is being amended to include the POS Help Desk and eCommerce Site information in this system of records is provided by authorized VCS employees who call, Email or submit a call ticket to the vendor in order to report a system, application or operational issue relative to a system application. The updates also provide the ability to offer a modern eCommerce platform that is comparable to commercial eCommerce sites, to include custom site personalization, product recommendations and order management.

The Routine Uses of Records Maintained in the System is amending the language in Routine Use #11, which states that disclosure of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and

necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

Routine Use #14 is clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine use #15 is being added to state, ''VA may disclose information from this system of records to another Federal agency or Federal entity, when VA 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.''

Routine use #16 is being added to state, ''VA may disclose relevant information to VCS contracted vendors, in order to provide a single point of contact for all incidents relative to VCS' POS software application.'' VA needs this routine use for VCS contracted vendors to use the information to intake, troubleshoot and triage call tickets as appropriate. In some cases, the incident may need to be escalated to a third party vendor or VA Office of Information Technology (OI&T) for further review and troubleshooting.

Routine use #17 is being added to state, ''VA may disclose relevant information to third party vendors for issues outside the scope of VCS software application vendor. This includes, but is not limited to notification of canteen location, contact information, canteen manager first and last name, VA Email address, and description of the issue.'' VA needs this routine use for vendors to triage and troubleshoot customer transactions.

Policies and Practices for Storage of Records is being amended to include the POS Help Desk records are maintained electronically within the managed service database.

Policies and Practices for Retrievability of Records is being amended to include the POS Help Desk and eCommerce Site records are retrieved by Incident Number.

Policies and Practices For Retention and Disposal of Records to replace ''records for active participants in the Payroll Deduction Program are maintained indefinitely. Records for participants who leave VA employment voluntarily or involuntarily terminate their participation in the Payroll Deduction Program are retained for three years following the date the account attains a zero balance; or for three years following the date the account balance is written off following unsuccessful collection action'' with Payroll System Reports which include error reports, ticklers, and system operation reports, destroy when related actions are completed or when no longer needed, not to exceed 2 years. (N1–GRS–92–4 item 22a). Reports providing fiscal information on agency payroll destroy after GAO audit or when 3 years old, whichever is sooner. (N1–GRS–92–4 item 22c). Information Technology (IT) Customer Service File records related to providing help desk information to customers, including pamphlets, responses to Frequently Asked Questions, and other documents prepared in advance to assist customers, destroy/delete 1 year after record is superseded or obsolete. (N1–GRS–03–1 item 10a). Help desk logs and reports and other files related to customer query and problem response; query monitoring and clearance; and customer feedback records; and related trend analysis and reporting, destroy/delete when 1 year old or when no longer needed for review and analysis, whichever is later. (N1–GRS–03–1 item 10b).''

Physical, Procedural, and Administrative Safeguards is being amended to include:

POS Help Desk and eCommerce Site—

1. Access to VA work and file areas is restricted to VA personnel and authorized contractors with a legitimate need for the information in the performance of their official duties. Strict control measures are enforced to ensure that access by these individuals is appropriately limited. Contractor and VCS employees are required to complete and adhere to annual VA security and privacy awareness training and rules of behavior and are VA cleared. Access is controlled by individual unique passwords or codes, which must be changed periodically by the users.

2. Physical access to the contractor's data processing center is generally restricted to contractor employees, custodial personnel, Federal Protective Service, and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. The only personnel who are able to physically access SDO are the Contractor's IT Team and emergency responders.

3. All data transmissions are encrypted to prevent disclosure of protected Privacy Act information. Access to backup copies of data is restricted to authorized personnel in the same manner as the data processing center.

Record Access Procedure is being amended to include for the POS Help Desk, individuals seeking information regarding access to and contesting of records in this system may write, call, or visit the VCS' Chief, Business Operations and Support at the Veterans Canteen Service Central Office (VCSCO), St. Louis, Missouri 63125; telephone; (314) 845–1200.

Notification Procedure is being amended to include for the POS Help Desk and eCommerce Site, individuals who wish to determine whether the system contains records about them should contact the VCS Chief, Business Operations and Support at the Veterans Canteen Service Central Office (VCSCO), St. Louis, Missouri 63125; telephone; (314) 845–1200. Inquiries should contain the person's full name, date(s) of contact, and return address.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. § 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority: The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. F. John Buck, Director, Office of Privacy Information and Identity Protection, Office of Quality, Privacy and Risk, Office of Information and Technology, Department of Veterans Affairs,

approved this document on June 5, 2018 for publication.

Dated: February 4, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME:

Veterans Canteen Service (VCS) Payroll Deduction Program (PDP), Point of Sale (POS) Help Desk and eCommerce—VA (117VA10NA6)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Individual PDP purchase records are maintained in the VCS office at each Department of Veterans Affairs (VA) health care facility. Addresses for VA facilities are listed in VA Appendix 1. In addition, information from these records or copies of records is maintained in a centralized electronic database at the Austin Information Technology Center (AITC), 1615 East Woodward Street, Austin, TX 78772.

For the POS Help Desk, information is maintained on a contractor owned-data center located in their Service-Desk Online (SDO) system in Coventry, United Kingdom (UK). For the eCommerce Site, data is maintained in a contracted data center located at the Phoenix, Arizona hosting site.

SYSTEM MANAGER(S):

PDP official responsible for policies and procedures: Office of the Chief Financial Officer, Veterans Canteen Service (103), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Officials maintaining the system: Chief of the Canteen Service at the facility where the individuals were associated. Addresses for VA facilities are listed in VA Appendix 1.

For POS Help Desk and eCommerce Site, official responsible for policies and procedures: Office of the Business Operations and Support, Veterans Canteen Service (103), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Addresses for VA facilities are listed in VA Appendix 1.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Part V, Chapter 78.

PURPOSE(S) OF THE SYSTEM:

PDP records and information will be used to track customer purchases, payments and balances due to VCS. Records and information may also be used for the purpose of debt collection. The records and information may be used for management and analysis reports of VCS programs.

For the POS Help Desk and eCommerce Site, the VCS System of Records allows authorized VCS contractors to collect data relevant to system processing to include addresses, phone numbers, user's first and last name, and Email addresses for the purposes of sustaining order fulfillment, payment processing, in-take, troubleshooting and triaging of VCS call tickets. Issues concerning the operation and maintenance of the must be reported by the end user to a VCS contracted designated help desk employee who has been designated to resolve the issue. Records are used to identify issues, conduct follow-up of unresolved issues, generate reports, perform trend analysis and notify VCS management of results from treading to include types of call tickets and call ticket volume. The VCS system of records allows authorized VCS employees and contractors to collect VCS canteen addresses, VCS canteen phone numbers, VCS system users first and last name and VCS employee's VA Email addresses through an incident management system for the purposes of in-taking, troubleshooting and triaging VCS call tickets. The records on the eCommerce Site will be further used to deliver a commercial grade eCommerce platform that will include the ability to provide site customizations and product recommendations based on user browsing patterns, and modern order fulfillment and payment processing methods.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals covered by the system encompass permanent VA employees, also known as customers, who participate in the VCS Payroll Deduction System, which permits them to pay for purchases in VCS canteens through deduction from their pay. For the POS Help Desk, the individuals covered by the system encompass VCS employees. The VCS eCommerce site covers the VCS customer base which includes Veterans enrolled in VA's health care system, their families, caregivers, VA employees, volunteers, and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include the following Information for PDP:

—Customer identification information such as last name, first name, middle initial, social security number;

—Customer purchases made under the program;

—Timestamps for payments;

—Payroll payments, cash payments, refunds for returned merchandise, and refunds for overpayments;

—Customer account balances and amounts written-off as uncollectible;

—Customer pay status when customer is in a ''without pay'' status;

—Identification of VCS employees creating customer transactions is by manual or electronic data capture. Manual transactions can be traced by a user ID within the payroll deduction system that identifies the individual entering the manual transaction. Electronic transactions can be traced by cashier code of the cashier ringing the transaction into the cash register; and

—Customer station number and canteen of purchase.

The POS Help Desk and eCommerce Site records include the following identification information:

—User First and Last Name, Prefix, Suffix;

—User Email address;

—User Gender;

—User Date of Birth;

—User Address, City, State, and Postal Zip Code;

—User Military Affiliation;

—User Site Behavioral Patterns;

—User Site Purchase History;

—User Phone Number;

—User PDP Account Number;

—User PDP Account Balance;

—User Date of Purchase;

—User Purchase Amount;

—User ICN;

—User Security ID;

—User Assurance Level;

—User Credential Service Identifier;

—User Identifier;

—User Hash;

—User Authentication Time;

—Credit Card Number;

—Credit Card CVV;

—Credit Card Date of Expiration;

—PayPal credentials;

—VCS canteen location including Address, City, State and Postal Zip Code;

—VCS canteen Phone Number; and

—Description of System or Application Issue.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the customers who participate in the PDP program, users of the VCS eCommerce Site, VA employees and various VA systems.

The POS Help Desk information in this system of records is provided by authorized users who call, Email or submit a call ticket to a VCS contracted vendor in order to report a system, application or operational issue relative to the system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. VA may disclose information from this system of records to a private debt collection agent for the purpose of collecting unpaid balances from customers who have left VA employment without making full payment for purchases made under the program.

2. VA may disclose information from this system of records to the U.S. Treasury Offset Program (TOPS) for the purpose of collecting unpaid balances from customers who have left VA employment without making full payment for purchases made under the program. VA needs to be able to collect unpaid balances from customers who have left VA employment without making full payment to VCS for purchases made under the program.

3. Disclosure may be made to the Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, and in connection with matters before the Federal Service Impasses Panel. The release of information to FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates.

4. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

5. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

6. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

7. A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of Title 44 United States Code. NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to these agencies in order to determine the proper disposition of such records.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. VA occasionally contracts out certain functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

9. Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

10. Disclosure may be made to a Federal, State or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: The hiring, retention or transfer of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the Veteran's prior written consent. VA must be able to provide information to agencies conducting background checks on applicants for employment or licensure.

11. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

12. VA may disclose any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

13. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

14. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA

suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

15. VA may disclose information from this system to another Federal agency or Federal entity, when VA 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.

16. VA may disclose relevant information to VCS contracted POS and eCommerce vendor, in order to provide a single point of contact for all incidents relative to the VCS system. This routine use permits VCS contracted vendors to use the information to process orders and payment, call intake, troubleshoot and triage call tickets as appropriate. In some cases, the incident may need to be escalated to a third-party vendor or VA Office of Information Technology (OI&T) for further review and resolution.

17. VA may disclose relevant information to third party vendors to analyze product recommendations, perform site customizations, process payments, and resolve issues outside the scope of the VCS system vendors. This information may include canteen location, contact information, canteen manager first and last name, VA Email address, issues description, site browsing patterns, purchase history, military affiliation, gender, and date of birth. This routine use permits third party vendors to triage and troubleshoot customer issues when the VCS vendor is unable due to the scope of their contract.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 168la(f)) or the Federal Claims Collection Act of 1966 (31 US.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

PDP records are maintained primarily on a computer disk in a centralized database system. Paper records of program Participation Agreements and individual customer records are maintained in canteen office files. The POS Help Desk and eCommerce records are maintained electronically within the respective vendors managed service databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

PDP records are retrieved by name and/or Social Security number of the participating VA employees or customers. The POS Help Desk records are retrieved by Incident Number. There is typically a three-letter mnemonic that identifies the customer with an incremented number following the mnemonic. eCommerce Site records can be retrieved by Email address or User Identifier data element.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Payroll System Reports which include error reports, ticklers, and system operation reports, destroy when related actions are completed or when no longer needed, not to exceed 2 years. (N1–GRS–92–4 item 22a). Reports providing fiscal information on agency payroll destroy after GAO audit or when 3 years old, whichever is sooner. (N1–GRS–92–4 item 22c). Information Technology Customer Service File records related to providing help desk information to customers, including pamphlets, responses to Frequently Asked Questions, and other documents prepared in advance to assist customers, destroy/delete 1 year after record is superseded or obsolete. (N1–GRS–03–1 item 10a). Help desk logs and reports and other files related to customer query and problem response; query monitoring and clearance; and customer feedback records; and related trend analysis and reporting, destroy/delete when 1 year old or when no longer needed for review and analysis, whichever is later. (N1–GRS–03–1 item 10b).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PDP—

1. Access to VA work and file areas is restricted to VA personnel with a legitimate need for the information in the performance of their official duties. Strict control measures are enforced to ensure that access by these individuals is appropriately limited. Information stored electronically may be accessed by authorized VCS employees at remote locations, including VA health care facilities. Access is controlled by individually unique passwords or codes, which must be changed periodically by the users.

2. Physical access to the Austin VA Data Processing Center is generally restricted to Center employees, custodial personnel, Federal Protective Service, and other security personnel. VA file areas are generally locked after normal duty hours, and the facilities are protected from outside access by the Federal Protective Service or other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted.

3. All data transmissions are encrypted to prevent disclosure of protected Privacy Act information. Access to backup copies of data is restricted to authorized personnel in the same manner as the Austin VA Data Processing Center.

POS Help Desk and eCommerce Site—

1. Access to VA work and file areas is restricted to VA personnel and authorized contractors with a legitimate need for the information in the performance of their official duties. Strict control measures are enforced to ensure that access by these individuals is appropriately limited. Contractors and VCS employees are required to annually complete and adhere to VA security and privacy awareness training and sign the rules of behavior. Access is controlled by individual unique passwords or codes, which must be changed periodically by the users.

2. Physical access to the contractor's data processing center is generally restricted to contractor employees, custodial personnel, Federal Protective Service, and other security personnel. Access to computer rooms is restricted to authorized personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. The only personnel who are provided physical access are the Contractor's Information Technology (IT) Team and emergency responders.

3. All data transmissions are encrypted to prevent disclosure of protected information. Access to backup copies of data is restricted to authorized personnel in the same manner as the AITC.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding PDP access to and contesting of records in this system may write, call, or visit the VCS Payroll Deduction Program Specialist at the Veterans Canteen Service Central Office (VCSCO–FC), St. Louis, Missouri 63125; telephone: (314) 845–1301.

For the POS Help Desk or VCS eCommerce Site, individuals seeking information regarding access to and contesting of records in this system may write, call, or visit the VCS' Chief, Business Operations and Support at the Veterans Canteen Service Central Office (VCSCO), St. Louis, Missouri 63125; telephone; (314) 845–1200.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains PDP records about them should contact the VCS Payroll Deduction Program Specialist at the Veterans Canteen Service Central Office (VCSCO–FC), St. Louis, Missouri 63125; telephone: (314) 845–1301. Inquiries should include the person's full name, Social Security number, date(s) of contact, and return address.

For the POS Help Desk and VCS eCommerce Site, individuals who wish to determine whether the system contains records about them should contact the VCS Chief, Business Operations and Support at the Veterans Canteen Service Central Office (VCSCO), St. Louis, Missouri 63125; telephone; (314) 845–1200. Inquiries should contain the person's full name, date(s) of contact, and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 75 FR 26851 dated May 12, 2010.

[FR Doc. 2020–02480 Filed 2–6–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration (VHA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled, ''Health Care Provider Credentialing and Privileging Records—VA'' (77VA10A4) as set forth in the **Federal Register** 80 FR 36595. VA is amending the system of records by revising the System Number; Routine Uses of Records Maintained in the System and Policies; and Practices for Retention and Disposal of Records. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than March 9, 2020. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective March 9, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to ''Health Care Provider Credentialing and Privileging Records—VA''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (704) 245–2492.

SUPPLEMENTARY INFORMATION: The System Number is being changed from (77VA10A4 to 77VA10E2E) to reflect the current organizational alignment.

The Routine Uses of Records Maintained in the System is amending the language in Routine Use #8 which states that disclosure of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

Routine Use #22 has been amended by clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine Use #25 which states, ''VA may disclose information to the Department of Defense (DoD) from the joint platform electronic credentialing system being shared with DoD for credentialing/privileging purposes.'' VA needs the ability to disclose limited information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges.

Routine use #26 is being added to state, ''VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with or in consideration of the reporting of:

(a) Any payment for the benefit of the former VA employee or contractor that was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the individual;

(b) A final decision which relates to possible incompetence or improper professional conduct that adversely affects the former employee's or contractor's clinical privileges for a period longer than 30 days; or

(c) The former employee's or contractor's surrender of clinical privileges or any restriction of such privileges while under investigation by the health care entity relating to possible incompetence or improper professional conduct to the National Practitioner Data Bank or the state licensing board in any state in which the individual is licensed, the VA facility is located, or an act or omission occurred upon which a medical malpractice claim was based.'' VA needs the ability to release medical record information to former employees for purposes of evidence files and Fair Hearing Process.

Routine use #27 is being added to state, ''VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with or in consideration of reporting that the individual's professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients, to a Federal agency, a State or local government licensing board, or the Federation of State Medical Boards or a similar nongovernmental entity which maintains records concerning individuals' employment histories or concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty.'' VA needs the ability to release medical record information to former employees for purposes of evidence files and Fair Hearing Process.

Routine use #28 is being added to state, ''VA may disclose information from this system of records to another Federal agency or Federal entity, when VA 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.''

The Policies and Practices for Retention and Disposal of Records is being amended to include the merging of Service Level Files with the two-part Paper Credentialing and Privileging Records for VA Employees when a provider departs from VA (*i.e.,* State Licensure Board Evidence Files, Exit Review Forms, Focused Professional Practice Evaluation (FPPE) and Ongoing Professional Practice Evaluations (OPPE) data collection). Exit Review forms, Service Level documentation, etc. must be maintained for 3 years after the individual separates and the files must be kept on site for 3 years. After the individual separates from VA employment or after reporting and retired to the Federal Records Center, they are maintained for 30 years and then destroyed.

Signing Authority: The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on September 5, 2019 for publication.

Dated: February 4, 2020.

Amy L. Rose,

Program Analyst VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Health Care Provider Credentialing and Privileging Records-VA (77VA10E2E).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at each Department of Veterans Affairs (VA) health care facility. Address locations for VA facilities are listed in VA Appendix 1 biennial publication of VA system of records. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 and/or Veterans Integrated Service Network (VISN) Offices. Records for those health care providers who are contractors in a VA health care facility or to VA for the delivery of health care to veterans and are credentialed by the contractor in accordance with Veterans Health Administration (VHA) policy, where credentialing information is received by VHA facilities, it will be maintained in accordance with this notice and VHA policy. Electronic copies of records may be maintained by VHA Office of Quality, Safety and Value (OQSV), a component thereof, or a contractor or subcontractor of VHA/OQSV. Backup copies of the electronic data warehouse are maintained at off-site locations.

SYSTEM MANAGER(S):

Official responsible for policies and procedures: Director, Credentialing and Privileging Program, Office of Quality, Safety and Value (OQSV), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. The System Manager is Marianne Chick, Director of Medical Staff Affairs, *Marianne.Chick@va.gov,* 919–474–3937. Officials maintaining the system: (1) The chief of staff at the VA health care facility where the provider made application, is employed, or otherwise utilized; (2) the credentialing coordinator of the VA health care facility for individuals who made application for employment or other utilization, or providers currently or previously employed or otherwise utilized at; (3) human resources management offices of the VA health care facility for individuals who made application for employment or other utilization, or providers currently or previously employed or otherwise utilized; (4) VA Central Office or at a VISN location; The electronic data will be maintained by VHA/OQSV, a component thereof, or a contractor or subcontractor of VHA/OQSV.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38 U.S.C. 501(a) and section 7304(a)(2).

PURPOSE(S) OF THE SYSTEM:

The information may be used for: Verifying the individual's credentials and qualifications for employment or utilization, appointment to the professional staff, and/or clinical privileges; advising prospective health care entity employers, health care professional licensing or monitoring bodies, the National Practioner Data Bank (NPDB), or similar entities or activities of individuals covered by this system; accreditation of a facility by an entity such as the Joint Commission; audits, reviews and investigations conducted by staff of the health care facility, the Veterans Integrated Service Network (VISN) Directors and Division Offices, VA Central Office, VHA program offices, and the VA Office of Inspector General; law enforcement investigations; quality assurance audits, reviews and investigations; personnel management and evaluations; employee ratings and performance evaluations; and, employee disciplinary or other adverse action, including discharge. The records and information may be used for statistical analysis, to produce various management reports, evaluate services, collection, distribution and utilization of resources, and provide clinical and

administrative support to patient medical care.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

The records include information concerning health care providers currently or formerly employed or otherwise utilized by VHA and individuals who apply to VHA for employment and are considered for employment or appointment as health care providers. These records will include information concerning individuals who through a contractual or other agreement may be, or are, providing health care to VA patients. This may include, but is not limited to, audiologists, dentists, dietitians, expanded-function dental auxiliaries, licensed practical or vocational nurses, nuclear medicine technologists, nurse anesthetists, nurse practitioners, registered nurses, occupational therapists, optometrists, clinical pharmacists, licensed physical therapists, registered kinesiotherapists, physician assistants, physicians, podiatrists, psychologists, registered respiratory therapists, certified respiratory therapy technicians, diagnostic and therapeutic radiology technologists, social workers, and speech pathologists.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system consist of information related to:

(1) The credentialing (the review and verification of an individual's qualifications for employment or utilization, which includes licensure, registration or certification, professional education and training, employment history, experience, appraisals of past performance, health status, etc.) of applicants who are considered for employment and/or appointment, for providing health services under a contract or other agreement, and/or for appointment to the professional staff at a VHA health care facility.

(2) The privileging (the process of reviewing and granting or denying a provider's request for clinical privileges to provide medical or other patient care services, within well-defined limits, which are based on an individual's professional license, registration or certification, experience, training, competence, health status, ability, and clinical judgment) health care providers who are permitted by law and by the medical facility to provide patient care independently and individuals whose duties and responsibilities are determined to be beyond the normal scope of activities for their profession;

(3) The periodic reappraisal of health care providers' professional credentials and the reevaluation of the clinical competence of providers who have been granted clinical privileges; and/or

(4) Records generated as part or result of accessing and reporting to the NPDB, and the Federation of State Medical Boards (FSMB).

The records may include individually identifiable information (*e.g.,* name, date of birth, gender, Social Security number, national provider identification number and associated taxonomy codes, and/or other personal identification number), address information (*e.g.,* home mailing address, home telephone number, email address, facsimile number), biometric data, information related to education and training (*e.g.,* name of medical or professional school attended and date of graduation, name of training program, type of training, dates attended, and date of completion).

The records may also include information related to: The individual's license, registration or certification by a State licensing board and/or national certifying body (*e.g.,* license number, expiration date, name and address of issuing office, status including any actions taken by the issuing office or any disciplinary board to include previous or current restrictions, suspensions, limitations, or revocations); citizenship; honors and awards; type of appointment or utilization; service/product line; professional society membership; professional performance, experience, and judgment (*e.g.,* documents reflecting work experience, appraisals of past and current performance and potential); educational qualifications (*e.g.,* name and address of institution, level achieved, transcript, information related to continuing education); Drug Enforcement Administration and/or State controlled dangerous substance certification (*e.g.,* current status, any revocations, suspensions, limitations, restrictions); information about mental and physical status; evaluation of clinical and/or technical skills; involvement in any administrative, professional or judicial proceedings, whether involving VA or not, in which professional malpractice on the individual's part is or was alleged; any actions, whether involving VA or not, which result in the limitation, reduction, revocation, or acceptance of surrender or restriction of the individual's clinical privileges; and, clinical performance information that is collected and used to support a determination of an individual's request for clinical privileges. Some information that is included in the record may be duplicated in an employee's official personnel folder.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the applicant/employee, or obtained from State licensing boards, Federation of State Medical Boards, National Council of State Boards of Nursing, National Practitioner Data Bank, professional societies, national certifying bodies, current or previous employers, other health care facilities and staff, references, educational institutions, medical schools, VA staff, patient, visitors, and VA patient medical records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to any source from which additional information is requested (to the extent necessary and to identify the type of information requested), when necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee, the issuance or reappraisal of clinical privileges, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits; or in response to scarce or emergency needs of the Department or other entities when specific skills are required.

2. A record from this system of records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of VA, information in connection with the hiring of an employee, appointment to the professional staff, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefit by the agency, or the lawful statutory or administrative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision; or at the initiative of VA, to the extent the information is relevant and necessary to an investigative purpose of the agency.

3. Disclosure may be made to a Congressional office from the record or an individual in response to an inquiry from the Congressional office made at the request of that individual.

4. Disclosure may be made to NARA (National Archives and Records Administration) in records management

inspections conducted under authority of title 44 United States Code.

5. Information from this system of records may be disclosed to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, utilization, appointment, retention or termination of individuals covered by this system or to inform a Federal agency or licensing boards or the appropriate nongovernment entities about the health care practices of a currently employed, appointed, otherwise utilized, terminated, resigned, or retired health care employee or other individuals covered by this system whose professional health care activity so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

6. Information may be disclosed to non-Federal sector (*i.e.,* State, or local governments) agencies, academic affiliates, organizations, boards, bureaus, or commissions (*e.g.,* the Joint Commission). Such disclosures may be made only when: (1) The records are properly constituted in accordance with VA requirements; (2) the records are accurate, relevant, timely, and complete; and (3) the disclosure is in the best interest of the Government (*e.g.,* to obtain accreditation or other approval rating). When cooperation with the non-Federal sector entity, through the exchange of individual records, directly benefits VA's completion of its mission, enhances personnel management functions, or increases the public confidence in VA's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving entity is to be furnished.

7. Information may be disclosed to a State or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

8. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

9. Hiring, appointment, performance, or other personnel credentialing related information may be disclosed to any facility or agent with which there is, or there is proposed to be, an affiliation, sharing agreement, partnership, contract, or similar arrangement, where required for establishing, maintaining, or expanding any such relationship.

10. Information concerning a health care provider's professional qualifications and clinical privileges may be disclosed to a VA patient, or the representative or guardian of a patient who due to physical or mental incapacity lacks sufficient understanding and/or legal capacity to make decisions concerning his/her medical care, who is receiving or contemplating receiving medical or other patient care services from the provider when the information is needed by the patient or the patient's representative or guardian in order to make a decision related to the initiation of treatment, continuation or discontinuation of treatment, or receiving a specific treatment that is proposed or planned by the provider. Disclosure will be limited to information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges.

11. VA may disclose any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

12. To disclose to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

13. To disclose to the VA-appointed representative of an employee all notices, determinations, decision, or other written communications issued to the employee in connection with an examination ordered by VA under fitness-for-duty examination procedures or Agency-filed disability retirement procedures.

14. To disclose information to officials of the Merit Systems Protection Board, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

15. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or the other functions of the Commission as authorized by law or regulation.

16. To disclose the information listed in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C., chapter 71 when relevant and necessary to their duties of exclusive

representation concerning personnel policies, practices, and matters affecting working conditions.

17. Identifying information in this system, including name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the NPDB at the time of hiring, appointment, utilization, and/or clinical privileging/re-privileging of physicians, dentists and other health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, appointment, utilization, privileging/re-privileging, retention or termination of the individual.

18. Relevant information from this system of records may be disclosed to the NPDB and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

19. In response to a request about a specifically identified individual covered by this system from a prospective Federal or non-Federal health care entity employer, the following information may be disclosed: (a) Relevant information concerning the individual's professional employment history including the clinical privileges held by the individual; (b) relevant information concerning a final decision that results in a voluntary or involuntary limitation, reduction or loss of clinical privileges; and (c) relevant information concerning any payment that is made in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim and, when through a peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to the individual.

20. Disclosure may be made to any Federal, State, local, tribal or private entity in response to a request concerning a specific provider for the purposes of credentialing providers who provide health care at multiple sites or move between sites. Such disclosures may be made only when: (1) The records are properly constituted in accordance with VA requirements; (2) the records are accurate, relevant, timely, and complete; and (3) disclosure is in the best interests of the Government (*i.e.,* to meet the requirements of contracts, sharing agreements, partnerships, etc.). When exchange of credentialing information through the exchange of individual records, directly benefits VA's completion of its mission, enhances public confidence in VA's or Federal Government's role in the delivery of health care, then the best interests of the Government are served.

21. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

22. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

23. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

24. VA may disclose information concerning a health care provider's professional qualification which may be published on publicly facing VA owned or managed internet websites. Information to be displayed include the name of provider, gender, name of professional school, post-graduate training program, State of licensure, and board certification.

25. VA may disclose information to DoD from the joint platform electronic credentialing system being shared with DoD for credentialing/privileging purposes.

26. VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with or in consideration of the reporting of:

(a) Any payment for the benefit of the former VA employee or contractor that was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the individual;

(b) A final decision which relates to possible incompetence or improper professional conduct that adversely affects the former employee's or contractor's clinical privileges for a period longer than 30 days; or (c) The former employee's or contractor's surrender of clinical privileges or any restriction of such privileges while under investigation by the health care entity relating to possible incompetence or improper professional conduct to the NPDB or the state licensing board in any state in which the individual is licensed, the VA facility is located, or an act or omission occurred upon which a medical malpractice claim was based.

27. VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with or in consideration of reporting that the individual's professional health care activity so significantly failed to

conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients, to a Federal agency, a State or local government licensing board, or the Federation of State Medical Boards or a similar nongovernmental entity which maintains records concerning individuals' employment histories or concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty.

28. VA may disclose information from this system to another Federal agency or Federal entity, when VA 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 maintained on paper documents or in electronic format. Information included in the record may be stored on microfilm, magnetic tape or disk. Records are maintained at the employing VHA health care facility. If the individual transfers to another VHA health care facility, the record is transferred to the new location, if appropriate.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the names and Social Security number or other assigned identifiers, *e.g.,* the National Provider Identifier (NPI), of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Paper records are retired to the VA Records Center and Vault (VA RC&V) 3 years after the individual separates from VA employment or when no longer utilized by VA (in some cases, records may be maintained at the facility for a longer period of time) and are destroyed 30 years after separation. Paper records for applicants who are not selected for VA employment or appointment are destroyed 2 years after non-selection or when no longer needed for reference, whichever is sooner. Electronic records are transferred to the Director, Credentialing and Privileging Program, Office of Quality, Safety and Value, VA Central Office, when the provider leaves the facility. Information stored on electronic storage media is maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. The merge of Service Level Files with the two-part Paper Credentialing and Privileging Records for VA Employees when a provider departs from VA (*i.e.,* State Licensure Board Evidence Files, Exit Review Forms, and Focused Professional Practice Evaluation (FPPE)/Ongoing Professional Practice Evaluations (OPPE) data collection). Exit Review forms, Service Level documentation etc. must be maintained for 3 years after the individual separates and the files must be kept on site for 3 years. After the individual separates from VA employment or after reporting and retired to the Federal Records Center, they are maintained for 30 years and then destroyed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to VA working and storage areas in VA health care facilities is restricted to VA employees on a ''need to know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the health care facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer room within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated data processing peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the Veterans Information Systems Technology Architecture (VistA) system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file that is needed in the performance of their official duties.

3. Access to records in VA Central Office and the VISN directors and division offices is only authorized to VA personnel on a ''need-to-know'' basis. There is limited access to the building with visitor control by security personnel.

4. The automated system is internet enabled and will conform to all applicable Federal Regulations concerning information security. The automated system is protected by a generalized security facility and by specific security techniques used within the application that accesses the data file and may include individually unique passwords/codes and may utilize Public Key Infrastructure (PKI) personal certificates. Both physical and system security measures will meet or exceed those required to provide an adequate level of protection for host systems. Access to file information is limited to only that information in the file that is needed in the performance of official duties. Access to computer rooms is restricted generally by appropriate locking devices to authorized operational personnel. Information submitted to the automated electronic system is afforded the same protections as the data that are maintained in the original files. Remote on-line access from other agencies to the data storage site is controlled in the same manner. Access to the electronic data is supported by encryption and the internet server is insulated by a firewall.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made application for employment or appointment, or are or were employed.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures).

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they made application for employment or appointment or are or were employed.

Inquiries should include the employee's full name, social security number, date of application for employment or appointment or dates of employment or appointment and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 80 FR 36596 dated Jun 25, 2015.

[FR Doc. 2020–02477 Filed 2–6–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled, ''Spinal Cord Injury and Disorders Outcomes-Repository (SCIDO–R)–VA'' (108VA11S) as set forth in 77 FR 22632. VA is amending the system of records by revising the System Name; System Number; System Location; Purpose of the System; Categories of Individuals Covered by the System; Categories of Records in the System; Record Source Categories; Routine Uses of Records Maintained in the System; Policies and Practices for Retention and Disposal of Records; Administrative, Technical, and Physical Safeguards; and Record Accord Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than March 9, 2020. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective March 9, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to ''Spinal Cord Injury and Disorders Outcomes-Repository (SCIDO–R)–VA''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The System Name is being changed from ''Spinal Cord Injury and Disorders Outcomes-Repository (SCIDO–R)–VA'' to ''Spinal Cord Injuries and Disorders (SCI/D) Registry and Outcomes Program-VA''.

The System Number is being changed from 108VA11S to 108VA10NC9 to reflect the current organizational alignment.

The System Location has been amended to remove paper records being maintained at the VA Austin Information Technology Center (AITC). Being removed, ''Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances'' and replaced with ''Address locations for VA facilities may be found at *https://www.va.gov/directory/guide/home.asp.*'' Also, SCIDO application and the VA databases housed at the AITC are being replaced with data transmissions occurring between the local Spinal Cord Injuries (SCI) Centers and the VA SCI/D National Program Office.

The Purpose of the System is being amended to replace the SCIDO Registry with Spinal Cord Injuries and Disorders (SCI/D) Registry and Outcomes Program. The Regional SCIDO Repositories are being replaced with the local SCI/D Centers.

The Categories of Individuals Covered by the System and The Categories of Records in the System are being amended to change Spinal Cord Injury and Disorders Outcomes (SCIDO) Repository to Spinal Cord Injuries and Disorders (SCI/D) Registry and Outcomes Program.

The Record Source Categories are being amended to replace 24VA19 with 24VA10P2.

The Routine Uses of Records Maintained in the System is amending the language in Routine Use #11 which states that disclosure of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

Routine Use #13 is being amended by clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine use #16 is being added to state, ''VA may disclose information from this system to another Federal agency or Federal entity, when VA 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.'' VA needs this routine use for the data breach response and remedial efforts with another Federal agency.

The Policies and Practices for Retention and Disposal of Records is being amended to remove, ''Records will be maintained and disposed of in accordance with record disposition authority approved by the Archivist of the United States. Depending on the record medium, records are destroyed by either shredding or degaussing. Optical disks or other electronic media are deleted when no longer required for official duties.'' VA has submitted a request for records disposition authority to the National Archives and Records Administration (NARA) for approval. Upon approval by NARA, VA will publish an amendment to this System of Records. In the interim, no records will be destroyed. This section will now state that ''Records are under the following records schedule; Record Control Schedule (RCS) 10–1 item 6270. Master Files within a centralized database; Temporary; cutoff at the last unique patient entry or the death of a particular patient. Delete 75 years after

cutoff. (N1–015–05–1, Item 1). Local Files (SCI centers and clinics); Temporary; delete when replaced by a subsequent file or 75 years after date of last activity for a particular patient. (N1–015–05–1, Item 2). Backup Files; Temporary; delete when master files have been deleted or replaced with a subsequent backup file. (N1–015–05–1, Item 3).

The Administrative, Technical, and Physical Safeguards are being amended to 1. Add the SCI/D National Program Office protected network folders. Also, added the use of Computerized Patient Record System (CPRS) security modules. 2. AITC is being replaced with the National Program Office.

The Record Access Procedure is amended to include the Program Office in which requests for services were made.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority: The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on November 25, 2019 for publication.

Dated: February 4, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Spinal Cord Injuries and Disorders (SCI/D) Registry and Outcomes Program-VA'' (108VA10NC9)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

All electronic records are maintained at the Austin Information Technology Center (AITC), Department of Veterans Affairs (VA), 1615 Woodward Street, Austin, Texas 78772, and address locations for VA facilities may be found at *https://www.va.gov/directory/guide/home.asp.* Each Spinal Cord Injury Center has a Spinal Cord Injury and Disorders Outcome (SCIDO) application deployment. Data transmissions occur between the local Spinal Cord Injury (SCI) Centers and the VA Spinal Cord Injuries and Disorders (SCI/D) National Program Office databases housed in the Department's wide area network.

SYSTEM MANAGER(S):

Official responsible for Spinal Cord Injury and Disorders Outcomes—Repository (SCIDO–R) design, development, and maintenance: SCIDO Program Specialist (128N), 1660 South Columbian Way, Seattle, Washington 98108.

Official responsible for policies and procedures: Chief Consultant, Spinal Cord Injury and Disorders Services (128N), 1660 South Columbian Way, Seattle, Washington 98108.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.), Section 501 and 7304.

PURPOSE(S) OF THE SYSTEM:

The SCI/D Registry and Outcomes Program provides a registry of Veterans with SCI/D. This registry contains pertinent information on Veterans with SCI/D and enables better coordination of care among Veterans Health Administration (VHA) staff. The purpose of the SCI/D Registry and Outcomes Program is to assist clinicians, administrators, and researchers in identifying and tracking services for Veterans with spinal cord dysfunction resulting from trauma or diseases. The SCI/D Registry and Outcomes Program can also facilitate clinical, administrative, and research reports for medical center use. Local SCI/D Centers provide data extracts to the SCI/D National Program Office which then uses the data to provide a VA-wide review of Veteran demographics and clinical aspects of injuries and disorders.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Veterans identified with SCI/D that have applied for VA healthcare services are included in the system. Occasionally, non-Veterans who have received VA healthcare or rehabilitation services under sharing agreements, contracted care, or humanitarian emergencies will also have information recorded in the SCI/D Registry and Outcomes Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain identifying information including name, social security number, date of birth, and registration date in the SCI/D Registry and Outcomes Program. Registration information may include information about whether individuals are receiving services from VA's spinal cord system of care, neurologic level of injury, etiology, date of onset, type of cause, completeness of injury, and annual evaluation dates offered and received. The SCI/D Registry and Outcomes Program also stores outcome measures of impairment, activity, social role participation, and satisfaction with life. A registrant may have multiple outcome entries.

RECORD SOURCE CATEGORIES:

Various automated record systems providing clinical and managerial support to VA healthcare facilities, the Veteran, family members, accredited representatives or friends, and ''Patient Medical Records—VA'' (24VA10P2) system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually-identifiable health information, and 38 U.S.C. 7332; *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited Veterans service organization representatives, and other individuals named as approved agents or attorneys for a documented purpose and period of time. These agents/attorneys must be aiding beneficiaries in the preparation/presentation of their cases during verification and/or due process procedures or in the presentation/prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

a. To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

b. To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

4. Disclosure may be made to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code.

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requester) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the armed services and/or their dependents may be disclosed;

a. To a Federal department or agency; or

b. Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to ensure the appropriateness of the disclosure to the contractor.

7. VA may disclose any information in this system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Rehabilitation Accreditation Commission, The Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

9. Records from this system of records may be disclosed in a proceeding before a court, adjudicative body, or other administrative body when the Department, or any Department component or employee (in his or her official capacity as a VA employee), is a party to litigation; when the Department determines that litigation is likely to affect the Department, any of its components or employees, or the United States has an interest in the litigation, and such records are deemed to be relevant and necessary to the legal proceedings; provided, however, that the disclosure is compatible with the purpose for which the records were collected.

10. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement.

11. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

12. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

13. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

14. VA may disclose identifying information, including social security number, concerning Veterans, spouses of Veterans, and the beneficiaries of Veterans to other Federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of Veterans receiving VA medical care under Title 38, U.S.C.

15. VA may disclose patient identifying information to Federal agencies and VA and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish this purpose.

16. VA may disclose information from this system to another Federal agency or Federal entity, when VA 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:

Magnetic tapes/disks and optical discs. Electronic data are maintained on Direct Access Storage Devices at the AITC. The AITC stores registry tapes for disaster backup at a secure, off-site

location. Electronic backup files for the regional SCI/D applications are stored at the Regional Data Processing Center (RDPC1) at Denver, Colorado also for disaster backup at a secure, off-site location.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed by name of Veteran, social security number, unique patient identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are under the following records schedule; Record Control Schedule (RCS) 10–1 item 6270. Master Files within a centralized database; Temporary; cutoff at the last unique patient entry or the death of a particular patient. Delete 75 years after cutoff. (N1–015–05–1, Item 1). Local Files (SCI centers and clinics); Temporary; delete when replaced by a subsequent file or 75 years after date of last activity for a particular patient. (N1–015–05–1, Item 2). Backup Files; Temporary; delete when master files have been deleted or replaced with a subsequent backup file. (N1–015–05–1, Item 3).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Data transmissions between VA healthcare facilities and the VA SCI/D National Program Office protected network folders. The SCI/D–Repository program and other programs at the respective facilities automatically flag records or events for transmission based upon functionality requirements. VA healthcare facilities control access to data by using VHA's VistA and Computerized Patient Record System (CPRS) security modules. The Department's Telecommunications Support Service has oversight responsibility for planning, security, and management of the wide area network.

2. Access to records at VA healthcare facilities is only authorized to VA personnel on a ''need-to-know'' basis. Records are maintained in staffed rooms during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel. Access to the National Program Office staff is generally restricted to SCI/D staff, VA Central Office employees, custodial personnel, Federal Protective Service, and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted. Backup records stored off-site for both the National Program Office and VA Central Office are safeguarded in secured storage areas.

3. Strict control measures are enforced to ensure that access to and disclosure from all records including electronic files and Veteran-specific data elements are limited to VHA employees whose official duties warrant access to those files. The automated record system recognizes authorized users by keyboard entry of unique passwords, access, and verify codes.

RECORD ACCESS PROCEDURE:

An individual who seeks access to records maintained under his or her name may write or visit the Program Office in which requests for services were made, the nearest VA facility, or write to the Chief Consultant, Spinal Cord Injury and Disorders Services (128N), 1660 South Columbian Way, Seattle, Washington 98108.

CONTESTING RECORD PROCEDURES:

(See Record Access procedures above).

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where medical care was provided or submit a written request to the Chief Consultant, Spinal Cord Injury and Disorders Services (128N), 1660 South Columbian Way, Seattle, Washington 98108. Inquiries should include the Veteran's name, social security number, and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 77 FR 73 dated April 16, 2012.

[FR Doc. 2020–02479 Filed 2–6–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled, ''Investigative Database—OMI–VA'' (162VA10MI) as set forth in the **Federal Register** 75 FR 26847. VA is amending the system of records by revising the System Number; System Location; System Manager; Categories of Records in the System; Record Source Categories and Routine Uses of Records Maintained in the System and Policies. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than March 9, 2020. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective March 9, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to ''Investigative Database—OMI–VA''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (704) 245–2492. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The System Number is being changed from (162VA10MI to 162VA10E1B) to reflect the current organizational alignment.

The System Location is being amended to change the Austin Automation Center to the Austin Information Technology Center.

The System Manager is being amended to remove ''Official responsible for policies and procedures; Chief Information Officer (OIT), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420.'' OMI (10MI) is being changed to OMI (10E1B).

The Categories of Records in the System is being amended to change 24VA19 to 24VA10P2 in section 1. In section 6, ''VHA Directive 2006–04 of June 27, 2006, Cooperation with the Office of the Medical Inspector,

Paragraph 4a.'', is being replaced with VHA Directive 1038 of August 2, 2017, Role of the Office of the Medical Inspector, Paragraph 4f.

The Record Source Categories is being amended to change 24VA19 to 24VA10P2, and ''Healthcare Eligibility Records—VA'' (89VA16) is being changed to ''Income Verification Records—VA'' (89VA10NB). The Austin Automation Center is being changed to the Austin Information Technology Center.

The Routine Uses of Records Maintained in the System has been amended by amending the language in Routine Use #3 which states that disclosure of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

Routine Use #10 is being amended from stating that any information in this system of records may be disclosed, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations. This routine use will now state that any relevant and necessary information in this system of records may be disclosed to support the litigation, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

Routine Use #14 is clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine use #15 is being added to state, ''VA may disclose information from this system of records to another Federal agency or Federal entity, when VA 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. VA needs this routine use for the data breach response and remedial efforts with another Federal agency.

Routine use #16 is being added to state VA may disclose information from this system to the Office of the Special Counsel for investigation and inquires of alleged or possible prohibited personnel practices. VA needs this routine use to insist in informal inquires as required by statute and regulation.

Signing Authority: The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on May 13, 2019 for publication.

Dated: February 4, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Investigative Database—OMI–VA'' (162VA10E1B).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The main Office of the Medical Inspector (OMI) records are maintained in secure files within the OMI and indexed on a secure document management server within the Department of Veterans Affairs (VA) Central Office firewall. Additional records are maintained by the Austin Information Technology Center, 1615 Woodward Street, Austin, Texas 78772, and subject to their security control.

SYSTEM MANAGER(S):

Official maintaining this system of records: Correspondence Analyst, OMI (10E1B), 810 Vermont Avenue NW, Washington, DC 20420.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38 U.S.C. 501.

PURPOSE(S) OF THE SYSTEM:

The records and information of this database may be used to document the investigative activities of the OMI; to perform statistical analysis to produce various management and follow-up reports; and to monitor the activities of VA Medical Centers in fulfilling action plans developed in response to OMI reports. The data may be used for VA's extensive quality improvement programs in accordance with VA policy. In addition, the data may be used for law enforcement investigations. Survey data will be collected for the purpose of measuring and monitoring various aspects and outcomes of National, Veterans Integrated Service Network (VISN) and Facility-Level performance. Results of the survey data analysis are shared throughout the Veterans Health Administration (VHA) system.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

The records contain information for individuals (1) Receiving health care from the VHA, and (2) VHA providers that are providing the health care. Individuals encompass Veterans and their immediate family members, members of the armed services, current and former employees, trainees, contractors, subcontractors, consultants, volunteers, and other individuals working collaboratively with VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information and health information related to:

1. Patient medical record abstract information including information from Patient Medical Record—VA (24VA10P2);

2. Identifying information (*e.g.,* name, birth date, death date, admission date, discharge date, gender, Social Security number, taxpayer identification number); address information (*e.g.,* home and/or mailing address, home and/or cell telephone number, emergency contact information such as name, address, telephone number, and relationship); prosthetic and sensory aid serial numbers; medical record

numbers; integration control numbers; information related to medical examination or treatment (*e.g.,* location of VA medical facility providing examination or treatment, treatment dates, medical conditions treated or noted on examination); information related to military service and status;

3. Medical benefit and eligibility information;

4. Patient aggregate workload data such as admissions, discharges, and outpatient visits; resource utilization such as laboratory tests, x rays, and prescriptions;

5. Patient Satisfaction Survey Data which include questions and responses;

6. Data capture from various VA databases. According to VHA Directive 1038 of August 2, 2017, Role of the Office of the Medical Inspector, Paragraph 4f., ''OMI, as a component of VHA, has legal authority under applicable Federal privacy laws and regulations to access and use any information, including health information, maintained in VHA records for the purposes of health care operations and health care oversight.''; and

7. Documents and reports produced and received by OMI in the course of its investigations.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by Veterans, VA employees, VA computer systems, Veterans Health Information Systems and Technology Architecture (VistA), VA medical centers, VA Health Eligibility Center, VA program offices, VISNs, Austin Information Technology Center, the Food and Drug Administration, the Department of Defense, Survey of Healthcare Experiences of Patients, External Peer Review Program, and the following Systems Of Records: ''Patient Medical Records—VA'' (24VA10P2), ''National Prosthetics Patient Database—VA'' (33VA113), ''Income Verification Records—VA'' (89VA10NB), VA Veterans Benefits Administration automated record systems (including the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23), and subsequent iterations of those systems of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a Congressional office from the record or an individual in response to an inquiry from the Congressional office made at the request of that individual.

2. Disclosure may be made to National Archives and Records Administration in records management inspections conducted under authority of title 44 United States Code.

3. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

4. Any information in this system, except the name and address of a Veteran, may be disclosed to a Federal, State, or local agency maintaining civil or criminal violation records or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit. The name and address of a Veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

5. VA may disclose any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

6. To assist attorneys in representing their clients, any information in this system may be disclosed to attorneys representing subjects of investigations, including Veterans, Federal government employees, retirees, volunteers, contractors, subcontractors, or private citizens.

7. Disclosure of information to Federal Labor Relations Authority, including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

8. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

9. To disclose information to officials of the Merit Systems Protection Board, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Any relevant and necessary information in this system of records may be disclosed to support the litigation, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

11. Any information in this system, except the name and address of a Veteran, may be disclosed to Federal, State, or local professional, regulatory, or disciplinary organizations or associations, including but not limited to bar associations, State licensing boards, and similar professional entities, for use in disciplinary proceedings and inquiries preparatory thereto, where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person employed by VA or a person representing a person in a matter before VA.

12. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement.

13. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

14. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

15. VA may disclose information from this system to another Federal agency or Federal entity, when VA 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.

16. VA may disclose information from this system to the Office of the Special Counsel for investigation and inquires of alleged or possible prohibited personnel practices.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and on electronic storage media, including magnetic tape, disk, encrypted flash memory, and laser optical media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, Social Security number, or other assigned identifiers of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are disposed of in accordance with Section XXXV—Office of the Medical Inspector (10E1B) of the Veterans Health Administration Records Control Schedule 10–1 of January 2016, which stipulates that records from investigations not involving site visits will be destroyed 10 years after closure; records from investigations involving site visits will be destroyed 20 years after closure.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to and use of national patient databases are limited to those persons whose official duties require such access, and VA has established security procedures to ensure that access is appropriately limited. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA provides information security training to all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

2. VA maintains Business Associate Agreements and Non-Disclosure Agreements with contracted resources in order to maintain confidentiality of the information.

3. Physical access to computer rooms housing national patient databases is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms. The Federal Protective Service or other security personnel provide physical security for the buildings housing computer rooms and data centers.

4. All materials containing real or scrambled Social Security numbers are kept only on secure, encrypted VHA servers, personal computers, laptops, or media. All email transmissions of such files use Public Key Infrastructure (PKI) encryption. If a recipient does not have PKI, items are mailed or sent to a secure fax. Paper records containing Social Security numbers are secured in locked cabinets or offices within the OMI area. Access to OMI requires passing a security officer, an elevator card reader for floor access and a separate VHA card reader for access to the office area. All materials, both paper and electronic, that are no longer required are shredded/obliterated in accordance with VHA guidelines. Materials required for case documentation and follow up are archived in our secure document management server (electronic) and in locked storage (paper).

5. In most cases, copies of back-up computer files are maintained at off-site locations.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write or call Correspondence Analyst, OMI, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–1030.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures).

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact Correspondence Analyst, OMI, 810 Vermont Avenue NW, Washington, DC 20420. Inquiries should include the person's full name, Social Security number, location and dates of employment or location and dates of treatment and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 75 FR 26847 dated May 12, 2010.

[FR Doc. 2020–02482 Filed 2–6–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Agent Orange Registry—VA'' (105VA131) as set forth in 68 FR 75025. VA is amending the system of records by revising the System Number; System Location; System Manager; Authority for Maintenance of the System; Categories of Individuals Covered by the System; Categories of Records in the System; Routine Uses of Records Maintained in the System and Policies; Policies and Practices for Storage of Records; Policies and Practices for Retention and Disposal of Records; Administrative, Technical, and Physical Safeguards; Record Access Procedure;

and Notification Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than March 9, 2020. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the new system will become effective March 9, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (Note: Not a toll-free number). Comments should indicate they are submitted in response to ''Agent Orange Registry—VA''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (Note: Not a toll-free number). In addition, comments may be viewed online at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492 (Note: Not a toll-free number).

SUPPLEMENTARY INFORMATION: The System Number is changed from 105VA131 to 105VA10P4Q to reflect the current organizational alignment.

The System Location is being amended to change the Austin Automation Center (AAC) to the Austin Information Technology Center (AITC). This section is being amended to remove ''narratives, signatures, etc., noted on the code sheets are not entered into this system, images of the code sheets are maintained at the Department of Veterans Affairs, Environmental Agents Service (131), 810 Vermont Avenue NW, Washington, DC 20420. These are electronic images of paper records, *i.e.,* code sheets, medical records, questionnaires and correspondence that are stored on optical disks. The optical disk system is currently being utilized where there is no access to the secure web-based system. The optical disk system is scheduled to be discontinued in 2004 and all access to the Agent Orange Registry (AOR) system will be through the secure web-based data entry system.''

System Manager is being amended to replace Director, Environmental Agents Service (131), Office of Public Health and Environmental Hazards, (clinical issues) and Management/Program Analyst, Environmental Agents Service (131) (administrative issues), with Deputy Chief Consultant, Post Deployment Health Services (10P4Q).

Authority for Maintenance of the System is being amended to replace Title 38, United States Code (U.S.C.) 1710(e)(1)(B) and 1720E with Public Law 102–4, 38 U.S.C. 527, 38 U.S.C. 1116, Public Law 102–585 Section 703, and Public Law 100–687.

Categories of Individuals Covered by the System is being amended to remove number 4. Have had an AOR examination at a VA medical facility. This section is being amended to include numbers 4. Exposure to Agent Orange in Vietnam Exposure on land in Vietnam or on a ship operating on the inland waterways of Vietnam between January 9, 1962 and May 7, 1975. 5. C–123 Airplanes and Agent Orange Residue, C–123 Reservists who were assigned to flight, ground or medical crew duties at Lockbourne/Rickenbacker Air Force Base in Ohio (906th and 907th Tactical Air Groups or 355th and 356th Tactical Airlift Squadron), Westover Air Force Base in Massachusetts (731st Tactical Air Squadron and 74th Aeromedical Evacuation Squadron) or Pittsburgh, Pennsylvania, International Airport (758th Airlift Squadron) during the period 1969 to 1986. 6. Blue Water Veterans, possible exposure on open sea ships off the shore of Vietnam during the Vietnam War. Ship categories include the following: (1) Ships operating primarily or exclusively on Vietnam's inland waterways; (2) Ships operating temporarily on Vietnam's inland waterways; (3) Ships that docked to shore or pier in Vietnam; (4) Ships operating on Vietnam's close coastal waters for extended periods with evidence that crewmembers went ashore; and (5) Ships operating on Vietnam's close coastal waters for extended periods with evidence that smaller craft from the ship regularly delivered supplies or troops ashore. The list of U.S. Navy and Coast Guard ships that operated in Vietnam can be viewed at this link: *https://www.benefits.va.gov/compensation/claims-postservice-agent_orange.asp.* 7. Korean Demilitarized Zone exposure along the demilitarized zone in Korea between April 1, 1968 and August 31, 1971 and 9. Thailand Military Bases exposure on or near the perimeters of military bases between February 28, 1961 and May 7, 1975.

The Categories of Records in the System is being amended to add VA medical facility where the Veteran had the AOR examination.

The Routine Uses of Records Maintained in the System has been amended to change Joint Commission for Accreditation of Healthcare Organizations (JCAHO) to The Joint Commission in Routine use #8.

Routine Use #9 is amending the language which states that disclosure of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

Routine Use #11 is clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine use #12 is being added to state, ''VA may disclose information from this system to another Federal agency or Federal entity, when VA 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.''

Routine use #13 is also being added to state, ''VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.'' This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

Policies and Practices for Storage of Records is being amended to remove, ''In 2003, the data collection process moved to a secure web-based system. Data previously recorded manually and converted to electronic format is now input through the secure VA Intranet system. In addition to electronic data, registry reports are maintained on paper documents and microfiche. The optical disk system is currently being utilized where there is no access to the secure web-based system. The optical disk system is scheduled to be discontinued in 2004 and all access to the AOR system will be through the secure web-based data entry system. Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.'' This section is also being amended to change the Austin Automation Center (AAC) to the Austin Information Technology Center (AITC).

Policies and Practices For Retention and Disposal of Records is being amended to replace, ''Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.'' with ''Maintain these records per Record Control Schedule (RCS) 10–1 Subject Identification Code (SIC) 1203 series, these records are permanent records per N1–015–01–3, Item 3a and are to be transferred in 5 year block to the National Archives and Records Administration (NARA)''.

Administrative, Technical, and Physical Safeguards is being amended to include the registry is stored on a password protected system located in a locked room. Registry application is Web-based and accessible behind the VA firewall. Access to the facility is limited by Personal Identity Verification access, security card, metal scanners at the entrance, and security guards. This section is also being amended to change the Austin Automation Center (AAC) to the Austin Information Technology Center (AITC).

The Record Access Procedure and Notification Procedure are being amended to replace Director, Environmental Agents Service (131) or the Management/Program Analyst, Environmental Agents Service (131) with Deputy Chief Consultant, Post Deployment Health Services (10P4Q).

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority: The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on May 13, 2019 for publication.

Dated: February 4, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Agent Orange Registry—VA (105VA10P4Q)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Character-based data from Agent Orange Registry (AOR) are maintained in a registry database at the Austin Information Technology Center (AITC), 1615 Woodward Street, Austin, Texas 78772. The secure Web-based data entry system is maintained by the AITC and provides retrievable images to users.

SYSTEM MANAGER(S):

Deputy Chief Consultant, Post Deployment Health Services (10P4Q), VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law No: 102–4, Title 38 United States Code 527, Title 38 United States Code 1116, Public Law 102–585 Section 703, and Public Law 100–687.

PURPOSE(S) OF THE SYSTEM:

The purpose of this AOR system of records is to provide information about: Veterans who have had an AOR examination at a VA facility; to assist in generating hypotheses for research studies; provide management with the capability to track patient demographics; reported birth defects among Veterans' children; dioxin-related diseases; planning and delivery of healthcare services and associated costs; and with relation to claims for compensation which may assist in the adjudication of claims possibly related to herbicide exposure although more comprehensive medical records are required for evaluation of subject claims.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered include Veterans who may have been exposed to dioxin or other toxic substance in a herbicide or defoliant during multiple periods and locations. These categories of Veterans are described below:

1. Veterans with active military service in the Republic of Vietnam between 1962 and 1975.

2. Veterans with active military service in the Republic of Korea between 1968 and 1969.

3. Veterans that may have come in contact as a result of testing, transporting or spraying herbicides for military purposes.

4. Veterans with possible exposure to Agent Orange in Vietnam on land in or on a ship operating on the inland waterways of Vietnam between January 9, 1962 and May 7, 1975.

5. Veterans with possible exposure to C–123 Airplanes and Agent Orange Residue as C–123 Reservists who were assigned to flight, ground or medical crew duties at Lockbourne/Rickenbacker Air Force Base in Ohio (906th and 907th Tactical Air Groups or 355th and 356th Tactical Airlift Squadron), Westover Air Force Base in Massachusetts (731st Tactical Air Squadron and 74th Aeromedical Evacuation Squadron) or Pittsburgh, Pennsylvania, International Airport (758th Airlift Squadron) during the period 1969 to 1986.

6. Blue Water Veterans with possible exposure on open sea ships off the shore of Vietnam during the Vietnam War. Ship categories include the following:

(1) Ships operating primarily or exclusively on Vietnam's inland waterways; (2) Ships operating temporarily on Vietnam's inland waterways; (3) Ships that docked to shore or pier in Vietnam; (4) Ships operating on Vietnam's close coastal waters for extended periods with evidence that crewmembers went ashore; and (5) Ships operating on Vietnam's close coastal waters for extended periods with evidence that smaller craft from the ship regularly delivered supplies or troops ashore. The list of U.S. Navy and Coast Guard ships that operated in Vietnam can be viewed at this link: *https://www.benefits.va.gov/compensation/claims-postservice-agent_orange.asp.*

7. Veterans with Korean Demilitarized Zone exposure along the demilitarized zone in Korea between April 1, 1968 and August 31, 1971.

8. Veterans with Thailand Military Bases exposure on or near the perimeters of military bases between February 28, 1961 and May 7, 1975.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may contain the following information: VA facility code identifier where the Veteran was examined or treated; VA medical facility where the Veteran had the AOR examination; Veteran's name; address; social security number; military service serial number; claim number; date of birth; race/ethnicity; marital status; sex; branch of service; periods of service; areas of service in Vietnam; list of military units where Veteran served; method of exposure to herbicides; Veteran's self-assessment of health; date of registry examination; Veteran's complaints/symptoms; reported birth defects among Veteran's children; consultations; diagnoses; disposition (hospitalized, referred for outpatient treatment, etc.) and name and signature of examiner/clinician coordinator, when available.

RECORD SOURCE CATEGORIES:

VA patient health records, various automated record systems providing clinical and managerial support to VA healthcare facilities, the Veteran, family members, and records from the Veterans Benefits Administration, Department of Defense, Department of the Army, Department of the Air Force, Department of the Navy and other Federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited service organization representatives, and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures, and in the presentation and prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances: (a) To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and (b) To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

4. Disclosure may be made to NARA and General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the U.S.C. NARA and GSA are responsible for management of old records no longer actively used, but which may be appropriate for preservation, and for the physical maintenance of the Federal Government's records.

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requestor) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. To conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the Armed Services and/or their dependents may be disclosed (a) To a Federal department or agency, or (b) Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

7. VA may disclose any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of The Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews but only to the extent that the information is necessary and relevant to the review. VA healthcare facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices.

9. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the

information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

10. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

11. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

12. VA may disclose information from this system to another Federal agency or Federal entity, when VA 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.

13. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Data are stored electronically on a Web server hosted by the AITC. Three levels of access are provided for the data that is input, using password security linked to the AITC Top Secret Security system, with mandated changes every 90 days. AITC stores registry tapes for disaster back up at an off-site location.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name of Veteran and social security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Maintain these records per Record Control Schedule (RCS) 10–1 Subject Identification Code (SIC) 1203 series, these records are permanent records per N1–015–01–3, Item 3a and are to be transferred in 5-year blocks to NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Registry data maintained at the AITC can only be updated by authorized AITC personnel. The registry is stored on a password protected system located in a locked room. Registry application is Web-based and accessible behind the VA firewall. Access to the facility is limited by Personal Identity Verification access, security card, metal scanners at the entrance, and security guards.

Data are securely located behind the VA firewall and only accessible from the VA Local Area Network (LAN) through the VA Intranet. AITC reports are also accessible through a telecommunications network on a read-only basis to the owner (VA facility) of the data. Access is limited to authorized employees by individually unique access codes which are changed periodically.

Physical access to the AITC is generally restricted to AITC staff, VA Central Office staff, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted. Backup records are stored off-site and safeguarded in secured storage areas. A disaster recovery plan is in place and system recovery is tested at an off-site facility in accordance with established schedules.

RECORD ACCESS PROCEDURE:

An individual who seeks access to records maintained under his or her name may write or visit the nearest VA facility or write to the Deputy Chief Consultant, Post Deployment Health Services (10P4Q), VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where medical care was provided or submit a written request to the Deputy Chief Consultant, Post Deployment Health Services (10P4Q), VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420. Inquiries should include the Veteran's name, social security number and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 68 FR 75025 dated December 29, 2003.

[FR Doc. 2020–02478 Filed 2–6–20; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Industry-Funded Monitoring; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200115–0017]

RIN 0648–BG91

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Industry-Funded Monitoring

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

ACTION: Final rule.

SUMMARY: This action implements the New England Fishery Management Council's Industry-Funded Monitoring Omnibus Amendment. This amendment allows the New England Council flexibility to increase monitoring in certain fishery management plans to assess the amount and type of catch and reduce uncertainty around catch estimates. This amendment establishes a process to standardize future industry-funded monitoring programs in New England fishery management plans and establishes industry-funded monitoring in the Atlantic herring fishery. This action helps ensure consistency in industry-funded monitoring programs across fisheries and increases monitoring in the Atlantic herring fishery.

DATES: Effective March 9, 2020, except for §§ 648.11(m) and 648.14(r) which are effective April 1, 2020.

ADDRESSES: Copies of the Industry-Funded Monitoring Omnibus Amendment, including the Environmental Assessment, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EA/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.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to the Greater Atlantic Regional Fisheries Office and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone: (978) 282–9272 or email: *Carrie.Nordeen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council developed an amendment to allow industry-funded monitoring in its fishery management plans (FMPs), except those managed jointly with the Mid-Atlantic Fishery Management Council, and establish industry-funded monitoring in the Atlantic herring fishery. The amendment standardizes the development and administration of future industry-funded monitoring programs in New England Council FMPs and increases monitoring in the herring fishery to help provide increased accuracy in catch estimates.

The New England Industry-Funded Monitoring Omnibus Amendment provides a mechanism to allow the Council flexibility to increase monitoring in its FMPs to assess the amount and type of catch and reduce uncertainty around catch estimates. Industry-funded monitoring would be in addition to monitoring requirements associated with the Standardized Bycatch Reporting Methodology (SBRM), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). This amendment remedies NMFS disapprovals of previous Council proposals for industry-funded monitoring that either required NMFS to spend money that was not yet appropriated or split monitoring costs between the fishing industry and NMFS in ways that were inconsistent with Federal law.

To remedy the disapproved measures, the amendment uses a monitoring coverage target, as opposed to a mandatory coverage level, to allow NMFS to approve new monitoring programs without committing to support coverage levels above appropriated funding or before funding is determined to be available. Using a coverage target instead of mandatory coverage level means the realized coverage in a given year would be determined by the amount of Federal funding available to cover NMFS cost responsibilities in a given year. Industry-funded monitoring coverage targets are specified in individual FMPs and realized coverage for a fishery in a given year would be anywhere from no additional coverage above SBRM up to the specified coverage target. Additionally, the amendment defines cost responsibilities for industry-funded monitoring programs between the fishing industry and NMFS in a manner that is consistent with legal requirements. Monitoring cost responsibilities may be divided between the industry and the government, provided government cost responsibilities are paid by the government and the government's costs are differentiated from the industry's cost responsibilities. This amendment specifies that industry-funded monitoring costs are delineated between NMFS administrative costs and industry sampling costs.

The Industry-Funded Monitoring Amendment was adopted by the Council on April 20, 2017. The Council refined its recommendations for industry-funded monitoring in the herring fishery on April 19, 2018. We published a notice of availability (NOA) for the amendment in the **Federal Register** on September 19, 2018 (83 FR47326), with a comment period ending November 19, 2018. We published a proposed rule for the amendment in the **Federal Register** on November 7, 2018 (83 FR 55665), with a comment period ending December 24, 2018. After considering public comment, we approved the Industry-Funded Monitoring Amendment, on behalf of the Secretary of Commerce, on December 18, 2018. We informed the Council of the amendment's approval in a letter dated December 18, 2018. This final rule implements the Industry-Funded Monitoring Amendment as approved.

Approved Omnibus Measures

This amendment standardizes the development and administration of future industry-funded monitoring programs in New England Council FMPs, including the Atlantic Herring FMP, the Atlantic Salmon FMP, the Atlantic Sea Scallop FMP, the Deep-Sea Red Crab FMP, the Northeast Multispecies FMP, and the Northeast Skate FMP. In the future, if the Council develops an industry-funded monitoring programs, the Council would develop those programs consistent with the specifications and requirements for industry-funded programs established in this amendment. The existing industry-funded monitoring programs in the Northeast Multispecies and Atlantic Sea Scallop FMPs would not be affected by this amendment. While cost responsibilities and monitoring service provider requirements established in this amendment are consistent with the existing programs, the industry-funded monitoring programs in the Multispecies and Scallop FMPS would not be included in the proposed process to prioritize industry-funded monitoring programs for available Federal funding.

The Council may incorporate these existing industry-funded monitoring programs into the prioritization process in a future action. Additionally, future industry-funded monitoring programs in the Multispecies and Scallop FMPs would either expand the existing programs or develop new programs consistent with the omnibus measures.

This amendment provides for industry-funded monitoring coverage targets in Council FMPs, noting that annual funding available to cover NMFS cost responsibilities would likely vary and dictate realized coverage levels. The realized coverage in a given year would be determined by the amount of Federal funding available to cover NMFS cost responsibilities in a given year.

The standards for future industry-funded monitoring programs in New England fisheries apply to several types of monitoring, including observing, at-sea monitoring, electronic monitoring, portside sampling, and dockside monitoring. This rule establishes the following principles to guide the Council's consideration when developing future industry-funded monitoring programs:

- A clear need or reason for the data collection;
- Objective design criteria;
- Cost of data collection should not diminish net benefits to the nation nor threaten continued existence of the fishery;
- Seek less data intensive methods to collect data necessary to assure conservation and sustainability when assessing and managing fisheries with minimal profit margins;
- Prioritize the use of modern technology to the extent practicable; and
- Incentives for reliable self-reporting.

All of this amendment's omnibus measures are administrative, specifying a process to develop and administer future industry-funded monitoring and monitoring set-aside programs and do not directly affect fishing effort or amounts of fish harvested. However, the omnibus measures may have indirect effects on Council FMPs. Standardizing the process for developing and administering future industry-funded monitoring programs may help reduce the administrative burden associated with implementing new programs and may lead to greater consistency in the information collected through industry-funded monitoring programs. Improved catch information resulting from greater consistency in how information is collected may lead to better management of biological resources. The prioritization process is expected to help ensure that available Federal funding is used to support industry-funded monitoring programs consistent with Council monitoring priorities. While industry-funded monitoring programs are expected to have an economic impact on the fishing industry, standard cost responsibilities may help the industry better understand and plan for their industry-funded monitoring cost responsibilities. Standard cost responsibilities may also aid the industry in negotiating coverage costs with service providers, which may ultimately reduce the dollar amount associated with industry cost responsibilities. Monitoring set-aside programs may also help minimize the economic burden on the fishing industry associated with paying for monitoring coverage.

1. Standard Process To Implement and Revise Industry-Funded Monitoring Programs

This amendment specifies that future industry-funded monitoring programs are implemented through an amendment to the relevant FMP. Because industry-funded monitoring programs have the potential to economically impact the fishing industry, the Council determined that implementing new industry-funded monitoring programs through an amendment would help ensure additional public notice and comment during the development of new programs. The details of any new industry-funded monitoring program implemented via amendment may include, but are not limited to:

- Level and type of coverage target;
- Rationale for level and type of coverage;
- Minimum level of coverage necessary to meet coverage goals;
- Consideration of waivers if coverage targets cannot be met;
- Process for vessel notification and selection;
- Cost collection and administration;
- Standards for monitoring service providers; and
- Any other measures necessary to implement the industry-funded monitoring program.

This amendment also specifies that future industry-funded monitoring programs, implemented through an amendment, may be revised through framework adjustments to the relevant FMP. Additional National Environmental Policy Act (NEPA) analysis would be required for any action implementing and/or modifying industry-funded monitoring programs, regardless if the vehicle is an amendment or framework adjustment.

2. Standard Cost Responsibilities

Cost responsibilities for industry-funded monitoring must be divided by cost category, rather than a dollar amount or percentage of total cost, between the fishing industry and NMFS. NMFS is obligated to pay any cost for which the benefit of the expenditure accrues to the government. This means that NMFS would be responsible for administrative costs to support industry-funded programs, but not the costs associated with sampling activities. Costs associated with sampling activities would be paid by the fishing industry. NMFS may help offset industry cost responsibilities if Federal funding is available, but NMFS cannot be obligated to pay sampling costs in industry-funded sampling programs. Cost responsibilities dictated by legal requirements cannot be modified through this amendment. Instead, this amendment codifies NMFS cost responsibilities for industry-funded monitoring in New England FMPs to ensure consistency and compliance with legal requirements.

NMFS is responsible for paying costs associated with setting standards for, monitoring the performance of, and administering industry-funded monitoring programs. These program elements would include:

- The labor and facilities costs associated with training and debriefing of monitors;
- NMFS-issued gear (*e.g.,* electronic reporting aids used by human monitors to record trip information);
- Certification of monitoring providers and individual observers or monitors;
- Performance monitoring to maintain certificates;
- Developing and executing vessel selection;
- Data processing (including electronic monitoring video audit, but excluding service provider electronic video review); and
- Costs associated with liaison activities between service providers, NMFS, Coast Guard, Council, sector managers, and other partners.

NMFS costs to administer industry-funded monitoring for all monitoring types would be paid with Federal funds. The industry is responsible for funding all other monitoring program costs, including but not limited to:

- Costs to the service provider for deployments and sampling (*e.g.,* travel and salary for observer deployments and debriefing);
- Equipment, as specified by NMFS, to the extent not provided by NMFS (*e.g.,* electronic monitoring system);

- Costs to the service provider for observer or monitor time and travel to a scheduled deployment that doesn't sail and was not canceled by the vessel prior to the sail time;
- Costs to the service provider for installation and maintenance of electronic monitoring systems;
- Provider overhead and project management costs (*e.g.,* provider office space, administrative and management staff, recruitment costs, salary and per diem for trainees); and
- Other costs of the service provider to meet performance standards laid out by an FMP.

The cost responsibilities described above are consistent with the existing scallop and multispecies industry-funded monitoring programs, although cost responsibilities are not explicitly defined in those FMPs. This amendment codifies NMFS cost responsibilities for industry-funded monitoring for all New England FMPs, but it does not alter other current requirements for existing industry-funded monitoring programs.

3. Standard Requirements for Monitoring Service Providers and Observers/Monitors

The SBRM Omnibus Amendment (80 FR 37182; June 30, 2015) adopted general industry-funded observer service provider and observer requirements (at 50 CFR 648.11(h) and (i), respectively) should a Council develop and implement a requirement or option for an industry-funded observer program to support SBRM in any New England or Mid-Atlantic Council FMP. However, the SBRM Amendment did not address requirements for other types of industry-funded monitoring programs or coverage in addition to SBRM.

This amendment modifies and expands existing observer and service provider requirements and allows those requirements to apply to coverage supplemental to SBRM, ESA, and MMPA coverage. Specifically, this rule modifies and expands existing observer service provider requirements at § 648.11(h) to apply to service providers for observers, at-sea monitors, portside samplers, and dockside monitors. Similarly, this rule modifies and expands existing observer requirements at § 648.11(i) to apply to observers, at-sea monitors, portside samplers, and dockside monitors, described collectively as observers/monitors. These observer/monitor requirements serve as the default requirements for any future industry-funded monitoring programs in New England FMPs. The Council may add new requirements or revise existing requirements for FMP-specific industry-funded monitoring programs as part of the amendment developing those programs or the framework adjustment revising those programs.

4. Prioritization Process

This amendment establishes a Council-led process to prioritize industry-funded monitoring programs for available Federal funding across New England FMPs. This prioritization process allows the Council to align industry-funded monitoring programs with its monitoring priorities by recommending priorities for available NMFS funding to pay NMFS cost responsibilities associated with industry-funded monitoring. Revising the prioritization process would be done in a framework adjustment. The existing scallop and multispecies industry-funded monitoring programs will not be included in the prioritization process, unless the Council takes action in the future to include those programs in the prioritization process or develops new industry-funded monitoring programs within those FMPs consistent with this amendment.

Available Federal funding refers to any funds in excess of those allocated to meet SBRM or other existing monitoring requirements that may be used to cover NMFS costs associated with supporting industry-funded monitoring programs. Funding for SBRM, ESA, and MMPA observer coverage is not be affected by this prioritization process. Any industry-funded monitoring programs will be prioritized separately from and, in addition to, any SBRM coverage or other statutory coverage requirements. The realized industry-funded monitoring coverage in a given year will be determined by the amount of Federal funding available to cover NMFS cost responsibilities in a given year.

When there is no Federal funding available to cover NMFS cost responsibilities above SBRM coverage in a given year, then no industry-funded monitoring programs would operate that year. If available funding in a given year is sufficient to support all industry-funded monitoring programs, the prioritization process would fully operationalize the industry-funded monitoring coverage targets specified in each FMP. If there is some available funding, but not enough to support all industry-funded monitoring programs, the Council will determine how to prioritize industry-funded monitoring coverage targets for available funding across FMPs.

As part of the Council-led prioritization process, this amendment establishes an equal weighting approach to prioritize industry-funded monitoring programs for available funding. An example of an equal weighting approach would be funding all industry-funded monitoring programs at 70 percent, if only 70 percent of the Federal funding needed to administer all the programs was available. Additionally, this rule specifies that the Council will adjust the equal weighting approach on an as-needed basis. This means that the equal weighting approach will be adjusted whenever a new industry-funded monitoring program consistent with this amendment is approved or whenever an existing industry-funded monitoring program consistent with this amendment is adjusted or terminated. The Council will revise the weighting approach for the Council-led prioritization process in a framework adjustment or by considering a new weighting approach at a public meeting, where public comment is accepted, and asking NMFS to publish a notice or rulemaking modifying the weighting approach, consistent with the Administrative Procedure Act (APA).

The SBRM coverage year begins in April and extends through March. SBRM coverage levels in a given year are determined by the variability of discard rates from the previous year and the availability of SBRM funding. During the spring, NMFS determines SBRM coverage for the upcoming year. Once NMFS finalizes SBRM coverage levels for the upcoming year, NMFS will then evaluate what Federal funding is available to cover its costs for meeting the industry-funded monitoring coverage targets for the upcoming year. NMFS will provide the Council, at the earliest practicable opportunity: (1) The estimated industry-funded monitoring coverage levels, incorporating the prioritization process and weighting approach, and based on available funding, for each FMP-specific monitoring program; and (2) the rationale for the industry-funded monitoring coverage levels, including the reason for any deviation from the Council's recommendations. NMFS will inform the Council of the estimated industry-funded coverage levels during a Council meeting. At that time, the Council may recommend revisions and additional considerations by the Regional Administrator and Science and Research Director. If NMFS costs associated with industry-funded coverage targets are fully funded in a given year, NMFS will also determine, in consultation with the Council, the allocation, if any, of any remaining available funding to offset industry costs. The earlier in the year that

industry-funded monitoring coverage targets are set for the following year, the more time the affected fishing industry would have to plan for industry-funded monitoring the following year. FMP-specific industry-funded monitoring programs would determine if industry-funded coverage targets were administered consistent with the FMP's fishing year or the SBRM year.

5. Monitoring Set-Aside Programs

This amendment standardizes the process to develop future monitoring set-aside programs and allows monitoring set-aside programs to be developed in a framework adjustment to the relevant FMP. A monitoring set-aside program would use a portion of the annual catch limit (ACL) from a fishery to help offset industry cost responsibilities associated with industry-funded monitoring coverage targets. There are many possible ways to structure a monitoring set-aside program, and the details of each program would be developed on an FMP-by-FMP basis. Monitoring set-aside programs are an option to help ease industry cost responsibilities associated with industry-funded monitoring, but they likely would only help offset a portion of the industry's cost responsibilities.

The details of monitoring set-aside programs may include, but are not limited to:

- The basis for the monitoring set-aside;
- The amount of the set-aside (*e.g.,* percentage of ACL, days-at-sea (DAS));
- How the set-aside is allocated to vessels required to pay for monitoring (*e.g.,* increased possession limit, differential DAS counting, additional trips against a percent of the ACL);
- The process for vessel notification;
- How funds are collected and administered to cover the industry's costs of monitoring coverage; and
- Any other measures necessary to develop and implement a monitoring set-aside.

Approved Atlantic Herring Measures

This amendment establishes an industry-funded monitoring program in the Atlantic herring fishery that is expected to provide increased accuracy in catch estimates. Increased monitoring in the herring fishery will address the following goals: (1) Accurate estimates of catch (retained and discarded); (2) accurate catch estimates for incidental species with catch caps (haddock and river herring/shad); and (3) affordable monitoring for the herring fishery.

This amendment establishes a 50-percent industry-funded monitoring coverage target on vessels issued an All Areas (Category A) or Areas 2/3 (Category B) Limited Access Herring Permits fishing on a declared herring trip. The Council considered other coverage targets, including 100 percent, 75 percent, and 25 percent, but determined that the 50-percent coverage target best balanced the benefits and costs of additional monitoring. When tracking catch against catch caps in the herring fishery, analyses in the EA supporting this amendment suggest that a 50-percent coverage target would reduce the uncertainty around catch estimates, and likely result in a coefficient of variation (CV) less than 30 percent for the majority of catch caps. Additionally, the industry's cost responsibilities associated with a 50-percent coverage target are substantially less than those associated with higher coverage targets. Vessels participating in the herring fishery also participate in the Atlantic mackerel fishery. Currently, the mackerel fishery does not have an industry-funded monitoring program. If the Mid-Atlantic Council develops industry-funded monitoring in the mackerel fishery and the coverage targets do not match for the herring and mackerel fisheries, then the higher coverage target would apply on all trips declared into the fishery with the higher coverage target.

Herring coverage targets would be calculated for the SBRM year, April through March, by combining SBRM and industry-funding monitoring coverage. NMFS will determine how to calculate the coverage target, in consultation with Council staff. For example, if there is an estimated 10-percent SBRM coverage in a given year (based on allocated sea days and anticipated effort), then 40-percent industry-funded monitoring coverage will be needed to achieve the 50-percent coverage target. Because the coverage target is calculated by combining SBRM and industry-funded monitoring coverage, a vessel will not have SBRM coverage and industry-funded coverage on the same trip. Any vessel selected for SBRM coverage on a particular trip will not have the option of industry-funded monitoring on that trip. Per the prioritization process in the proposed omnibus measures, the realized coverage level in a given year will be determined by the amount of funding available to cover NMFS cost responsibilities in a given year. The realized coverage for the herring fishery in a given year will fall somewhere between no additional coverage in addition to SBRM and the specified coverage target. Combined coverage targets are intended to help reduce the cost of industry-funded coverage, but the level of SBRM coverage in the herring fishery varies by gear type and has the potential to vary year to year. The variability of SBRM coverage has the potential to make it difficult for the herring industry to plan for industry-funded monitoring year to year.

In addition to the standard monitoring and service provider requirements in the omnibus measures, this amendment specifies that requirements for industry-funded observers and at-sea monitors in the herring fishery include a high volume fishery (HVF) certification. Currently, NMFS's Northeast Fisheries Observer Program (NEFOP) observers must possess a HVF certification in order to observe the herring fishery. NMFS developed the HVF certification to more effectively train observers in high volume catch sampling and documentation. NEFOP determined that data quality on herring trips was sub-optimal when collected by observers without specialized training, potentially resulting in data loss. In addition, the high variety of deck configurations, fish handling practices, and fast-paced operations proved more demanding for observers. Having additional training to identify these practices improved decision-making while at sea, which, ultimately, improved data accuracy and maximized data collection.

Additionally, this amendment requires the Council to examine the results of any increased coverage in the herring fishery two years after implementation of this amendment, and consider if adjustments to the coverage targets are warranted. Depending on the results and desired actions, subsequent action to adjust the coverage targets could be accomplished via a framework adjustment or an amendment to the Herring FMP, as appropriate. Measures implemented in this amendment would remain in place unless revised by the Council.

1. Industry-Funded At-Sea Monitoring Coverage on Vessels Issued Category A or B Herring Permits

This rule specifies that vessels issued Category A or B herring permits will carry an industry-funded at-sea monitor on declared herring trips that are selected for coverage by NMFS, unless NMFS issues the vessel a waiver for coverage on that trip. Vessels will be selected for coverage by NMFS to meet the 50-percent coverage target. Prior to any trip declared into the herring fishery, representatives for vessels with Category A or B permits are required to notify NMFS for monitoring coverage. If an SBRM observer is not selected to

cover that trip, NMFS will notify the vessel representative whether an at-sea monitor must be procured through a monitoring service provider. Because the 50-percent coverage target is calculated by combining SBRM and industry-funded monitoring coverage, a vessel will not carry an SBRM observer on the same trip that carries an at-sea monitor. If NMFS informs the vessel representative that they need at-sea monitoring coverage, they will be required to obtain and pay for an at-sea monitor to carry on that trip. The vessel would be prohibited from fishing for, taking, possessing, or landing any herring without carrying an at-sea monitor on that trip. If NMFS informs the vessel representative that the vessel is not selected for at-sea monitoring coverage, NMFS will issue the vessel an at-sea monitoring coverage waiver for that trip.

This rule establishes three additional reasons for issuing vessels waivers for industry-funded monitoring requirements on a trip-by-trip basis. First, if an at-sea monitor is not available to cover a specific herring trip (either due to logistics or a lack of available Federal funding to cover NMFS cost responsibilities), NMFS will issue the vessel an at-sea monitoring coverage waiver for that trip. Second, if a vessel using midwater trawl gear intends to operate as a wing vessel on a trip, meaning that it would pair trawl with another midwater trawl vessel but would not pump or carry any fish onboard, then that vessel may request a waiver for industry-funded monitoring requirements on that trip. Vessels would notify NMFS in advance of the wing vessel trip, and NMFS would issue a waiver for industry-funded monitoring requirements for that trip. Wing vessels would be prohibited from carrying fish onboard during these trips. If a wing vessel did carry fish, the vessel would be out of compliance with industry-funded monitoring requirements on that trip. Third, if a vessel intended to land less than 50 mt of herring on a trip, then the vessel may request a waiver for industry-funded monitoring requirements on that trip. Vessels will notify NMFS in advance of the trip on which they intend to land less than 50 mt of herring, and NMFS will issue a waiver for industry-funded monitoring requirements for that trip. Vessels would be prohibited from landing 50 mt or more of herring on these trips. If the vessel landed 50 mt or more of herring, the vessel would be out of compliance with industry-funded monitoring requirements on that trip.

At-sea monitors will collect the following information on herring trips:

- Fishing gear information (*i.e.,* size of nets, mesh sizes, and gear configurations);
- Tow-specific information (*i.e.,* depth, water temperature, wave height, and location and time when fishing begins and ends);
- Species, weight, and disposition of all retained and discarded catch on observed hauls;
- Species, weight, and disposition of all retained catch on unobserved hauls;
- Actual catch weights whenever possible, or alternatively, weight estimates derived by sub-sampling;
- Length data, along with whole specimens and photos to verify species identification, on retained and discarded catch;
- Information on and biological samples from interactions with protected species, such as sea turtles, marine mammals, and sea birds; and
- Vessel trip costs (*i.e.,* operational costs for trips including food, fuel, oil, and ice).

The primary biological data that at-sea monitors will collect are length data on retained and discarded catch. However, to verify species identification, at-sea monitors may also collect whole specimens or photos. In the future, the Council may recommend that at-sea monitors collect additional biological information upon request. Revising what information an at-sea monitor collects could be done in a framework adjustment. Alternatively, the Council may recommend that at-sea monitors collect additional biological information by considering the issue at a public meeting, where public comment is accepted, and asking NMFS to publish a notice or rulemaking modifying the duties for at-sea monitors, consistent with the Administrative Procedure Act.

In contrast to observers, at-sea monitors would not collect whole specimens, photos, or biological samples (other than length data) from catch, unless it was for purposes of species identification, or sighting data on protected species. The Council recommended a limited data collection compared to observers to allow for possible cost savings for either the industry or NMFS associated with a limited data collection.

Currently, vessels issued Category A or B herring permits are required to comply with all slippage restrictions, slippage reporting requirements, and slippage consequence measures when carrying an observer for SBRM coverage (§ 648.11(m)(4)). Because the purpose of slippage restrictions is to help ensure catch is made available for sampling, this rule ensures that existing slippage requirements also apply when vessels are carrying an industry-funded at-sea monitor. Specifically, when vessels issued Category A or B herring permits are carrying either an SBRM observer or industry-funded at-sea monitor, vessels are required to bring catch aboard the vessel and make it available for sampling prior to discarding. If vessels slipped catch for any reason, they would be required to report that slippage event on the daily vessel monitoring catch report and complete a slipped catch affidavit. If vessels slip catch due to excess catch of spiny dogfish, mechanical failure, or safety, then vessels are required to move 15 nautical miles (27.78 km) following that slippage event and remain 15 nautical miles (27.78 km) away from that slippage event before making another haul and for the duration of that fishing trip. If vessels slip catch for any other reason, they are required to terminate that fishing trip and immediately return to port.

Industry-funded monitoring would have direct economic impacts on vessels issued Category A and B permits participating in the herring fishery. The EA estimates the industry's cost responsibility associated with carrying an at-sea monitor at $710 per day. The EA uses returns-to-owner (RTO) to estimate the potential reduction in annual RTO associated with paying for monitoring coverage. RTO was calculated by subtracting annual operating costs from annual gross revenue and was used instead of net revenues to more accurately reflect fishing income. While the actual cost of industry-funded monitoring on a particular vessel would vary with effort level and the amount of SBRM coverage, analyses in the EA suggest that the cost of the proposed at-sea monitoring coverage may reduce the annual RTO for vessels with Category A or B herring permits up to approximately 20 percent. Waiving at-sea monitoring coverage requirements for wing vessel trips or trips that land less than 50 mt of herring would help reduce the cost of at-sea monitoring coverage on those trips, but those waivers are not an option for vessels that choose to land more than 50 mt of herring on a trip.

2. Industry-Funded Observer Coverage on Midwater Trawl Vessels Fishing in Groundfish Closed Areas

Midwater trawl vessels fishing in the Groundfish Closed Areas are required to carry an observer under the requirements at § 648.202(b). When Amendment 5 to the Herring FMP (79 FR 8786; February 13, 2014) established that requirement, the Groundfish Closed Areas included Closed Area I, Closed

Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, and the Western Gulf of Maine Closure Area. Currently, the only mechanism for midwater trawl vessels to carry an observer is if an observer is assigned through the SBRM. As described previously, SBRM coverage for midwater trawl vessels has recently been variable (approximately 4 to 40 percent from 2012 through 2018). This rule maintains the requirement to carry an observer for midwater trawl vessels fishing in a Groundfish Closed Area, but allows midwater trawl vessels to purchase observer coverage in order to access Groundfish Closed Areas.

Prior to any trip declared into a Groundfish Closed Area, representatives for midwater trawl vessels are required to provide notice to NMFS for monitoring coverage. If neither an SBRM observer nor industry-funded monitoring is selected to cover that trip, NMFS will notify the vessel representative that an observer may be procured through a monitoring service provider. The vessel is prohibited from fishing in the Groundfish Closed Areas without carrying an observer. Observers will collect the following information on midwater trawl trips:

- Fishing gear information (*i.e.,* size of nets, mesh sizes, and gear configurations);
- Tow-specific information (*i.e.,* depth, water temperature, wave height, and location and time when fishing begins and ends);
- Species, weight, and disposition of all retained and discarded catch on observed hauls;
- Species, weight, and disposition of all retained catch on unobserved hauls;
- Actual catch weights whenever possible, or alternatively, weight estimates derived by sub-sampling;
- Whole specimens, photos, length information, and biological samples (*i.e.,* scales, otoliths, and/or vertebrae);
- Information on interactions with protected species, such as sea turtles, marine mammals, and sea birds; and
- Vessel trip costs (*i.e.,* operational costs for trip including food, fuel, oil, and ice).

The measure allowing midwater trawl vessels to purchase observer coverage to access Groundfish Closed Areas also has economic impacts on vessels participating in the herring fishery. The EA estimates the industry's cost responsibility associated with carrying an observer at $818 per day. While the actual cost of industry-funded monitoring on a particular vessel would vary with effort level and the amount of SBRM coverage, analyses in the EA suggest that the cost of observer coverage may reduce the annual RTO for midwater trawl vessels up to 5 percent. That 5 percent reduction in RTO would be in addition to any reduction in RTO due to other types of industry-funded monitoring coverage. Coverage waivers for Groundfish Closed Area trips are not an option to reduce the cost of observer coverage because coverage waivers do not apply on midwater trawl vessels fishing in the Groundfish Closed Areas.

If the Groundfish Closed Areas are modified, eliminated, or added in the future, existing observer coverage requirements for midwater trawl vessels apply to the modified areas, except for areas that are eliminated as Groundfish Closed Areas. Anticipating changes to the Groundfish Closed Areas in the Omnibus Essential Fish Habitat Amendment 2 (Habitat Amendment) (83 FR 15240; April 9, 2018), the Industry-Funded Monitoring Amendment Development Team/Fishery Management Action Team (PDT/FMAT) recommended the Council clarify its intent regarding the requirement that midwater trawl vessels fishing in Groundfish Closed Areas must carry an observer. In a March 17, 2017, memorandum, the PDT/FMAT noted that the Habitat Amendment proposed changes to Groundfish Closed Areas, such as eliminating areas, boundary changes, and seasonality. That same memorandum proposed the Council clarify that this amendment maintains the 100-percent observer coverage requirement on midwater trawl vessels fishing in Groundfish Closed Areas, as modified by the Habitat Amendment. The Council accepted the FM PDT/FMAT's proposed clarification when it took final action on this amendment in April 2017.

In January 2018, NMFS partially approved the Habitat Amendment, including changes to Closed Area I, Nantucket Lightship Closed Area, and the Western Gulf of Maine Closure Area. Consistent with Council intent regarding observer coverage, the final rule for the Habitat Amendment maintained the 100-percent observer requirement for midwater trawl vessels fishing in Closed Area I North (February 1–April 15), Closed Area II, Cashes Ledge Closure Area, and the Western Gulf of Maine Closure Area. Because the Habitat Amendment removed the Nantucket Lightship Closed Area and the southern portion of Closed Area 1 from the list of Groundfish Closed Areas, the 100-percent observer coverage requirement no longer applies to midwater trawl vessels fishing in the area previously known as the Nantucket Lightship Closed Area and the southern portion of what was formerly Closed Area 1. A recent Court Order (*Conservation Law Found.* v. *Ross, No. CV 18–1087 (JEB), 2019 WL 5549814 (D.D.C. Oct. 28, 2019*) enjoined NMFS from allowing gillnet fishing in the Nantucket Lightship Closed Area and Closed Area I. This decision does not apply to fishing gears other than gillnet gear, and the rule implementing this order (84 FR 68799; December 17, 2019) is specific to gillnet gear and does not prohibit midwater trawl vessels from fishing in these areas.

Recognizing that it recommended multiple industry-funded monitoring types, including at-sea monitoring coverage and observer coverage in Groundfish Closed Areas, for the herring fishery, the Council also recommended prioritizing coverage aboard Category A and B vessels because those vessels harvest the majority of the herring. Consistent with that recommendation, if available Federal funding is insufficient to cover NMFS cost responsibilities associated with administering multiple monitoring programs for the herring fishery, this rule prioritizes industry-funded monitoring coverage on Category A and B vessels before observer coverage on midwater trawl vessels fishing in Groundfish Closed Areas.

Atlantic Herring Exempted Fishing Permit

On April 19, 2018, the Council considered whether electronic monitoring in conjunction with portside sampling, would be an adequate substitute for at-sea monitoring coverage aboard midwater trawl vessels. Because midwater trawl vessels discard only a small percentage of catch at sea, electronic monitoring and portside sampling have the potential to be a cost effective way to address monitoring goals for the herring fishery. The purpose of electronic monitoring would be to confirm catch retention and verify compliance with slippage restrictions, while the purpose of portside sampling would be to collect species composition data along with age and length information. After reviewing the midwater trawl electronic monitoring study, the Council approved electronic monitoring and portside sampling as a monitoring option for midwater trawl vessels, but did not recommend requiring electronic monitoring and portside sampling as part of this action. Instead, the Council recommended NMFS use an exempted fishing permit (EFP) to further evaluate how to best permanently administer an electronic monitoring and portside sampling program.

The EFP would exempt midwater vessels from the requirement for industry-funded at-sea monitoring coverage and allow midwater trawl vessels to use electronic monitoring and portside sampling coverage to comply with the Council-recommended 50-percent coverage target. The recent midwater trawl electronic monitoring study provides a good foundation for an electronic monitoring program. However, using an EFP would provide NMFS with further information about how to most effectively and efficiently administer the electronic monitoring and portside sampling program, while allowing NMFS the flexibility to respond quickly to emerging issues, helping to make the monitoring program more robust. An EFP would also enable NMFS to evaluate other monitoring issues in the herring fishery that are of interest to the Council and herring industry, such as evaluating the utility of electronic monitoring and portside sampling when midwater trawl vessels fish in Groundfish Closed Areas or for other gear types (*e.g.,* purse seine or bottom trawl) used in the herring fishery.

The supporting documentation for the EFP was developed concurrently with rulemakings for this amendment and midwater trawl vessels issued EFPs are allowed to use electronic monitoring and portside sampling coverage to comply with the Council-recommended 50-percent coverage target. The Council recommended reconsidering herring industry-funded monitoring requirements two years after implementation. The Council would consider establishing electronic monitoring and portside sampling program requirements into regulation via a framework adjustment at that time.

Status of Industry-Funded Monitoring in 2020

Throughout the development of this amendment, we cautioned the Council that any additional coverage would be contingent upon us having sufficient funding to administer industry-funded monitoring. For 2020, we have sufficient Federal funding to pay NMFS cost responsibilities associated with fully implementing industry-funded monitoring in the herring fishery. We estimate industry-funded monitoring cost responsibilities for the herring fishery to total approximately $100,000 in 2020. Therefore, beginning April 1, 2020, vessels issued Category A or B herring permits will be required to pay for at-sea monitoring coverage on trips we select for industry-funded monitoring coverage. Alternatively, herring vessels will have the option of requesting an EFP to use electronic monitoring and portside sampling instead of at-sea monitoring coverage to satisfy industry-funded monitoring requirements in 2020. We cannot yet determine if we will have funding to administer industry-funded monitoring in the herring fishery in 2021. We will evaluate available Federal funding relative to the cost of administering industry-funded monitoring in the herring fishery during the upcoming year.

Compliance With the National Environmental Policy Act

In light of recent catch reductions in the herring fishery, we evaluated whether the EA supporting the Industry-Funded Monitoring Amendment remained valid to support this amendment. In making a determination on the need for additional analysis under NEPA, we considered and were guided by the Council on Environmental Quality (CEQ) NEPA regulations and applicable case law. The CEQ's regulations state that ''[a]gencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts'' (40 Code of Federal Regulations (CFR) § 1502.09(c)). In addition, we considered the CEQ's significance criteria at 40 CFR 1508.27 to determine if any new circumstances or information are significant, which could require a new EA.

The EA describes the economic impacts of herring measures on fishery-related businesses and human communities as negative and explained they result from paying for monitoring coverage. The economic impact of industry-funded monitoring coverage on the herring fishery is difficult to estimate because it varies with sampling costs, fishing effort, SBRM coverage, price of herring, and participation in other fisheries. The EA estimates industry's cost for at-sea monitoring coverage at $710 per day and observer coverage at $818 per day, but cautioned those estimates would largely depend on negotiated costs between vessels and monitoring service providers. Less than half of the 50 vessels issued Category A or B herring permits are active in the herring fishery.

The impact of management measures on fishing-related businesses and communities is typically based on an analysis of revenue. But in an effort to better understand income from fishing trips, a survey of herring and mackerel vessels collected more detailed cost information for 2014, including payments to crew, repairs, maintenance, upgrades, and permitting costs. This additional information was used to calculate the vessel RTO for 2014 by subtracting fixed and operational costs from gross revenue, thereby providing a general framework for understanding the interaction between revenue and monitoring requirement costs.

Analysis in the EA estimates that at-sea monitoring coverage associated with the 50-percent coverage target has the potential to reduce annual RTO for vessels with Category A or B herring permits up to 20 percent and up to an additional 5 percent for midwater trawl access to Groundfish Closed Areas. Electronic monitoring and portside sampling may be a more cost effective way for herring vessels to satisfy industry-funded monitoring requirements. At the conclusion of our electronic monitoring project aboard midwater trawl vessels, we estimated industry's cost for electronic monitoring and portside sampling at $515 per day. Analysis in the EA estimates a reduction in annual RTO of up to 10 percent for electronic monitoring and portside sampling coverage.

At the Council's request, we reduced the herring ACL for 2018 (49,900 mt) on August 22, 2018, and reduced the herring ACL for 2019 (15,065 mt) on February 8, 2019, from the ACL that was in place during 2014 (104,088 mt).

To assess how a reduction in herring ACL may affect revenue, we compared herring revenue generated by Category A and B herring vessels from 2014 to 2018 (see Table 1). Even though the 2018 ACL was reduced by 52 percent (54,188 mt) from the 2014 ACL, the impact on 2018 revenue was not proportional to the reduction in ACL and differed by gear type.

TABLE 1—CHANGE IN CATEGORY A AND B HERRING REVENUE FROM 2014 TO 2018

Gear type	2014 herring revenue	2018 herring revenue	Change in herring revenue
Midwater Trawl	$13,439,000	$7,886,000	−$5,553,000
Purse Seine	11,000,000	13,088,000	+2,088,000
Bottom Trawl	1,508,000	1,017,000	−491,000

Source: NMFS.

The change in herring revenue between 2014 may have been affected by several factors, such as the availability of herring relative to the demand and vessel participation in other fisheries. The price of herring increased almost 70 percent between 2014 and 2018 from approximately $310 per mt to $525 per mt. While the price of herring is not likely to increase every year, we expect that a herring price increase would mitigate the negative economic impact of lowering the ACL. Total revenue from all fisheries for small-mesh bottom trawl vessels increased by approximately $25,000,000 between 2014 and 2018 suggesting vessels are expanding their participation in other fisheries. We expect that increases in total revenue from other fisheries would also mitigate the negative economic impacts of reductions to the herring ACL and associated revenue.

At its September 2019 meeting, the Council recommended further reducing the herring ACL for 2020 and 2021 (11,621 mt). These catch levels are consistent with Council's new harvest policy for herring developed in Amendment 8 to the Herring FMP and recommendations from the Council's Scientific and Statistical Committee. If the 2020 herring stock assessment determines recruitment and biomass are higher than expected, the Council may request an increase to the 2021 ACL.

While the economic impact of industry-funded monitoring coverage on the herring fishery is affected by revenue, the level of fishing effort and SBRM coverage would also affect the economic impact of industry-funded monitoring. Analyses in the EA estimate the coverage days to achieve the 50-percent coverage target in the herring fishery in 2014. In an effort to estimate the maximum number of coverage days, that particular analysis did not account for SBRM coverage or coverage waivers for trips landing less than 50 mt of herring. To assess how changes in the herring fishery may affect industry-funded monitoring coverage, we re-estimated the coverage days to achieve the 50-percent coverage target for 2020. Our updated analysis adjusts for recent vessel activity, low herring ACL, recent SBRM coverage, and coverage waivers for trips landing less than 50 mt of herring. The change in estimated average coverage days to achieve the 50-percent coverage target from 2014 to 2020 is shown in Table 2.

TABLE 2—ESTIMATED REDUCTION IN INDUSTRY-FUNDED MONITORING COVERAGE DAYS TO ACHIEVE A 50-PERCENT COVERAGE TARGET FROM 2014 TO 2020

Gear type	2014	2020	Change in days
Midwater Trawl	Up to 728 days (14 vessels)	Up to 54 days (9–11 vessels)	−674
Purse Seine	Up to 196 days (7 vessels)	Up to 67 days (5 vessels)	−129
Bottom Trawl	Up to 108 days (9 vessels)	Up to 29 days (2 vessels)	−79

Source: NMFS.

The reduction in expected industry-funded monitoring coverage days and vessels participating in the herring fishery from 2014 to 2020 is largely driven by changes in fishing behavior, likely linked to the availability of herring (distribution and seasonality) and a low herring ACL in 2020. Because the RTO analysis was, in part, based on economic data collected with a special cost survey that could not be repeated in a timely way for this action, it is not possible to update that analysis for 2020. However, fewer sea days required to achieve the 50-percent coverage target will result in lower industry costs in 2020 than what the EA estimated for 2014. Fewer coverage days and fewer active vessels in 2020 (and likely 2021) is expected to mitigate the negative economic impacts of reductions to the herring ACL and associated revenue.

We also expect midwater trawl fishing effort in Groundfish Closed Areas to be lower in 2020 than was estimated for 2014. Without considering SBRM coverage, the EA estimates midwater trawl vessels may purchase observer coverage for up to approximately 250 coverage days to access Groundfish Closed Areas in 2014. After adjusting for recent vessel activity and a low herring ACL and assuming recent SBRM coverage, we estimate that midwater trawl vessels may purchase coverage for up to 30 coverage days to access Groundfish Closed Areas in 2020 (and likely 2021). Even though purchasing observer coverage to access Groundfish Closed Areas is optional, few coverage days and fewer active vessels in 2020 is expected to mitigate the negative economic impacts of reductions to the herring ACL and associated revenue.

As recommended by the Council, we intend to offer an EFP in 2020 and 2021 to allow vessels to use electronic monitoring and portside sampling in lieu of at-sea monitoring coverage to achieve the 50-percent coverage target. Depending on vessel interest and sampling logistics, that same EFP may also allow midwater trawl vessels to access Groundfish Closed Areas or evaluate electronic monitoring for other gear types (*e.g.,* purse seine or bottom trawl) used in the herring fishery. Analyses in the EA and updated estimates at the conclusion of our electronic monitoring project aboard midwater trawl vessels, suggest that electronic monitoring and portside sampling is likely less expensive and more cost effective than either at-sea monitoring or observer coverage. Excluding the initial cost associated with purchasing and installing

electronic monitoring equipment, video review and storage are likely the most substantial ongoing industry costs associated with using electronic monitoring. A portion of our Federal funding to administer industry-funded monitoring in the herring fishery is designated to help offset industry's video review and storage costs. Federal funding helping offset industry's electronic monitoring sampling costs is expected to minimize the economic impact of industry-funded monitoring coverage on the herring fishery. Participating in the EFP is expected to mitigate the negative economic impacts of reductions to the herring ACL and associated revenue.

High herring prices and low coverage days to achieve the 50-percent coverage target are likely short-term influences on the economic impact of industry-funded monitoring coverage on the herring fishery associated with a low herring ACL. If herring recruitment and biomass return to average levels, the long-term economic impact of industry-funded monitoring coverage on the herring fishery is likely consistent with estimated impacts analyzed and described in the EA.

Additionally, the EA analyzes a range of coverage targets for at-sea monitoring and electronic monitoring and portside sampling aboard Category A and B vessels, including 100 percent, 75 percent, 50 percent, and 25 percent. The EA estimates the reduction in annual RTO associated with these coverage target alternatives ranged from 42 percent to less than 1 percent. Despite reductions in expected revenue for 2020 and 2021, we expect the reduction of annual RTO associated with implementing a 50-percent coverage target for at-sea monitoring aboard Category A and B vessels to be within this analyzed range.

After considering the action, new information, and new circumstances, we determined that the action and its impacts fall within the scope of the existing EA. It is not necessary to develop a new NEPA analysis because (1) the action is identical to the proposed action analyzed in the EA and (2) no new information or circumstances relevant to environmental concerns or impacts of the action are significantly different from when the EA's finding of no significant impact was signed on December 17, 2018. Thus, the FONSI for existing EA for the New England Industry-Funded Monitoring Omnibus Amendment remains valid to support implementing this amendment.

Changes From the Proposed Rule

This rule includes minor changes from the proposed rule to clarify requirements. First, it revises the definition for *slippage in the Atlantic herring fishery* to make it consistent with the definition for *slips* and *slipping catch in the Atlantic herring fishery* and clarifies that slippage applies when a NMFS-certified observer or monitor is aboard the vessel.

Second, this rule aligns the herring coverage target with the SBRM year (April–March) instead of the fishing year (January–December) and adjusts the date by which the herring industry selects a monitoring type for the following year (October instead of July). This change ensures the coverage target will be more predictable for the entire year rather than changing with the SBRM year. NMFS will determine how to calculate the coverage target in consultation with Council staff.

Third, this rule removes ''on a declared herring trip'' from the criteria described at § 648.11(m)(2)(i) and revises the list of required information at § 648.11(m)(2)(i) to clarify when and how the owner, operator, or manager of a herring vessel must notify NMFS of a herring trip. The existing notification requirement describes that vessels issued certain herring permits or acting as herring carriers must notify NMFS of trips on which a vessel may harvest, possess, or land herring. Because pre-trip notifications are required at least 48 hours in advance of a trip and trip declarations are required just prior to a vessel leaving port on a trip, the existing criteria absent the reference to ''on a declared herring trip'' is a more logical descriptor of when a vessel is required to notify NMFS of a herring trip. The list of required information is revised to support NMFS selecting vessels for industry-funded monitoring coverage.

Fourth, this rule corrects references to § 648.11 to reflect provisions implemented in this rule.

Comments and Responses

We received 20 comment letters on the NOA and proposed rule: 5 from participants in the herring fishery (Seafreeze, Lund's Fisheries, Providian, O'Hara Corporation); 3 from fishing industry organizations (CHOIR Coalition, New England Purse Seiner's Alliance (NEPSA), and Cape Cod Commercial Fishermen's Alliance (CCCFA); 3 from environmental advocacy groups (Conservation Law Foundation (CLF) and Cause of Action Institute (COA)); and 9 from members of the public.

Comment 1: COA and Seafreeze commented that the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) does not authorize an industry-funded monitoring program as envisioned by the Industry-Funded Monitoring Amendment. They cautioned that the amendment intends to standardize the development of industry-funded monitoring programs, yet it fails to identify any specific provision in the Magnuson-Stevens Act granting it such authority. COA also commented that the Council does not have explicit statutory authorization to require the industry to fund discretionary supplemental at-sea monitoring programs. COA and Seafreeze explained that the Magnuson-Stevens Act only explicitly authorizes industry-funded monitoring for foreign fishing, limited access privilege programs (LAPPs), and the North Pacific fisheries research plan. They cautioned that because the Magnuson-Steven Act caps industry fees related to LAPPs at 3 percent of ex-vessel revenue, the agency does not have the ability to require the fishing industry to pay data collection and monitoring costs without limit.

Response: We disagree. The Magnuson-Stevens Act expressly authorizes onboard human monitors to be carried on fishing vessels ''for the purpose of collecting data necessary for the conservation and management of the fishery.'' 16 U.S.C. 1853(b)(8). The requirement to carry observers, along with many other requirements under the Magnuson-Stevens Act, includes compliance costs on industry participants. For example, NMFS regulations require fishing vessels to install vessel monitoring systems for monitoring vessel positions and fishing, report catch electronically, fish with certain gear types or mesh sizes, or ensure a vessel is safe before an observer may be carried on a vessel. Vessels pay costs to third-parties for services or goods in order to comply with these regulatory requirements that are authorized by the Magnuson-Stevens Act. There are also opportunity costs imposed by restrictions on vessel sizes, fish sizes, fishing areas, or fishing seasons. These industry costs are not ''fees.'' A fee is a form of ''funding'' where the industry is assessed a payment by the agency, authorized by statute, to be deposited in the U.S. Treasury and disbursed for administrative costs otherwise borne by the agency. This amendment does not address administrative costs that are charged in LAPPs and are subject to the 3 percent cap.

The need for monitoring and the data it provides is discussed in the amendment. Section 1.1 of the amendment explains that the Council is

establishing the framework for industry-funded monitoring programs because of its interest in increasing monitoring and/or other types of data collection in some FMPs to assess the amount and type of catch, to more accurately monitor annual catch limits, and/or provide other information for management. The Council's goals for industry-funded monitoring in the herring fishery are described in Section 2.2 of the amendment and include: (1) Accurate estimates of catch (retained and discarded); (2) accurate catch estimates for incidental species for which catch caps apply; and (3) affordable monitoring for the herring fishery. The Council's rationale for increased monitoring through industry-funded monitoring programs is consistent with the Magnuson-Stevens Act provision ''for the purpose of collecting data appropriate for the conservation and management of the fishery.''

Comment 2: COA and Seafreeze claim that the amendment is inconsistent with Federal appropriations laws and the U.S. Constitution. They commented that Congress decides how to finance any program it establishes, stating that a Federal agency cannot spend money on a program without authorization from Congress and cannot add to its appropriations from sources outside the government without permission from Congress. COA and Seafreeze caution that the type of industry-funded program set forth in the amendment imposes a ''tax'' on regulated parties. COA raised additional concerns that the industry funded program may violate the Anti-Deficiency Act and Miscellaneous Receipts Statute. Further, COA stated the amendment violates the Fourth Amendment to, and the Commerce Clause in, the U.S. Constitution. Last, Seafreeze expressed concern that the amendment violates the Fifth Amendment to the Constitution because data collected using industry funds could be used in enforcement actions.

Response: The Magnuson-Stevens Act expressly authorizes measures, including monitoring, ''for the purpose of collecting data necessary for the conservation and management of the fishery.'' It also acknowledges such measures may result in costs to the fishing industry as evident by its requirement to, where practicable, minimize costs and adverse economic impacts on communities. The inherent cost of a requirement, like industry-funding monitoring, is not the same as a ''tax.'' A hallmark of a tax is that the government receives some revenue. The government receives no revenue from industry-funded monitoring. Similar to arrangements between vessels and vessel monitoring system service providers, the payment for industry cost responsibilities associated with industry-funded monitoring would be made by the vessel to the monitoring service provider. Because the agency would not receive any payment from the vessel related to industry-funded monitoring, this amendment is consistent with the Anti-Deficiency Act and Miscellaneous Receipts Statue. Industry-funded monitoring in the herring fishery does not does not violate the Commerce Clause of the Constitution, which authorizes Congress to regulate commerce, because NMFS is regulating existing economic activity, which is permissible under the Commerce Clause. Industry-funded monitoring does not violate the Fourth Amendment protection against unreasonable searches and seizures because it is neither a search nor unreasonable if it was considered to be a search. At-sea monitors are not authorized officers conducting vessel searches for purposes of ensuring compliance with fisheries requirements. Further, the fishing industry is pervasively regulated, and monitoring is reasonable as authorized under the Magnuson-Stevens Act to receive critical fisheries data. Last, the amendment does not violate the Fifth Amendment to the Constitution because the monitoring requirement does not compel evidence that is testimonial in nature. An at-sea monitor simply records the results of the vessel's actions. An individual's participation in the fishery is voluntary, and an individual may choose to land less than the 50 mt of herring per trip threshold for requiring industry-funded monitoring. Further, monitoring is a regulatory reporting requirement, to which the Fifth Amendment privilege does not apply. Last, the information provided is not for purposes of discovering criminal violations. The herring fishery is a regulated industry under the Magnuson-Stevens Act, which provides for civil penalties for fisheries catch violations, not criminal sanctions. Any potentially incriminating evidence would be merely a byproduct of the requirement for industry-funded monitoring.

Comment 3: Seafreeze commented that because the amendment was initiated jointly by the New England and Mid-Atlantic Councils, it was led to believe that identical omnibus measures would need to be selected by both Councils. Seafreeze expressed concern that the potential of only one Council adopting the amendment was not considered during the development of the amendment and, therefore, recommended the omnibus measures be disapproved.

Response: When the New England Council took final action on the Industry-Funded Monitoring Amendment in April 2017, it considered whether to make its recommendations contingent upon a similar action by the Mid-Atlantic Council, but decided against it. Instead, the Council overwhelmingly approved the omnibus measures for its FMPs, with the exception of FMPs managed jointly with the Mid-Atlantic Council (*i.e.,* Monkfish and Spiny Dogfish FMPs) and the herring measures in the amendment and recommended the amendment be submitted to the agency for review and approval. The Mid-Atlantic Council considered industry-funded monitoring for its FMPs at its April 2017 and October 2018 meetings, but decided not to pursue it. Mid-Atlantic fishermen had an opportunity to participate and submit their concerns to the Mid-Atlantic Council during those meetings. Mid-Atlantic representatives to the New England Council also had an opportunity to present the Mid-Atlantic Council's concerns to the New England Council during the amendment's development. Further, while the omnibus measures, especially the prioritization process, were designed to be appropriate for both Councils, they were never intended to obligate a Council to establish provisions for industry-funded monitoring. Therefore, as explained in the proposed rule (83 FR 55665; November 7, 2018), the joint amendment initiated by both Councils to allow for industry-funded monitoring became the New England Industry-Funded Monitoring Omnibus Amendment and, as such, omnibus measures only apply to New England Council FMPs. The omnibus measures do not impose any substantive burden on any Mid-Atlantic fishery. Rather, the amendment sets up the framework under which future potential monitoring programs for New England fisheries would be established. If the Mid-Atlantic Council reconsiders industry-funded monitoring it a future action, it may consider whether to adopt similar omnibus measures at that time.

Comment 4: COA commented that our publication of **Federal Register** notices for the Industry-Funded Monitoring Amendment caused confusion. It questioned why we published an NOA in September 2018 seeking public comment on the approval or disapproval of the amendment followed

by a proposed rule with implementing regulations in November 2018 prior to finalizing our decision on the amendment. COA suggested that by publishing the notices for the approval/disapproval of the amendment and implementing regulations concurrently, that we had already made a decision on the amendment and would view public comments with prejudice. Additionally, the O'Hara Corporation was concerned that we approved the amendment in December 2018, prior to the closing of the public comment period on the proposed rule. O'Hara Corporation was disappointed in our process for notice and comment and wondered how public comments received after the amendment approval were considered.

Response: It is our practice to publish an NOA and proposed rule concurrently. The NOA for the Industry-Funded Monitoring Amendment was published on September 19, 2018, with a comment period ending November 19, 2018. The proposed rule for the amendment was published on November 7, 2018, with a comment period ending December 24, 2018. The comment periods for the NOA and proposed rule overlapped for 13 days. Both the NOA and proposed rule explained that any public comments we received on the amendment or the proposed rule during the NOA comment period would be considered in our decision to approve/disapprove the amendment.

We received seven comment letters during the NOA comment period. Those commenters expressed diverse views on the Industry-Funded Monitoring Amendment and recommended we approve, disapprove, and re-consider the amendment. We carefully reviewed and considered all of those comments prior to approving the amendment on December 18, 2018. NMFS must approve/disapprove an amendment within 30 days of the end of the comment period on the amendment. The decision date for the Industry-Funded Monitoring Amendment was December 19, 2018. Therefore, it would not have been possible to consider all public comments received through December 24, 2018, in the decision to approve/disapprove the Industry-Funded Monitoring Amendment.

The proposed rule explained that we would consider any public comment received after the NOA comment period but during the proposed rule comment period in our decision to implement proposed measures. We reviewed and considered all additional comments received during the proposed rule comment period prior to publishing this final rule. Commenters did not provide any new or additional information during the public comment period on the proposed rule that would have prevented us from approving the Industry-Funded Monitoring Amendment.

Comment 5: Seafreeze disagreed with the conclusions in the EA regarding impacts of the omnibus measures on fishery-related business and human communities. Specifically, it questioned assertions that omnibus measures would have no direct impacts, that costs are too speculative to analyze, and that standardized industry-funded monitoring requirements would have a positive impact. Seafreeze also commented that the impact of any future industry-funded monitoring program on fishery-related business and communities would be negative.

Response: The EA explains that omnibus measures are tools for the Council to use when developing future industry-funded monitoring programs. The omnibus measures have no direct biological impacts because they do not directly affect the level of fishing, fishing operations, amount of fish harvested, or area fished. Additionally, the omnibus measures do not have any direct economic impacts on fishery-related business or human communities because they do not require the development of industry-funded monitoring programs nor do they directly impose any costs. Categorizing and characterizing industry cost responsibilities in this action could provide the industry with information to better understand and plan for their industry-funded monitoring cost responsibilities as well negotiate better contracts with industry-funded monitoring service providers, which may ultimately reduce the dollar amount associated with industry cost responsibilities. Improved catch information that results from the opportunity to align funding with the most critical industry-funded monitoring programs may lead to better management of biological resources, which may eventually lead to higher harvest levels.

In the future, if the Council developed an industry-funded monitoring program for a particular FMP, the EA acknowledges there would be direct negative economic impacts to fishing vessels provided vessels were required to pay for increased monitoring. Future industry-funded monitoring programs would be developed to achieve specific goals. Without knowing the goals or the details of the measures to achieve those goals, attempting to quantify in this amendment the impact or the specific benefits of a future industry-funded monitoring program is too speculative. The economic impacts to fishing vessels and benefits resulting from a future industry-funded monitoring program would be evaluated in the amendment to establish that industry-funded monitoring program and cannot considered in this amendment.

Comment 6: COA commented that the introduction of industry-funded monitoring across the Greater Atlantic Region would impose a tremendous economic burden on the fishing industry that could lead to the elimination of small-scale fishing. As an example, COA referenced a 2016 letter by the Long Island Commercial Fishing Association in which the Association states the $800 per day cost of monitoring would force more than half of its fleet out of business.

Response: Generalizing economic impacts associated with industry-funded monitoring programs is often inaccurate. Members of the Long Island Commercial Fishing Association participate in a variety of fisheries, including vessels using small-mesh bottom trawl gear in the herring fishery. The $800 cost per covered day is the estimated cost for observer coverage in the herring fishery. The Industry-Funded Monitoring Amendment does not require observer coverage on small-mesh bottom trawl vessels in the herring fishery, instead it establishes a 50-percent coverage for at-sea monitoring coverage on declared herring trips at an estimated cost of $710 per day of coverage. Additionally, the Industry-Funded Monitoring Amendment does not require industry-funded monitoring coverage on trips intending to land less than 50 mt of herring. For those trips, the vessel owner/operator would request a waiver for industry-funded monitoring coverage and would not be responsible for industry-funded monitoring costs on that trip. The amendment estimated that waiving coverage on trips that land less than 50 mt of herring would result in industry-funded monitoring coverage on only 19 percent of trips by small-mesh bottom trawl vessels. More recently, when we only considered small-mesh bottom trawl vessels with Category A or B permits that had been active in the herring fishery in the last two years, we found that industry-funded monitoring requirements would likely only apply to only two small-mesh bottom trawl vessels. For these reasons, we disagree that the implementation of industry-funded monitoring in the herring fishery would lead to the elimination of small-scale fishing in the Greater Atlantic Region.

Comment 7: Seafreeze expressed concern that vessels participating in New England and Mid-Atlantic fisheries on the same trip may be subject to industry-funded monitoring requirements, even though the Mid-Atlantic Council did not adopt the this amendment. COA commented the EA fails to address the possibility of overlapping requirements for industry-funded monitoring in multiple fisheries.

Response: Similar to other measures in FMPs (*e.g.,* possession limits, gear restrictions, or reporting requirements), vessels are subject to the most restrictive requirements when participating in multiple fisheries on a single trip. With the understanding that vessels participate in multiple fisheries, the EA explicitly considers revenue and operational costs associated with participation in the herring, Atlantic mackerel, and squid fisheries. Because herring and mackerel are often harvested together on the same trip, the amendment specifies that the higher coverage target applies on trips declared into both fisheries. If the Council considers industry-funded monitoring in other fisheries in the future, the impacts of those programs relative to existing industry-funded monitoring programs will be considered at that time.

Comment 8: Several commenters expressed opinions on the relative costs and benefits of industry-funded monitoring. CLF, CCCFA, and CHOIR generally support the industry-funded monitoring requirements for the herring fishery, but are concerned that anything less than 100-percent coverage, especially when combined with coverage waivers, may undermine the effectiveness of additional monitoring. In contrast, Lund's cautioned that the 50-percent coverage target for the herring fishery is higher than necessary and wastes scarce agency and industry resources by monitoring a fishery with a low bycatch rate. COA commented that the amendment is inconsistent with National Standards 7 and 8 because it fails to explain why increased monitoring is necessary, in light of the financial burden it will place on the fishing industry, or how the amendment would minimize adverse economic impacts and provide for the sustained participation of communities.

Response: This amendment establishes industry-funded monitoring in the herring fishery to help increase the accuracy of catch estimates, especially for species with incidental catch caps (*i.e.,* haddock and river herring/shad). Our decision to approve this amendment included weighing the benefits of the measures relative to the costs, especially the industry's cost associated with additional monitoring. We concluded that the Council's measures minimize costs to the extent practicable and take into account the importance of fishery resources to fishing communities to provide for their sustained participation in the fishery and minimize the adverse economic impacts of these measures on those communities.

The 50-percent coverage target for vessels with Category A or B herring permits has the potential to reduce uncertainty around catch estimates in the herring fishery, thereby improving catch estimation for stock assessments and management. SBRM coverage on vessels participating in the herring fishery is variable. Recent coverage has ranged from 2 percent to 40 percent during 2012 to 2018. Analysis in the EA suggests a 50-percent coverage target would reduce the uncertainty around estimates of catch tracked against catch caps, likely resulting in a CV of less than 30 percent for the majority of catch caps. If increased monitoring reduces the uncertainty in the catch of haddock and river herring and shad tracked against catch caps, herring vessels may be more constrained by catch caps, thereby increasing accountability, or they may be less constrained by catch caps and better able to fully harvest herring sub-ACLs. Recent CVs associated with catch caps constraining the herring fishery have been as high as 86 percent. Improving our ability to track catch against catch limits is expected to support the herring fishery achieve optimum yield, minimize bycatch and incidental catch to the extent practicable, and support the sustained participation of fishing communities. Coverage waivers would only be issued under specific circumstances, when monitors are unavailable or trips have minimal to no catch, and are not expected to reduce the benefits of additional monitoring. This amendment does not require additional monitoring aboard herring vessels in Groundfish Closed Areas. Rather it maintains an existing requirement for 100-percent observer coverage on herring midwater trawl vessels fishing inside of Groundfish Closed Areas, but provides flexibility for vessels by allowing the purchase of observer coverage to access Groundfish Closed Areas.

While the economic impact of industry-funding monitoring on participants in the herring fishery may be substantial, we considered the nature and extent of these costs relative to the benefits of additional monitoring, such as reducing uncertainty around catch estimates to improve management, and measures to mitigate costs.

Recognizing the potential economic impact of industry-funded monitoring on the herring industry, the Council recommended several measures to minimize the impact of paying for additional coverage. Setting the coverage target at 50 percent, instead of 75 or 100 percent, balances the benefit of additional monitoring with the costs associated with additional monitoring. Allowing SBRM coverage to contribute toward the 50-percent coverage target for at-sea monitoring is expected to reduce costs for the industry. Waiving industry-funded monitoring requirements on certain trips, including trips that land less than 50 mt of herring and pair trawl trips carrying no fish, would minimize the cost of additional monitoring. Trips that land less than 50 mt are common for small-mesh bottom trawl, single midwater trawl, and purse seine vessels. As such, the 50-mt exemption has the potential to result in a less than 5 percent reduction in annual RTO associated with at-sea monitoring coverage for those vessels. Electronic monitoring and portside sampling may be a more cost effective way for midwater trawl vessels to meet the 50-percent coverage target requirement than at-sea monitoring coverage. Analysis in the EA estimates that electronic monitoring and portside sampling coverage has the potential to reduce annual RTO up to 10 percent instead of the 20 percent reduction associated with at-sea monitoring coverage.

The amendment also includes measures to ensure the Council considers the cost of additional monitoring relative to its effectiveness and provides the flexibility to adjust measures if industry-funded monitoring requirements for the herring fishery become too onerous. Herring measures require the Council to review the industry-funded monitoring requirements two years after implementation. Omnibus measures allow the Council to modify the weighting approach to recommend to us how to prioritize Federal funding across industry-funded monitoring programs. If the Council wants to recommend that we not prioritize Federal funding to administer industry-funded monitoring in herring fishery, essentially recommending no additional monitoring for the herring fishery, it would consider the new weighting approach at a public meeting and request us to publish a rulemaking modifying the weighting approach. Additionally, if we find that coverage waivers undermine the benefits of

additional monitoring, the Council could restrict waivers when it reviews the industry-funded monitoring requirements two years after implementation.

Comment 9: Seafreeze and COA commented that industry-funding monitoring in the herring fishery disproportionately affects Seafreeze vessels and any other vessels that make multi-day trips processing catch at sea in violation of National Standard 6's requirement to take into account and allow for variations among fisheries, fishery resources, and catch. Seafreeze explained that despite a relatively low daily production capacity (57 mt), its vessels would not qualify for a coverage waiver, like other small-mesh bottom trawl vessels, because its vessels make longer than average trips processing and freezing catch from multiple fisheries. Seafreeze also commented that, according to the EA, the 50-percent coverage target would cost it $80,000 per year ($40,000 per vessel) on trips that do not land herring.

Response: We disagree. In an effort to minimize the economic impact of industry-funded monitoring, the Council explicitly considered measures to address Seafreeze's concern about disproportional impacts on its vessels, including considering alternatives for coverage waivers for trips when landings would be less than 20-percent herring or less than 50 mt of herring per day. Ultimately, the Council determined that the potential for a relatively high herring catches per trip aboard those vessels warranted additional monitoring and chose the 50 mt per trip threshold. The EA estimates the effort and monitoring costs associated with declared herring trips that ultimately did not land herring. In 2014, there were 111 sea days for small-mesh bottom trawl vessels that had no herring landings. The cost of at-sea monitoring coverage on 50 percent of those trips was estimated at just under $40,000. That $40,000 is the total cost for monitoring all small-mesh bottom trawl vessels for the year. Therefore, it is highly unlikely that Seafreeze would be paying $80,000 per year for at-sea monitoring on trips that did not land herring. As described previously, the Council has the flexibility to recommend we not prioritize Federal funding for industry-funded monitoring in the herring fishery and/or adjust measures if industry-funded monitoring requirements for the herring fishery become too onerous or do not allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

Comment 10: Several commenters (CLF, CCCFA, Lund's) support the option to allow midwater trawl vessels to purchase observers to access Groundfish Closed Areas. However, CLF and CCCFA object to midwater trawl vessels having any additional access to Groundfish Closed Areas, including access to areas maintained as Groundfish Closed Areas in the recent Omnibus Habitat Amendment.

Response: We acknowledge the commenters support for the measure allowing midwater trawl vessels to purchase an observer to access Groundfish Closed Areas. This amendment does not relax any restrictions for Groundfish Closed Areas implemented in the recent Omnibus Habitat Amendment.

Comment 11: Several commenters were concerned with recent catch limit reductions in the herring fishery and how that affects the economic impact of industry-funded monitoring. The specifics of their comments are as follows:

- COA, Providian, and Seafreeze noted that economic impacts for the herring fishery were analyzed based on revenue and operating costs from 2014 and do not reflect the recent reductions in ACLs;
- Providian acknowledges that lower ACLs means fewer fishing trips and recommends continued SBRM coverage in the herring fishery;
- Lund's recommends SBRM coverage, in conjunction with the existing state-administered portside sampling program, as the best investment to understand catch in herring fishery; and
- Lund's, Providian, and O'Hara request the amendment be delayed, at least until after 2021, in hopes that future increases in herring harvest and revenue would be able to support industry-funded monitoring.

Response: As discussed in the preamble, we acknowledge that herring effort, catch, and resulting revenue will likely be lower in 2020 and 2021 than in prior years, such that the cost of industry-funded monitoring relative to herring catch and revenue may be high in the short-term. However, the magnitude of that impact on individual vessels and businesses is likely variable and would be mitigated by several factors, which are discussed in the preamble section addressing our NEPA considerations.

Comment 12: Four members of the public supported this amendment and believe increased monitoring is necessary for sustainable FMPs. For two of those individuals, their support is conditional on the economic impact of the amendment, specifically that the amendment does not overburden an already struggling New England fishing industry.

Response: We appreciate the commenters' support for this amendment and note the amendment includes several measures to minimize the economic impact on the herring industry of paying for additional coverage.

Comment 13: Several commenters provided input on the EFP to further evaluate how to best permanently administer an electronic monitoring and portside sampling program. The specifics of their comments are as follows:

- NEPSA, CLF, CCCFA, and CHOIR supported us using an EFP to initially administer electronic monitoring and portside sampling in the herring fishery and urged us to quickly transition to electronic monitoring in the herring fishery because electronic monitoring provides a more cost effective and accurate means to monitor the herring fishery than human monitors;
- CHOIR and NEPSA urged us to allow purse seine vessels to participate in the EFP and explained that lessons learned from the midwater trawl electronic monitoring study would apply to purse seine vessels as both gear types capture fish in nets and bring those nets alongside the vessels to pump fish aboard;
- NEPSA asserted that electronic monitoring is easier for vessel operators than at-sea monitoring coverage because it does not involve the logistics of carrying a human monitor and noted that allowing purse seine vessels to participate in the EFP would increase the number of participants and help decrease the per-vessel cost of using electronic monitoring;
- Lund's commented that it supports us using an EFP to further evaluate an electronic monitoring and portside sampling program, but at this time prefers human monitors to electronic monitoring;
- CLF and CHOIR advocated that net sensors be incorporated into the EFP to help quantify the amount of slipped catch and CHOIR hoped that electronic monitoring can be developed to identify the contents and estimate the amount of slipped catch; and
- CLF requested the EFP include documenting all discards, verifying compliance with slippage requirements and consequence measures, 100-percent video review, documenting interactions with protected species, and complementary coverage by SBRM observers.

Response: We acknowledge commenters' support for the EFP and will consider these recommendations as

the terms and conditions of the EFP are finalized.

Comment 14: One member of the public supported developing future industry-funded monitoring programs via amendment to allow for public input and standardizing industry-funded monitoring programs to help ensure fairness across fisheries.

Response: We acknowledge the commenter's support for omnibus measures in the amendment.

Comment 15: One individual commented that additional monitoring, especially industry-funded monitoring for herring, is unnecessary because herring are numerous and not at risk of extinction. The individual is not convinced the Council considered its own criteria for the development of an industry-funded monitoring program, such as a clear need for the data collection, cost of collection, less data intensive methods, prioritizing modern technology, and incentive for reliable self-reporting. Instead, the commenter recommended tracking catch by using fishing industry reporting to NMFS of the weight of fish sold.

Response: We disagree. The Council identified and supported the need for additional monitoring as reducing uncertainty around catch estimates in the herring fishery, thereby improving catch estimation for stock assessments and management, as noted in the response to Comment 8. The Council considered less data intensive methods, prioritizing modern technology, and incentives for self-reporting by allowing vessels to use either at-sea monitoring or electronic monitoring and portside sampling coverage to satisfy industry-funded monitoring requirements. In contrast to observers, at-sea monitors would not collect whole specimens, photos, or biological samples (other than length data) from catch, unless it was for purposes of species identification, or sighting data on protected species. The Council recommended a limited data collection for at-sea monitors compared to observers to allow for possible cost savings for either the industry or NMFS associated with a limited data collection. Because midwater trawl vessels discard only a small percentage of catch at sea, electronic monitoring and portside sampling have the potential to be a cost effective way to address monitoring goals for the herring fishery. Analysis in the EA estimates that electronic monitoring and portside sampling coverage has the potential to reduce annual RTO up to 10 percent instead of the 20 percent reduction associated with at-sea monitoring coverage.

We currently track catch in the herring fishery using the weight of fish purchased by dealers, but those data are not robust enough to track catch against catch caps and would not help reduce the uncertainty associated with catch tracked against catch caps.

Comment 16: Three members of the public provided comments on forest management, keeping marine mammals in captivity, and NEPA requirements for terrestrial businesses.

Response: Because those comments are outside the scope of this amendment, we are not providing responses to those comments in this final rule.

Classification

The Administrator, Greater Atlantic Region, NMFS determined that this amendment is necessary for the conservation and management of New England Council FMPs and that it is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This final rule is not an E.O. 13771 regulatory action because this action is not significant under E.O. 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) in support of this action. The FRFA incorporates the initial RFA, a summary of the significant issues raised by the public comments in response to the initial RFA, NMFS responses to those comments, and a summary of the analyses completed in support of this action. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA and a copy of the EA/RIR/IRFA are available upon request (see **ADDRESSES**) or via the internet at: *http://www.nefmc.org.*

The omnibus measures are administrative, specifying a process to develop and administer future industry-funded monitoring and monitoring set-aside programs, and do not directly affect fishing effort or amount of fish harvested. Because the omnibus measures have no direct economic impacts, they will not be discussed in this section. The herring measures affect levels of monitoring, rather than harvest specifications, but they are expected to have economic impacts on fishery-related businesses and human communities due to the costs associated with the industry-funded monitoring measures for the herring fishery.

A Statement of the Significant Issues Raised by the Public in Response to the IRFA, a Statement of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

We received 18 comment letters on the NOA and proposed rule. Those comments, and our responses, are contained in the Comments and Responses section of this final rule and are not repeated here. Comments 1, 2, 5, 6, 8, 9, 11, and 12 discussed the economic impacts of the measures, but did not directly comment on the IRFA. All changes from the proposed rule, as well as the rationale for those changes, are described in the Changes from the Proposed Rule section of this final rule and are not repeated here.

Description and Estimate of the Number of Small Entities To Which the 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). The directly regulated entities are businesses that own at least one limited access Atlantic herring vessel. As of 2016, there are 66 businesses that own at least one limited access herring vessel. Four businesses are large entities (gross receipts greater than $11 million). The remaining 62 businesses are small entities. Gross receipts and gross receipts from herring fishing for the small entities are characterized in Table 3.

TABLE 3—GROSS REVENUES AND REVENUES FROM HERRING FOR THE DIRECTLY REGULATED SMALL ENTITIES

	Gross receipts from all fishing by herring permitted small entities	Gross receipts from herring fishing by herring permitted small entities
Mean	$1,847,392	$422,210
Median	1,076,172	0
25th Percentile	656,965	0
75th Percentile	2,684,753	95,218
Permitted Small Entities	62	62

Source: NMFS.

Many of the businesses that hold limited access herring permits are not actively fishing for herring. Of those businesses actively fishing for herring, there are 32 directly regulated entities with herring landings. Two businesses are large entities (gross receipts over $11 million). The remaining 30 businesses are small entities. Table 4 characterizes gross receipts and gross receipts from the herring fishery for the active small entities.

TABLE 4—GROSS REVENUES AND REVENUES FROM HERRING FOR THE ACTIVE DIRECTLY REGULATED SMALL ENTITIES

	Gross receipts from all fishing by active herring permitted small entities	Gross receipts from active herring permitted fishing by small entities
Mean	$2,070,541	$872,567
Median	1,030,411	95,558
25th Percentile	554,628	6,570
75th Percentile	2,955,883	1,696,758
Active Small Entities	30	30

Source: NMFS.

For the 30 small entities, herring represents an average of 36 percent of gross receipts. For 12 of the small entities, herring represents the single largest source of gross receipts. For eight of the small entities, longfin squid is the largest source of gross receipts and Atlantic sea scallops is the largest source of gross receipts for five of the small entities. The largest source of gross receipts for the remaining five small entities are mixed across different fisheries. Eight of the 30 small entities derived zero revenues from herring.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The new requirements, which are described in detail in the preamble, have been submitted to OMB for approval as a revised collection under control number 0648–0674. The action does not duplicate, overlap, or conflict with any other Federal rules.

The Industry-Funded Monitoring Amendment would replace the current phone-based observer pre-trip notification system with a new web-based pre-trip notification system. There would be no additional reporting burden associated with this measure because the new notification system would increase convenience and will require approximately the same time burden (5 minutes).

This amendment would implement a 50-percent industry-funded monitoring coverage target on vessels issued Category A or B herring permits. The herring industry would be required to pay for industry cost responsibilities associated with at-sea monitoring. There are an estimated 42 vessels with Category A or B permits in the herring fishery. After considering SBRM coverage, we estimate that each vessel would incur monitoring costs for an additional 19 days at sea per year, at an estimated maximum cost of $710 per sea day. The annual cost estimate for carrying an at-sea monitor for Category A and B vessels would be $566,580, with an average cost per vessel of $13,490.

In addition to the 50-percent industry-funded monitoring coverage target, midwater trawl vessels would have the option to purchase observer coverage to allow them to fish in Groundfish Closed Areas. This option would be available to the estimated 12 vessels that fish with midwater trawl gear. Because this option would be available on all trips not otherwise selected for SBRM or industry-funded coverage, it is estimated that each vessel may use this option for up to 21 days per year, at an estimated maximum cost of $818 per sea day. Therefore, the annual cost associated with industry-funded observer coverage for midwater trawl vessels fishing in Groundfish Closed Areas is estimated to be $206,136, with an average annual cost per vessel of $17,178.

To access Groundfish Closed Areas, owners/operators of the 12 affected midwater trawl vessels would request an observer by calling one of the approved monitoring service providers. The average midwater trawl vessel is estimated to take 7 of these trips per year, and each call would take an estimated 5 minutes at a rate of $0.10 per minute. Thus, the total annual burden estimate to the industry for calls to obtain industry-funded observer coverage would be 7 hours and $42 (Per vessel: 1 hr and $3.50). For each of the 7 estimated trips that the vessel calls in to request an industry-funded observer to access Groundfish Closed Areas, the vessel has the option to cancel that trip. The call to cancel the trip would take an estimated 1 minute at a rate of $0.10 per minute. The total annual burden

estimated to the industry for cancelling these trips would be 1 hour and $8 (Per vessel: 1 hr and $1).

We expect that some monitoring service providers would apply for approval under the service provider requirements at § 648.11(h), specifically that four out of six providers may apply for approval, and would be subject to these requirements. These providers would submit reports and information required of service providers as part of their application for approval. Service providers must comply with the following requirements, submitted via email, phone, web-portal, fax, or postal service: Submit applications for approval as a monitoring service provider; formally request industry-funded at-sea monitor training by the NEFOP; submit industry-funded at-sea monitor deployment and availability reports; submit biological samples, safety refusal reports, and other reports; give notification of industry-funded at-sea monitor availability within 24 hours of the vessel owner's notification of a prospective trip; provide vessels with notification of industry-funded observer availability in advance of each trip; and maintain an updated contact list of all industry-funded at-sea monitors/observers that includes the monitor's/observer's identification number, name, mailing and email address, phone numbers, homeports or fisheries/trip types assigned, and whether or not the monitor/observer is ''in service'' (*i.e.,* available to provide coverage services). Monitoring service providers would have to provide raw at-sea monitoring data to NMFS and make at-sea monitors available to NMFS for debriefing upon request. The regulations would also require monitoring service providers to submit any outreach materials, such as informational pamphlets, payment notification, and descriptions of monitor duties, as well as all contracts between the service provider and entities requiring monitoring services for review to NMFS. Monitoring service providers also have the option to respond to application denials, and submit a rebuttal in response to a pending removal from the list of approved monitoring service providers. NMFS expects that all of these reporting requirements combined are expected to take 1,192 hours of response time per year for a total annual cost of $12,483 for all affected monitoring service providers ($3,121 per provider). The following table provides the detailed time and cost information for each response item.

TABLE 5—BURDEN ESTIMATE FOR MEASURES

Monitoring service provider requirements	Number of respondents	Total number of annual responses	Response time per response (minutes)	Total annual burden (hours)	Cost per response	Total annual cost
Monitor deployment report	4	444	10	74	$0.00	$0
Monitor availability report	4	216	20	72	0.00	0
Safety refusals	4	40	30	20	0.00	0
Raw monitor data	4	444	5	37	23.75	10,545
Monitor debriefing	4	124	120	248	12.00	1,488
Other reports	4	68	30	34	0.00	0
Biological samples	4	516	60	516	0.50	258
New application to be a service provider	4	4	600	40	0.55	2
Applicant response to denial	1	1	600	10	0.55	1
Request for monitor training	4	12	30	6	1.80	22
Rebuttal of pending removal from list of approved service providers	1	1	480	8	0.55	1
Request to service provider to procure a monitor	90	360	10	60	0.00	0
Notification of unavailability of monitors	90	360	5	30	0.00	0
Call to service provider to procure an observer for Groundfish Closed Areas by phone	21	84	10	14	1.00	84
Notification of unavailability of observers for Groundfish Closed Areas	21	84	5	7	0.50	42
Monitor contact list updates	4	48	5	4	0.00	0
Monitor availability updates	4	48	5	4	0.00	0
Service provider material submissions	4	8	30	4	2.50	20
Service provider contracts	4	8	30	4	2.50	20
Total				1,192		12,483

Public comment is sought regarding the following: Whether this proposed collection of information is necessary for the proper performance of agency functions, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**) and email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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 the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Recognizing the potential economic impact of industry-funded monitoring

on the herring industry, this amendment contains several measures to minimize the impact of paying for additional coverage. Setting the coverage target at 50 percent, instead of 75 or 100 percent, balances the benefit of additional monitoring with the costs associated with additional monitoring. Allowing SBRM coverage to contribute toward the 50-percent coverage target for at-sea monitoring is expected to reduce costs for the industry. Waiving industry-funded monitoring requirements on certain trips, including trips that land less than 50 mt of herring and pair trawl trips carrying no fish, would minimize the cost of additional monitoring. Trips that land less than 50 mt are common for small-mesh bottom trawl, single midwater trawl vessel, and purse seine vessels. As such, the 50-mt exemption has the potential to result in a less than 5 percent reduction in annual RTO associated with at-sea monitoring coverage for those vessels. Electronic monitoring and portside sampling may be a more cost effective way for midwater trawl vessels to meet the 50-percent coverage target requirement than at-sea monitoring coverage. Analysis in the EA estimates that electronic monitoring and portside sampling coverage has the potential to reduce annual RTO up to 10 percent instead of the 20 percent reduction associated with at-sea monitoring coverage. Herring measures require the Council to review the industry-funded monitoring requirements two years after implementation. Omnibus measures allow the Council to modify the weighting approach to recommend to us how to prioritize Federal funding across industry-funded monitoring programs. If the Council wants to recommend that we not prioritize Federal funding to administer industry-funded monitoring in the herring fishery, essentially recommending no additional monitoring for the herring fishery, it would consider the new weighting approach at a public meeting and request us to publish a rulemaking modifying the weighting approach. These measures ensure the Council considers the cost of additional monitoring relative to its effectiveness and provides the flexibility to adjust measures if industry-funded monitoring requirements for the herring fishery become too onerous. Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO), and the compliance guide (*i.e.,* fishery bulletin) will be sent to all holders of permits for the herring fishery. The guide and this final rule will be posted on the GARFO website.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 15, 2020.

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 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 § 648.2, revise the definitions for ''Electronic monitoring,'' ''Observer/sea sampler,'' ''Slippage in the Atlantic herring fishery,'' and ''Slip(s) or slipping catch in the Atlantic herring fishery'' to read as follows:

§ 648.2 Definitions.

* * * * *

Electronic monitoring means a network of equipment that uses a software operating system connected to one or more technology components, including, but not limited to, cameras and recording devices to collect data on catch and vessel operations. With respect to the NE multispecies fishery, electronic monitoring means any equipment that is used to monitor area fished and the amount and identity of species kept and discarded in lieu of at-sea monitors as part of an approved Sector at-sea monitoring program.

* * * * *

Observer or monitor means any person certified by NMFS to collect operational fishing data, biological data, or economic data through direct observation and interaction with operators of commercial fishing vessels as part of NMFS' Northeast Fisheries Observer Program. Observers or monitors include NMFS-certified fisheries observers, at-sea monitors, portside samplers, and dockside monitors.

* * * * *

Slippage in the Atlantic herring fishery means discarded catch from a vessel issued an Atlantic herring permit that is carrying a NMFS-certified observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by a NMFS-certified observer or monitor after the catch is on board. Slippage also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are not considered slippage. Discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-certified observer or monitor are also not considered slippage.

Slip(s) or slipping catch in the Atlantic herring fishery means discarded catch from a vessel issued an Atlantic herring permit that is carrying a NMFS-certified observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by a NMFS-certified observer or monitor after the catch is on board. Slip(s) or slipping catch also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slip(s) or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-certified observer or monitor, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

* * * * *

■ 3. In § 648.7, revise paragraph (b)(2)(i) to read as follows:

§ 648.7 Record keeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(i) *Atlantic herring owners or operators issued an All Areas open access permit.* The owner or operator of a vessel issued an All Areas open access permit to fish for herring must report catch (retained and discarded) of herring via an IVR system for each week herring was caught, unless exempted by the Regional Administrator. IVR reports are not required for weeks when no herring was caught. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; week in which herring are caught; management areas fished; and pounds retained and pounds discarded of herring caught in each management area. The IVR reporting week begins on Sunday at 0001 hour (hr) (12:01 a.m.) local time and ends Saturday at 2400 hr (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight each Tuesday, eastern time, for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

■ 4. Revise § 648.11 to read as follows:

§ 648.11 Monitoring coverage.

(a) *Coverage.* The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specified in paragraph (k) of this section. A vessel holding an All Areas or Areas 2/3 Limited Access Herring Permit is subject to the additional requirements specified in paragraph (m) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section.

(b) *Facilitating coverage.* If requested by the Regional Administrator or their designees, including NMFS-certified observers, monitors, and NMFS staff, to be sampled by an observer or monitor, it is the responsibility of the vessel owner or vessel operator to arrange for and facilitate observer or monitor placement. Owners or operators of vessels selected for observer or monitor coverage must notify the appropriate monitoring service provider before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners or permit holder letters.

(c) *Safety waivers.* The Regional Administrator may waive the requirement to be sampled by an observer or monitor if the facilities on a vessel for housing the observer or monitor, or for carrying out observer or monitor functions, are so inadequate or unsafe that the health or safety of the observer or monitor, or the safe operation of the vessel, would be jeopardized.

(d) *Vessel requirements associated with coverage.* An owner or operator of a vessel on which a NMFS-certified observer or monitor is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer or monitor access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's or monitor's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer or monitor, and allow the observer or monitor access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the observer or monitor in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the observer or monitor, as specified by the Regional Administrator, ensuring that transfers of observers or monitors at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the observers or monitors involved.

(6) Allow the observer or monitor free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the observer or monitor to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) *Vessel requirements associated with protected species.* The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the observer or monitor, also must:

(1) Notify the observer or monitor of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the observer or monitor with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

(f) *Coverage funded from outside sources.* NMFS may accept observer or monitor coverage funded by outside sources if:

(1) All coverage conducted by such observers or monitors is determined by NMFS to be in compliance with NMFS' observer or monitor guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The observer or monitor is approved by the Regional Administrator.

(g) *Industry-funded monitoring programs.* Fishery management plans (FMPs) managed by the New England Fishery Management Council (New England Council), including Atlantic Herring, Atlantic Salmon, Atlantic Sea Scallops, Deep-Sea Red Crab, Northeast Multispecies, and Northeast Skate Complex, may include industry-funded monitoring programs (IFM) to supplement existing monitoring required by the Standard Bycatch Reporting Methodology (SBRM), Endangered Species Act, and the Marine Mammal Protection Act. IFM programs may use observers, monitors, including at-sea monitors and portside samplers, and electronic monitoring to meet specified IFM coverage targets. The ability to meet IFM coverage targets may be constrained by the availability of

Federal funding to pay NMFS cost responsibilities associated with IFM.

(1) *Guiding principles for new IFM programs.* The Council's development of an IFM program must consider or include the following:

(i) A clear need or reason for the data collection;

(ii) Objective design criteria;

(iii) Cost of data collection should not diminish net benefits to the nation nor threaten continued existence of the fishery;

(iv) Seek less data intensive methods to collect data necessary to assure conservation and sustainability when assessing and managing fisheries with minimal profit margins;

(v) Prioritize the use of modern technology to the extent practicable; and

(vi) Incentives for reliable self-reporting.

(2) *Process to implement and revise new IFM programs.* New IFM programs shall be developed via an amendment to a specific FMP. IFM programs implemented in an FMP may be revised via a framework adjustment. The details of an IFM program may include, but are not limited to:

(i) Level and type of coverage target;

(ii) Rationale for level and type of coverage;

(iii) Minimum level of coverage necessary to meet coverage goals;

(iv) Consideration of waivers if coverage targets cannot be met;

(v) Process for vessel notification and selection;

(vi) Cost collection and administration;

(vii) Standards for monitoring service providers; and

(viii) Any other measures necessary to implement the industry-funded monitoring program.

(3) *NMFS cost responsibilities.* IFM programs have two types of costs, NMFS and industry costs. Cost responsibilities are delineated by the type of cost. NMFS cost responsibilities include the following:

(i) The labor and facilities associated with training and debriefing of monitors;

(ii) NMFS-issued gear (*e.g.,* electronic reporting aids used by human monitors to record trip information);

(iii) Certification of monitoring service providers and individual observers or monitors; performance monitoring to maintain certificates;

(iv) Developing and executing vessel selection;

(v) Data processing (including electronic monitoring video audit, but excluding service provider electronic video review); and

(vi) Costs associated with liaison activities between service providers, and NMFS, Coast Guard, New England Council, sector managers, and other partners.

(vii) The industry is responsible for all other costs associated with IFM programs.

(4) *Prioritization process to cover NMFS IFM cost responsibilities.* (i) Available Federal funding refers to any funds in excess of those allocated to meet SBRM requirements or the existing IFM programs in the Atlantic Sea Scallop and Northeast Multispecies FMPs that may be used to cover NMFS cost responsibilities associated with IFM coverage targets. If there is no available Federal funding in a given year to cover NMFS IFM cost responsibilities, then there shall be no IFM coverage during that year. If there is some available Federal funding in a given year, but not enough to cover all of NMFS cost responsibilities associated with IFM coverage targets, then the New England Council will prioritize available Federal funding across IFM programs during that year. Existing IFM programs for Atlantic sea scallops and Northeast multispecies fisheries shall not be included in this prioritization process.

(ii) Programs with IFM coverage targets shall be prioritized using an equal weighting approach, such that any available Federal funding shall be divided equally among programs.

(iii) After NMFS determines the amount of available Federal funding for the next fishing year, NMFS shall provide the New England Council with the estimated IFM coverage levels for the next fishing year. The estimated IFM coverage levels would be based on the equal weighting approach and would include the rationale for any deviations from the equal weighting approach. The New England Council may recommend revisions and additional considerations to the Regional Administrator and Science and Research Director.

(A) If available Federal funding exceeds that needed to pay all of NMFS cost responsibilities for administering IFM programs, the New England Council may request NMFS to use available funding to help offset industry cost responsibilities through reimbursement.

(B) [Reserved]

(iv) Revisions to the prioritization process may be made via a framework adjustment to all New England FMPs.

(v) Revisions to the weighting approach for the New England Council-led prioritization process may be made via a framework adjustment to all New England FMPs or by the New England Council considering a new weighting approach at a public meeting, where public comment is accepted, and requesting NMFS to publish a notice or rulemaking revising the weighting approach. NMFS shall implement revisions to the weighting approach in a manner consistent with the Administrative Procedure Act.

(5) *IFM program monitoring service provider requirements.* IFM monitoring service provider requirements shall be consistent with requirements in paragraph (h) of this section and observer or monitor requirements shall be consistent with requirements in paragraph (i) of this section.

(6) *Monitoring set-aside.* The New England Council may develop a monitoring set-aside program for individual FMPs that would devote a portion of the annual catch limit for a fishery to help offset the industry cost responsibilities for monitoring coverage, including observers, at-sea monitors, portside samplers, and electronic monitoring.

(i) The details of a monitoring set-aside program may include, but are not limited to:

(A) The basis for the monitoring set-aside;

(B) The amount of the set-aside (*e.g.,* quota, days at sea);

(C) How the set-aside is allocated to vessels required to pay for monitoring (*e.g.,* an increased trip limit, differential days at sea counting, additional trips, an allocation of the quota);

(D) The process for vessel notification;

(E) How funds are collected and administered to cover the industry's costs of monitoring; and

(F) Any other measures necessary to develop and implement a monitoring set-aside.

(ii) The New England Council may develop new monitoring set-asides and revise those monitoring set-asides via a framework adjustment to the relevant FMP.

(h) *Monitoring service provider approval and responsibilities*—(1) *General.* An entity seeking to provide monitoring services, including services for IFM Programs described in paragraph (g) of this section, must apply for and obtain approval from NMFS following submission of a complete application. Monitoring services include providing NMFS-certified observers, monitors (at-sea monitors and portside samplers), and/or electronic monitoring. A list of approved monitoring service providers shall be distributed to vessel owners and shall be posted on the NMFS Fisheries Sampling Branch (FSB) website at: *https://www.nefsc.noaa.gov/femad/fsb/.*

(2) [Reserved]

(3) *Contents of application.* An application to become an approved monitoring service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal conviction(s), Federal contract(s) they have had and the performance rating they received on the contracts, and previous decertification action(s) while working as an observer or monitor or monitoring service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a monitoring service provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers or monitors, whether contracted or employed by the service provider, during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer or monitor, vessel owner, and observer provider. The minimum coverage required is $5 million. Monitoring service providers shall provide copies of the insurance policies to observers or monitors to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers or monitors, whether contracted or employed by the service provider, are compensated with salaries that meet or exceed the U.S. Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Monitoring service providers shall provide any other benefits and personnel services in accordance with the terms of each observer's or monitor's contract or employment status.

(ix) The names of its fully equipped, NMFS/FSB certified, observers or monitors on staff or a list of its training candidates (with resumes) and a request for an appropriate NMFS/FSB Training class. All training classes have a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an ''at sea'' emergency with an observer or monitor, including, but not limited to, personal injury, death, harassment, or intimidation. An EAP that details a monitoring service provider's responses to emergencies involving observers, monitors, or monitoring service provider personnel. The EAP shall include communications protocol and appropriate contact information in an emergency.

(4) *Application evaluation.* (i) NMFS shall review and evaluate each application submitted under paragraph (h)(3) of this section. Issuance of approval as a monitoring service provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a monitoring service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 business days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the monitoring service provider's name will be added to the list of approved monitoring service providers found on the NMFS/FSB website specified in paragraph (h)(1) of this section, and in any outreach information to the industry. Approved monitoring service providers shall be notified in writing and provided with any information pertinent to its participation in the observer or monitor programs.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, a monitoring service provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved monitoring service providers.

(5) *Responsibilities of monitoring service providers*—(i) *Certified observers or monitors.* A monitoring service provider must provide observers or monitors certified by NMFS/FSB pursuant to paragraph (i) of this section for deployment in a fishery when contacted and contracted by the owner, operator, or vessel manager of a fishing vessel, unless the monitoring service provider refuses to deploy an observer or monitor on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section.

(ii) *Support for observers or monitors.* A monitoring service provider must provide to each of its observers or monitors:

(A) All necessary transportation, lodging costs and support for arrangements and logistics of travel for observers and monitors to and from the initial location of deployment, to all subsequent vessel assignments, to any debriefing locations, and for appearances in Court for monitoring-related trials as necessary;

(B) Lodging, per diem, and any other services necessary for observers or monitors assigned to a fishing vessel or to attend an appropriate NMFS/FSB training class;

(C) The required observer or monitor equipment, in accordance with equipment requirements listed on the NMFS/FSB website specified in paragraph (h)(1) of this section, prior to any deployment and/or prior to NMFS observer or monitor certification training; and

(D) Individually assigned communication equipment, in working order, such as a mobile phone, for all

necessary communication. A monitoring service provider may alternatively compensate observers or monitors for the use of the observer's or monitor's personal mobile phone, or other device, for communications made in support of, or necessary for, the observer's or monitor's duties.

(iii) *Observer and monitor deployment logistics.* Each approved monitoring service provider must assign an available certified observer or monitor to a vessel upon request. Each approved monitoring service provider must be accessible 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure monitoring coverage when requested. The telephone or other notification system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Monitoring service providers approved under this paragraph (h) are required to report observer or monitor deployments to NMFS for the purpose of determining whether the predetermined coverage levels are being achieved in the appropriate fishery.

(iv) *Observer deployment limitations.* (A) A candidate observer's first several deployments and the resulting data shall be immediately edited and approved after each trip by NMFS/FSB prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified. For further information, see *https://www.nefsc.noaa.gov/fsb/training/*.

(B) For the purpose of coverage to meet SBRM requirements, unless alternative arrangements are approved by NMFS, a monitoring service provider must not deploy any NMFS-certified observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(C) For the purpose of coverage to meet IFM requirements, a monitoring service provider may deploy any NMFS-certified observer or monitor on the same vessel for more than two consecutive multi-day trips and more than twice in any given month for multi-day deployments.

(v) *Communications with observers and monitors.* A monitoring service provider must have an employee responsible for observer or monitor activities on call 24 hours a day to handle emergencies involving observers or monitors or problems concerning observer or monitor logistics, whenever observers or monitors are at sea, stationed portside, in transit, or in port awaiting vessel assignment.

(vi) *Observer and monitor training requirements.* A request for a NMFS/FSB Observer or Monitor Training class must be submitted to NMFS/FSB 45 calendar days in advance of the requested training. The following information must be submitted to NMFS/FSB at least 15 business days prior to the beginning of the proposed training: A list of observer or monitor candidates; candidate resumes, cover letters and academic transcripts; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. A medical report certified by a physician for each candidate is required 7 business days prior to the first day of training. CPR/First Aid certificates and a final list of training candidates with candidate contact information (email, phone, number, mailing address and emergency contact information) are due 7 business days prior to the first day of training. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/FSB minimum eligibility standards for observers or monitors as described on the NMFS/FSB website.

(vii) *Reports and Requirements*—(A) *Deployment reports.* The monitoring service provider must report to NMFS/FSB when, where, to whom, and to what vessel an observer or monitor has been deployed, as soon as practicable, and according to requirements outlined on the NMFS/FSB website. The deployment report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week. The monitoring service provider must ensure that the observer or monitor reports to NMFS the required electronic data, as described in the NMFS/FSB training. Electronic data submission protocols will be outlined in training and may include accessing government websites via personal computers/devices or submitting data through government issued electronics. The monitoring service provider shall provide the raw (unedited) data collected by the observer or monitor to NMFS at the specified time per program. For further information, see *https://www.nefsc.noaa.gov/fsb/scallop/*.

(B) *Safety refusals.* The monitoring service provider must report to NMFS any trip or landing that has been refused due to safety issues (*e.g.,* failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's or monitor's safety checklist) within 12 hours of the refusal.

(C) *Biological samples.* The monitoring service provider must ensure that biological samples, including whole marine mammals, sea turtles, sea birds, and fin clips or other DNA samples, are stored/handled properly and transported to NMFS within 5 days of landing. If transport to NMFS/FSB Observer Training Facility is not immediately available then whole animals requiring freezing shall be received by the nearest NMFS freezer facility within 24 hours of vessel landing.

(D) *Debriefing.* The monitoring service provider must ensure that the observer or monitor remains available to NMFS, either in-person or via phone, at NMFS' discretion, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip. If requested by NMFS, an observer or monitor that is at sea during the 2-week period must contact NMFS upon his or her return. Monitoring service providers must pay for travel and land hours for any requested debriefings.

(E) *Availability report.* The monitoring service provider must report to NMFS any occurrence of inability to respond to an industry request for observer or monitor coverage due to the lack of available observers or monitors as soon as practicable if the provider is unable to respond to an industry request for monitoring coverage. Availability report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week.

(F) *Incident reports.* The monitoring service provider must report possible observer or monitor harassment, discrimination, concerns about vessel safety or marine casualty, or observer or monitor illness or injury; and any information, allegations, or reports regarding observer or monitor conflict of interest or breach of the standards of behavior, to NMFS/FSB within 12 hours of the event or within 12 hours of learning of the event.

(G) *Status report.* The monitoring service provider must provide NMFS/FSB with an updated list of contact information for all observers or monitors that includes the identification number, name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer or monitor is ''in service,'' indicating when the observer or monitor has requested leave and/or is not currently working for an industry-funded program. Any Federally contracted NMFS-certified observer not actively deployed on a vessel for 30 days will be placed on Leave of Absence (LOA) status (or as specified by NMFS/FSB according to

most recent Information Technology Security Guidelines at *https://www.nefsc.noaa.gov/fsb/memos/.* Those Federally contracted NMFS-certified observers on LOA for 90 days or more will need to conduct an exit interview with NMFS/FSB and return any NMFS/FSB issued gear and Common Access Card (CAC), unless alternative arrangements are approved by NMFS/FSB. NMFS/FSB requires 2-week advance notification when a Federally contracted NMFS-certified observer is leaving the program so that an exit interview may be arranged and gear returned.

(H) *Vessel contract.* The monitoring service provider must submit to NMFS/FSB, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the monitoring service provider and those entities requiring monitoring services.

(I) *Observer and monitor contract.* The monitoring service provider must submit to NMFS/FSB, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the monitoring service provider and specific observers or monitors.

(J) *Additional information.* The monitoring service provider must submit to NMFS/FSB, if requested, copies of any information developed and/or used by the monitoring service provider and distributed to vessels, observers, or monitors, such as informational pamphlets, payment notification, daily rate of monitoring services, description of observer or monitor duties, etc.

(viii) *Refusal to deploy an observer or monitor.* (A) A monitoring service provider may refuse to deploy an observer or monitor on a requesting fishing vessel if the monitoring service provider does not have an available observer or monitor within the required time and must report all refusals to NMFS/FSB.

(B) A monitoring service provider may refuse to deploy an observer or monitor on a requesting fishing vessel if the monitoring service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The monitoring service provider may refuse to deploy an observer or monitor on a fishing vessel that is otherwise eligible to carry an observer or monitor for any other reason, including failure to pay for previous monitoring deployments, provided the monitoring service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* A monitoring service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, and/or fishery advocacy group (other than providing monitoring services);

(ii) Must assign observers or monitors without regard to any preference by representatives of vessels other than when an observer or monitor will be deployed for the trip that was selected for coverage; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of monitoring service providers.

(7) *Removal of monitoring service provider from the list of approved service providers.* A monitoring service provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved monitoring service providers. Such notification shall specify the reasons for the pending removal. A monitoring service provider that has received notification that it is subject to removal from the list of approved monitoring service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the monitoring service provider that the monitoring service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the monitoring service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the monitoring service provider shall be automatically removed from the list of approved monitoring service providers. The decision to remove the monitoring service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved monitoring service providers does not necessarily prevent such monitoring service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers and monitors under contract with observer monitoring service provider that has been removed from the list of approved service providers must complete their assigned duties for any fishing trips on which the observers or monitors are deployed at the time the monitoring service provider is removed from the list of approved monitoring service providers. A monitoring service provider removed from the list of approved monitoring service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if a monitoring service provider may remain on the list of approved monitoring service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of monitoring service providers specified in paragraphs (h)(5) and (6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing monitoring services under this section; and

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer, monitor, or monitoring service provider.

(i) *Observer or monitor certification*—(1) *Requirements.* To be certified, employees or sub-contractors operating as observers or monitors for monitoring service providers approved under paragraph (h) of this section. In addition, observers must meet NMFS National Minimum Eligibility Standards for observers specified at the National Observer Program website: *https://www.nmfs.noaa.gov/op/pds/categories/scienceandtechnology.html.* For further information, see *https://www.st.nmfs.noaa.gov/observer-home/.*

(2) *Observer or monitor training.* In order to be deployed on any fishing vessel, a candidate observer or monitor

must have passed an appropriate NMFS/FSB Observer Training course and must adhere to all NMFS/FSB program standards and policies (refer to website for program standards, *https://www.nefsc.noaa.gov/fsb/training/*). If a candidate fails training, the candidate and monitoring service provider shall be notified immediately by NMFS/FSB. Observer training may include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. Refer to the NMFS/FSB website for the required number of program specific observer and monitor training certification trips for full certification following training, *https://www.nefsc.noaa.gov/fsb/training/.*

(3) *Observer requirements.* All observers must:

(i) Have a valid NMFS/FSB fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/FSB website specified in paragraph (h)(1) of this section and shall be provided to each approved monitoring service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section;

(iv) Hold a current Red Cross (or equivalence) CPR/First Aid certification;

(v) Accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment; and

(vi) Report unsafe sampling conditions, pursuant to paragraph (m)(6) of this section.

(4) *Monitor requirements.* All monitors must:

(i) Hold a high school diploma or legal equivalent;

(ii) Have a valid NMFS/FSB certification pursuant to paragraph (i)(1) of this section;

(iii) Be physically and mentally capable of carrying out the responsibilities of a monitor on board fishing vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/FSB website specified in paragraph (h)(1) of this section and shall be provided to each approved monitoring service provider;

(iv) Have successfully completed all NMFS-required training and briefings for monitors before deployment, pursuant to paragraph (i)(2) of this section;

(v) Hold a current Red Cross (or equivalence) CPR/First Aid certification if the monitor is to be employed as an at-sea monitor;

(vi) Accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment; and

(vii) Report unsafe sampling conditions, pursuant to paragraph (m)(6) of this section.

(5) *Probation and decertification.* NMFS may review observer and monitor certifications and issue observer and monitor certification probation and/or decertification as described in NMFS policy found on the NMFS/FSB website specified in paragraph (h)(1) of this section.

(6) *Issuance of decertification.* Upon determination that decertification is warranted under paragraph (i)(5) of this section, NMFS shall issue a written decision to decertify the observer or monitor to the observer or monitor and approved monitoring service providers via certified mail at the observer's or monitor's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

(j) *Coverage.* In the event that a vessel is requested by the Regional Administrator to carry a NMFS-certified fisheries observer pursuant to paragraph (a) of this section and is also selected to carry an at-sea monitor as part of an approved sector at-sea monitoring program specified in § 648.87(b)(1)(v) for the same trip, only the NMFS-certified fisheries observer is required to go on that particular trip.

(k) *Atlantic sea scallop observer program*—(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access and LAGC IFQ permits are required to comply with the additional notification requirements specified in paragraph (k)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (k)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (k)(3) and (k)(4)(ii) of this section.

(2) *Vessel notification procedures*—(i) *Limited access vessels.* Limited access vessel owners, operators, or managers shall notify NMFS/FSB by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(ii) *LAGC IFQ vessels.* LAGC IFQ vessel owners, operators, or managers must notify the NMFS/FSB by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start any open area or access area scallop trip and must include the port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl vessel. If selected, up to two trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/FSB must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

(3) *Selection of scallop trips for observer coverage.* Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified scallop trip, within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective scallop trip, as specified in paragraph (k)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop

trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(4) *Procurement of observer services by scallop vessels.* (i) An owner of a scallop vessel required to carry an observer under paragraph (k)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/FSB from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/FSB website at *https://www.nefsc.noaa.gov/femad/fsb/.* The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/FSB from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS/FSB shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met. A vessel may not begin the trip without being issued a waiver.

(5) *Cost of coverage.* Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas or additional catch per open area or access area trip for LAGC IFQ trips in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS or IFQ scallop trip consistent with paragraphs (k)(5)(i)(A) and (B), respectively, of this section.

(A) *Access Area trips.* (*1*) For purposes of determining the daily rate for an observed scallop trip on a limited access vessel in a Sea Scallop Access Area when that specific Access Area's observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time at sea equals 27 hr, which would equate to 2 full ''days.''

(*2*) For purposes of determining the daily rate in a specific Sea Scallop Access Area for an observed scallop trip on a limited access vessel taken after NMFS has announced the industry-funded observer set-aside in that specific Access Area has been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(*3*) For purposes of determining the daily rate in a specific Sea Scallop Access Area for observed scallop trips on an LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(B) *Open area scallop trips.* For purposes of determining the daily rate for an observed scallop trip for DAS or LAGC IFQ open area trips, regardless of the status of the industry-funded observer set-aside, a service provider shall charge dock to dock where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on the July 1st at 10 p.m. and lands on July 3rd at 1 a.m., the time at sea equals 27 hr, so the provider would charge 1 day and 3 hr.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in a Sea Scallop Access Area or on an open area LAGC IFQ trips for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. NMFS shall notify vessel owners and observer providers of any adjustments.

(iii) Owners of scallop vessels shall pay observer service providers for observer services within 45 days of the end of a fishing trip on which an observer deployed.

(6) *Coverage and cost requirements.* When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(l) *NE multispecies observer coverage*—(1) *Pre-trip notification.* Unless otherwise specified in this paragraph (l), or notified by the Regional Administrator, the owner, operator, or manager of a vessel (*i.e.,* vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advanced notice to NMFS of the vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, whether a monkfish DAS will be used, and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85, as instructed by the Regional Administrator, for the purposes of selecting vessels for observer deployment. For trips lasting

48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly notifications, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one NE multispecies DAS or sector trip during the following week and provide the date, time, port of departure, area to be fished, whether a monkfish DAS will be used, and gear type to be used for each trip during that week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued an observer notification or a waiver by NMFS.

(2) *Vessel selection for observer coverage.* NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's or manager's notification of the prospective trip, as specified in paragraph (l)(1) of this section. All trip notifications shall be issued a unique confirmation number. A vessel may not fish on a NE multispecies DAS or sector trip with an observer waiver confirmation number that does not match the trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date. If a trip is interrupted and returns to port due to bad weather or other circumstance beyond the operator's control, and goes back out within 48 hr, the same confirmation number and observer status remains. If the layover time is greater than 48 hr, a new trip notification must be made by the operator, owner, or manager of the vessel.

(3) *NE multispecies monitoring program goals and objectives.* Monitoring programs established for the NE multispecies are to be designed and evaluated consistent with the following goals and objectives:

(i) Improve documentation of catch:

(A) Determine total catch and effort, for each sector and common pool, of target or regulated species; and

(B) Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

(ii) Reduce the cost of monitoring:

(A) Streamline data management and eliminate redundancy;

(B) Explore options for cost-sharing and deferment of cost to industry; and

(C) Recognize opportunity costs of insufficient monitoring.

(iii) Incentivize reducing discards:

(A) Determine discard rate by smallest possible strata while maintaining cost-effectiveness; and

(B) Collect information by gear type to accurately calculate discard rates.

(iv) Provide additional data streams for stock assessments:

(A) Reduce management and/or biological uncertainty; and

(B) Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

(v) Enhance safety of monitoring program.

(vi) Perform periodic review of monitoring program for effectiveness.

(m) *Atlantic herring monitoring coverage*—(1) *Monitoring requirements.* (i) In addition to the requirement for any vessel holding an Atlantic herring permit to carry a NMFS-certified observer described in paragraph (a) of this section, vessels issued an All Areas or Areas 2/3 Limited Access Herring Permit are subject to industry-funded monitoring (IFM) requirements on declared Atlantic herring trips, unless the vessel is carrying a NMFS-certified observer to fulfill Standard Bycatch Reporting Methodology requirements. An owner of a midwater trawl vessel, required to carry a NMFS-certified observer when fishing in Northeast Multispecies Closed Areas at § 648.202(b), may purchase an IFM high volume fisheries (HVF) observer to access Closed Areas on a trip-by-trip basis. General requirements for IFM programs in New England Council FMPs are specified in paragraph (g) of this section. Possible IFM monitoring for the Atlantic herring fishery includes NMFS-certified observers, at-sea monitors, and electronic monitoring and portside samplers, as defined in § 648.2.

(A) IFM HVF observers shall collect the following information:

(*1*) Fishing gear information (*e.g.,* size of nets, mesh sizes, and gear configurations);

(*2*) Tow-specific information (*e.g.,* depth, water temperature, wave height, and location and time when fishing begins and ends);

(*3*) Species, weight, and disposition of all retained and discarded catch (fish, sharks, crustaceans, invertebrates, and debris) on observed hauls;

(*4*) Species, weight, and disposition of all retained catch on unobserved hauls;

(*5*) Actual catch weights whenever possible, or alternatively, weight estimates derived by sub-sampling;

(*6*) Whole specimens, photos, length information, and biological samples (*e.g.,* scales, otoliths, and/or vertebrae from fish, invertebrates, and incidental takes);

(*7*) Information on interactions with protected species, such as sea turtles, marine mammals, and sea birds; and

(*8*) Vessel trip costs (*i.e.,* operational costs for trip including food, fuel, oil, and ice).

(B) IFM HVF at-sea monitors shall collect the following information:

(*1*) Fishing gear information (*e.g.,* size of nets, mesh sizes, and gear configurations);

(*2*) Tow-specific information (*e.g.,* depth, water temperature, wave height, and location and time when fishing begins and ends);

(*3*) Species, weight, and disposition of all retained and discarded catch (fish, sharks, crustaceans, invertebrates, and debris) on observed hauls;

(*4*) Species, weight, and disposition of all retained catch on unobserved hauls;

(*5*) Actual catch weights whenever possible, or alternatively, weight estimates derived by sub-sampling;

(*6*) Length data, along with whole specimens and photos to verify species identification, on retained and discarded catch;

(*7*) Information on and biological samples from interactions with protected species, such as sea turtles, marine mammals, and sea birds; and

(*8*) Vessel trip costs (*i.e.,* operational costs for trip including food, fuel, oil, and ice).

(*9*) The New England Council may recommend that at-sea monitors collect additional biological information upon request. Revisions to the duties of an at-sea monitor, such that additional biological information would be collected, may be done via a framework adjustment. At-sea monitor duties may also be revised to collect additional biological information by considering the issue at a public meeting, where public comment is accepted, and requesting NMFS to publish a notice or rulemaking revising the duties for at-sea monitors. NMFS shall implement revisions to at-sea monitor duties in accordance with the APA.

(C) IFM Portside samplers shall collect the following information:

(*1*) Species, weight, and disposition of all retained catch (fish, sharks, crustaceans, invertebrates, and debris) on sampled trips;

(*2*) Actual catch weights whenever possible, or alternatively, weight estimates derived by sub-sampling; and

(*3*) Whole specimens, photos, length information, and biological samples (*i.e.,* scales, otoliths, and/or vertebrae from fish, invertebrates, and incidental takes).

(ii) Vessels issued an All Areas or Areas 2/3 Limited Access Herring Permit are subject to IFM at-sea monitoring coverage. If the New England Council determines that electronic monitoring, used in conjunction with portside sampling, is an adequate substitute for at-sea monitoring on vessels fishing with midwater trawl gear, and it is approved by the Regional Administrator as specified in (m)(1)(iii), then owners of vessels issued an All Areas or Areas 2/3 Limited Access Herring Permit may choose either IFM at-sea monitoring coverage or IFM electronic monitoring and IFM portside sampling coverage, pursuant with requirements in paragraphs (h) and (i) of this section. Once owners of vessels issued an All Areas or Areas 2/3 Limited Access Herring Permit may choose an IFM monitoring type, vessel owners must select one IFM monitoring type per fishing year and notify NMFS of their selected IFM monitoring type via selection form six months in advance (October 31) of the beginning of the SBRM year. NMFS will provide vessels owners with selection forms no later than September 1 in advance of the beginning of the SBRM year.

(A) In a future framework adjustment, the New England Council may consider if electronic monitoring and portside sampling coverage is an adequate substitute for at-sea monitoring coverage for Atlantic herring vessels that fish with purse seine and/or bottom trawl gear.

(B) IFM coverage targets for the Atlantic herring fishery are calculated by NMFS, in consultation with New England Council staff.

(C) If IFM coverage targets do not match for the Atlantic herring and Atlantic mackerel fisheries, then the higher IFM coverage target would apply on trips declared into both fisheries.

(D) Vessels intending to land less than 50 mt of Atlantic herring are exempt from IFM requirements, provided that the vessel requests and is issued a waiver prior to departing on that trip, consistent with paragraphs (m)(2)(iii)(B) and (m)(3) of this section. Vessels issued a waiver must land less than 50 mt of Atlantic herring on that trip.

(E) A wing vessel (*i.e.,* midwater trawl vessel pair trawling with another midwater trawl vessel) is exempt from IFM requirements on a trip, provided the wing vessel does not possess or land any fish on that trip and requests and is issued a waiver prior to departing on that trip, consistent with paragraphs (m)(2)(iii)(C) and (m)(3) of this section.

(F) Two years after implementation of IFM in the Atlantic herring fishery, the New England Council will examine the results of any increased coverage in the Atlantic herring fishery and consider if adjustments to the IFM coverage targets are warranted.

(iii) Electronic monitoring and portside sampling coverage may be used in place of at-sea monitoring coverage in the Atlantic herring fishery, if the electronic monitoring technology is deemed sufficient by the New England Council. The Regional Administrator, in consultation with the New England Council, may approve the use of electronic monitoring and portside sampling for the Atlantic herring fishery in a manner consistent with the Administrative Procedure Act, with final measures published in the **Federal Register**. A vessel electing to use electronic monitoring and portside sampling in lieu of at-sea monitoring must develop a vessel monitoring plan to implement an electronic monitoring and portside sampling program that NMFS determines is sufficient for monitoring catch, discards and slippage events. The electronic monitoring and portside sampling program shall be reviewed and approved by NMFS as part of a vessel's monitoring plan on a yearly basis in a manner consistent with the Administrative Procedure Act.

(iv) Owners, operators, or managers of vessels issued an All Areas Limited Access Herring Permit or Areas 2/3 Limited Access Herring Permit are responsible for their vessel's compliance with IFM requirements. When NMFS notifies a vessel owner, operator, or manager of the requirement to have monitoring coverage on a specific declared Atlantic herring trip, that vessel may not fish for, take, retain, possess, or land any Atlantic herring without the required monitoring coverage. Vessels may only embark on a declared Atlantic herring trip without the required monitoring coverage if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver for the required monitoring coverage for that trip, pursuant to paragraphs (m(2)(iii)(B) and (C) and (m)(3) of this section.

(v) To provide the required IFM coverage aboard declared Atlantic herring trips, NMFS-certified observers and monitors must hold a high volume fisheries certification from NMFS/FSB. See details of high volume certification at *https://www.nefsc.noaa.gov/fsb/training/.*

(2) *Pre-trip notification.* (i) At least 48 hr prior to the beginning of any trip on which a vessel may harvest, possess, or land Atlantic herring, the owner, operator, or manager of a vessel issued a Limited Access Herring Permit, or a vessel issued an Areas 2/3 Open Access Herring Permit, or a vessel issued an All Areas Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), or a vessel acting as a herring carrier must notify NMFS/FSB of the trip.

(ii) The notification to NMFS/FSB must include the following information: Vessel name or permit number; email and telephone number for contact; the date, time, and port of departure; trip length; and gear type.

(iii) For vessels issued an All Areas Limited Access Herring Permit or Areas 2/3 Limited Access Herring Permit, the trip notification must also include the following requests, if appropriate:

(A) For IFM NMFS-certified observer coverage aboard vessels fishing with midwater trawl gear to access the Northeast Multispecies Closed Areas, consistent with requirements at § 648.202(b), at any point during the trip;

(B) For a waiver of IFM requirements on a trip that shall land less than 50 mt of Atlantic herring; and

(C) For a waiver of IFM requirements on trip by a wing vessel as described in paragraph (m)(ii)(E) of this section.

(iv) Trip notification must be provided no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS/FSB of any trip plan changes at least 12 hr prior to vessel departure from port.

(3) *Selection of trips for monitoring coverage.* NMFS shall notify the owner, operator, and/or manager of a vessel with an Atlantic herring permit whether a declared Atlantic herring trip requires coverage by a NMFS-funded observer or whether a trip requires IFM coverage. NMFS shall also notify the owner, operator, and/or manager of vessel if a waiver has been granted, either for the NMFS-funded observer or for IFM coverage, as specified in paragraph (m)(2) of this section. All waivers for monitoring coverage shall be issued to the vessel by VMS so that there is an on-board verification of the waiver. A waiver is invalid if the fishing behavior on that trip is inconsistent with the terms of the waiver.

(4) *Procurement of monitoring services by Atlantic herring vessels.* (i) An owner of an Atlantic herring vessel required to have monitoring under paragraph (m)(3) of this section must

arrange for monitoring by an individual certified through training classes operated by the NMFS/FSB and from a monitoring service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected for monitoring must contact a monitoring service provider prior to the beginning of the trip and the monitoring service provider will notify the vessel owner, operator, or manager whether monitoring is available. A list of approved monitoring service providers shall be posted on the NMFS/FSB website at *https://www.nefsc.noaa.gov/femad/fsb/.*

(ii) An owner, operator, or vessel manager of a vessel that cannot procure monitoring due to the unavailability of monitoring may request a waiver from NMFS/FSB from the requirement for monitoring on that trip, but only if the owner, operator, or vessel manager has contacted all of the available monitoring service providers to secure monitoring and no monitoring is available. NMFS/FSB shall issue a waiver, if the conditions of this paragraph (m)(4)(ii) are met. A vessel without monitoring coverage may not begin a declared Atlantic herring trip without having been issued a waiver.

(iii) Vessel owners shall pay service providers for monitoring services within 45 days of the end of a fishing trip that was monitored.

(5) *Vessels working cooperatively.* When vessels issued limited access herring permits are working cooperatively in the Atlantic herring fishery, including pair trawling, purse seining, and transferring herring at-sea, each vessel must provide to observers or monitors, when requested, the estimated weight of each species brought on board and the estimated weight of each species released on each tow.

(6) *Sampling requirements for NMFS-certified observer and monitors.* In addition to the requirements at § 648.11(d)(1) through (7), an owner or operator of a vessel issued a limited access herring permit on which a NMFS-certified observer or monitor is embarked must provide observers or monitors:

(i) A safe sampling station adjacent to the fish deck, including: A safety harness, if footing is compromised and grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.

(ii) Reasonable assistance to enable observers or monitors to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and holding bins; collecting bycatch when requested by the observers or monitors; and collecting and carrying baskets of fish when requested by the observers or monitors.

(iii) Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.

(iv) Visual access to the net, the codend of the net, and the purse seine bunt and any of its contents after pumping has ended and before the pump is removed from the net. On trawl vessels, the codend including any remaining contents must be brought on board, unless bringing the codend on board is not possible. If bringing the codend on board is not possible, the vessel operator must ensure that the observer or monitor can see the codend and its contents as clearly as possible before releasing its contents.

(7) *Measures to address slippage.* (i) No vessel issued a limited access herring permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for inspection; or

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(ii) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board for sampling.

(iii) If a vessel issued any limited access herring permit slips catch, the vessel operator must report the slippage event on the Atlantic herring daily VMS catch report and indicate the reason for slipping catch. Additionally, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iv) If a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit slips catch for any of the reasons described in paragraph (m)(7)(i) of this section when an observer or monitor is aboard, the vessel operator must move at least 15 nm (27.78 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip.

(v) If a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit slips catch for any reason on a trip selected by NMFS for portside sampling, pursuant to paragraph (m)(3) of this section, the vessel operator must move at least 15 nm (27.78 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip.

(vi) If catch is slipped by a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit for any reason not described in paragraph (m)(7)(i) of this section when an observer or monitor is aboard, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port.

(n) *Atlantic mackerel, squid, and butterfish observer coverage*—(1) *Pre-trip notification.* (i) A vessel issued a limited access Atlantic mackerel permit, as specified at § 648.4(a)(5)(iii), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or email address for contact; and the date, time, port of departure, gear type, and approximate trip duration, at least 48 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (n)(1)(iii) of this section.

(ii) A vessel that has a representative provide notification to NMFS as described in paragraph (n)(1)(i) of this section may only embark on a mackerel trip without an observer if a vessel representative has been notified by NMFS that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specific mackerel trip, within 24 hr of the vessel representative's notification of the prospective mackerel trip, as specified in paragraph (n)(1)(i) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes

with an observer waiver confirmation number that does not match the mackerel trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing mackerel except as specified in paragraph (n)(1)(iii) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(iii) A vessel issued a limited access mackerel permit, as specified in § 648.4(a)(5)(iii), that does not have a representative provide the trip notification required in paragraph (n)(1)(i) of this section is prohibited from fishing for, possessing, harvesting, or landing more than 20,000 lb (9.07 mt) of mackerel per trip at any time, and may only land mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iv) If a vessel issued a limited access Atlantic mackerel permit, as specified in § 648.4(a)(5)(iii), intends to possess, harvest, or land more than 20,000 lb (9.07 mt) of mackerel per trip or per calendar day, and has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or email address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

(2) *Sampling requirements for limited access Atlantic mackerel and longfin squid/butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or longfin squid/butterfish moratorium permit on which a NMFS-certified observer is embarked must provide observers:

(i) A safe sampling station adjacent to the fish deck, including: A safety harness, if footing is compromised and grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.

(ii) Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and holding bins; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.

(iii) Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.

(3) *Measures to address slippage.* (i) No vessel issued a limited access Atlantic mackerel permit or a longfin squid/butterfish moratorium permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for sampling and inspection; or

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish that can be pumped from the net prior to release.

(ii) If a vessel issued any limited access Atlantic mackerel permit slips catch, the vessel operator must report the slippage event on the Atlantic mackerel and longfin squid daily VMS catch report and indicate the reason for slipping catch. Additionally, vessels issued a limited Atlantic mackerel permit or a longfin squid/butterfish moratorium permit, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iii) If a vessel issued a limited access Atlantic mackerel permit slips catch for any of the reasons described in paragraph (n)(3)(i) of this section, the vessel operator must move at least 15 nm (27.8 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.8 km) from the slippage event location for the remainder of the fishing trip.

(iv) If catch is slipped by a vessel issued a limited access Atlantic mackerel permit for any reason not described in paragraph (n)(3)(i) of this section, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port.

■ 5. In § 648.14, revise paragraphs (e), (r)(1)(vi)(A), (r)(2)(v), and (r)(2)(viii) through (xii) and add paragraphs (r)(2)(xiii) and (xiv) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(e) *Observer program.* It is unlawful for any person to do any of the following:

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-certified observer or monitor conducting his or her duties; any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g).

(2) Refuse monitoring coverage by a NMFS-certified observer or monitor if selected for monitoring coverage by the Regional Administrator or the Regional Administrator's designee.

(3) Fail to provide information, notification, accommodations, access, or reasonable assistance to either a NMFS-certified observer or monitor conducting his or her duties as specified in § 648.11.

(4) Submit false or inaccurate data, statements, or reports.

* * * * *

(r) * * *

(1) * * *

(vi) * * *

(A) For the purposes of observer deployment, fail to notify NMFS at least 48 hr prior to departing on a declared herring trip with a vessel issued an All Areas Limited Access Herring Permit and/or an Area 2 and 3 Limited Access Herring Permit and fishing with midwater trawl or purse seine gear, or on a trip with a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), pursuant to the requirements in § 648.80(d) and (e).

* * * * *

(2) * * *

(v) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a)(3) through (5) and (c)(3) and (4), without a NMFS-certified observer on board, if the vessel has been issued an Atlantic herring permit.

* * * * *

(viii) Slip catch, as defined at § 648.2, unless for one of the reasons specified at § 648.11(m)(7)(i).

(ix) For vessels with All Areas or Areas 2/3 Limited Access Herring

Permits, fail to move 15 nm (27.78 km), as required by §§ 648.11(m)(7)(iv) and (v) and 648.202(b)(4)(iv).

(x) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to immediately return to port, as required by §§ 648.11(m)(7)(vi) and 648.202(b)(4)(iv).

(xi) Fail to complete, sign, and submit a Released Catch Affidavit as required by §§ 648.11(m)(7)(iii) and 648.202(b)(4)(ii).

(xii) Fail to report or fail to accurately report a slippage event on the Atlantic herring daily VMS catch report, as required by §§ 648.11(m)(7)(iii) and 648.202(b)(4)(iii).

(xiii) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to comply with industry-funded monitoring requirements at § 648.11(m).

(xiv) For a vessel with All Areas or Areas 2/3 Limited Access Herring Permit, fail to comply with its NMFS-approved vessel monitoring plan requirements, as described at § 648.11(m).

* * * * *

■ 6. In § 648.80, revise paragraphs (d)(5) and (e)(5) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(5) To fish for herring under this exemption, a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), must provide notice of the following information to NMFS at least 48 hr prior to beginning any trip into these areas for the purposes of observer deployment: Vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and

* * * * *

(e) * * *

(5) To fish for herring under this exemption, vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 48 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

* * * * *

■ 7. In § 648.86, revise paragraph (a)(3)(ii)(A)(*1*) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) *Haddock incidental catch cap.* When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock, as specified in § 648.90(a)(4)(iii)(D),has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, *i.e.,* the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(*2*) and (*3*) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel's gear is stowed and not available for immediate use as defined in § 648.2 while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a NE multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by NMFS-certified observers or monitors by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

* * * * *

§ § 648.10, 648.14, 648.51, 648.59, 648.80, 648.86, and 648.202 [Amended]

■ 8. In the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears in the section, and add the text indicated in the right column:

Section	Remove	Add
648.10(f)(4)(i) introductory text	NMFS-approved	NMFS-certified.
648.14(i)(1)(ix)(B)	NMFS-approved	NMFS-certified.
648.14(i)(1)(ix)(C)	648.11(g)	648.11(k).
648.14(k)(2)(iii)	648.11(k)	648.11(l).
648.14(k)(2)(iv)	648.11(k)	648.11(l).
648.51(c)(4)	648.11(g)	648.11(k).
648.51(e)(3)(iii)	648.11(g)	648.11(k).
648.59(b)(2)	648.11(g)	648.11(k).
648.80(d)(3)	NMFS-approved sea sampler/observer	NMFS-certified observer.
648.80(e)(2)(ii)	NMFS-approved sea sampler/observer	NMFS-certified observer.
648.86(a)(3)(ii)(A)(*1*)	NMFS-approved	NMFS-certified.
648.202(b)(4)(iv)	648.11(m)(4)(iv) and (v)	648.11(m)(7)(iv) and (vi).

[FR Doc. 2020–00881 Filed 2–6–20; 8:45 am]

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