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Contents

Federal Register

Vol. 85, No. 82

Tuesday, April 28, 2020

Agriculture Department
See Forest Service

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Supplemental Questions Related to the Effects of the COVID–19 Pandemic on Businesses, 23503–23505

Centers for Disease Control and Prevention
NOTICES
CDC Recommendations for Hepatitis C Screening Among Adults—United States, 2020, 23519

Centers for Medicare & Medicaid Services
NOTICES
Medicare Program:
Application From National Association of Boards of Pharmacy for Initial CMS-Approval of Its Home Infusion Therapy Accreditation Program, 23519–23521

Civil Rights Commission
NOTICES
Meetings:
Georgia Advisory Committee, 23502–23503
Ohio Advisory Committee, 23503
Rhode Island Advisory Committee, 23502

Commerce Department
See Census Bureau
See Economic Analysis Bureau
See Foreign-Trade Zones Board
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration

Defense Department
RULES
Victim and Witness Assistance, 23473–23486
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 23509–23510

Economic Analysis Bureau
NOTICES
Meetings:
Bureau of Economic Analysis Advisory Committee, 23505
Federal Economic Statistics Advisory Committee, 23505

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Electricity Advisory Committee, 23510–23511
Environmental Management Site-Specific Advisory Board, Northern New Mexico; Conference Call, 23510

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 23511–23512

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
North Carolina; Large Internal Combustion Engines NO_X Rule Changes; State Implementation Plan Call Withdrawal and Air Plan Approval, 23700–23730
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Kentucky; Jefferson County Performance Tests, 23498–23500
NOTICES
Meetings:
Clean Air Act Advisory Committee, 23518

Federal Aviation Administration
RULES
Airworthiness Directives:
The Boeing Company Airplanes, 23452–23454
Amendment and Removal of Air Traffic Service Routes:
Eastern United States, 23456–23458
Amendment of Air Traffic Service Route T–333:
Western United States, 23458–23459
Amendment of Multiple Air Traffic Service Routes:
Western United States, 23454–23456
PROPOSED RULES
Airworthiness Directives:
Airbus Helicopters Deutschland GmbH Helicopters, 23489–23495
Establishment of Class E Airspace:
Quinter, KS, 23495–23496
NOTICES
Petition for Exemption; Summary:
American Robotics, Inc., 23592

Federal Communications Commission
RULES
Auction 106 Postponed; Delay of Auction of FM Broadcast Construction Permits Initially Scheduled To Begin on April 28, 2020, 23486

Federal Energy Regulatory Commission
NOTICES
Application:
Badger Mountain Hydro, LLC, 23514
Coneross Power Corp., 23515–23516
Golden Pass LNG Terminal LLC; Golden Pass Pipeline LLC, 23517–23518
Whitewater Green Energy, LLC, 23516–23517
Combined Filings, 23516, 23518
Extension of Time Request:
Questar Southern Trails Pipeline Co., 23513
Request for Technical Conference or Workshop:
Carbon Pricing in FERC-Jurisdictional Organized Regional Wholesale Electric Energy Markets, 23512–23513

Federal Motor Carrier Safety Administration
PROPOSED RULES
Controlled Substances and Alcohol Testing:
State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License, 23670–23698

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Accident Recordkeeping Requirements, 23594–23595
Hours of Service of Drivers; Exemption Applications:
Right-A-Way, LLC, 23592–23594

Federal Reserve System
RULES
Reserve Requirements of Depository Institutions; Regulation D, 23445–23448
Temporary Actions To Support the Flow of Credit to Households and Businesses by Encouraging Use of Intraday Credit:
Policy statement, 23448–23449
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 23518

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Species:
Designation of Critical Habitat for the Northern Mexican Gartersnake and Narrow-Headed Gartersnake, 23608–23668

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Accreditation Scheme for Conformity Assessment Pilot Program, 23521–23523

Foreign-Trade Zones Board
NOTICES
Application for Reorganization (Expansion of Service Area) under Alternative Site Framework:
Foreign-Trade Zone 139, Sierra Vista, NV, 23506
Proposed Production Activity:
Lilly del Caribe, Inc., Foreign-Trade Zone 7, Mayaguez, PR, 23505–23506

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Superior National Forest; Cook County; MN; Lutsen Mountains Ski Area Expansion Project, 23501–23502

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Rural Health Network Development Planning Performance Improvement and Measurement System Database, 23524–23526
The National Health Service Corps and Nurse Corps Interest Capture Form, 23523–23524

Homeland Security Department
See U.S. Customs and Border Protection

Industry and Security Bureau
RULES
Elimination of License Exception Civil End Users, 23470–23473
Expansion of Export, Reexport, and Transfer (In-Country) Controls for Military End Use or Military End Users in the People's Republic of China, Russia, or Venezuela, 23459–23470
PROPOSED RULES
Modification of License Exception Additional Permissive Reexports, 23496–23498

Interior Department
See Fish and Wildlife Service

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 23600–23602
Requests for Nominations:
Internal Revenue Service Advisory Council, 23601–23602

International Trade Commission
NOTICES
Complaint:
Certain Liquid Crystal Display Devices, Components Thereof, and Products Containing the Same, 23529–23530
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Pocket Lighters, 23528–23529

Justice Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Contractor Drug Use Statement, 23530

Labor Department
See Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Employment and Training Administration Quick Turnaround Surveys, 23531
Formaldehyde Standard, 23531–23532
Interstate Arrangement for Combining Employment and Wages, 23532
Job Corps Enrollee Allotment Determination, 23533–23534
Protections for Transit Workers Under Section 5333(b) Urban Program, 23532–23533

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
War Risk Insurance, Applications and Related Information, 23595–23596
Deepwater Port License Application:
SPOT Terminal Services, LLC, 23596–23598

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council; Regulatory and Policy Committee, 23535–23536

National Credit Union Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 23536–23537

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Government 5-Star Safety Ratings Label Consumer Research, 23598–23600

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 23527
National Advisory Dental and Craniofacial Research Council, 23526
National Institute of Allergy and Infectious Diseases, 23526–23527

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review, 23508–23509
Gulf of Mexico Fishery Management Council, 23508
Mid-Atlantic Fishery Management Council, 23506
New England Fishery Management Council, 23507
Pacific Fishery Management Council, 23507–23508

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Survey of College Graduates, 23537–23538
Request for Information:
Interagency Arctic Research Policy Committee, 23538

Nuclear Regulatory Commission
NOTICES
Exemption; Issuance:
Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Unit Nos. 2 and 3, 23538–23540
ZionSolutions, LLC; Dominion Energy Kewaunee, Inc.; Duke Energy Carolinas, LLC, 23540–23542

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Susan Harwood Training Grant Program Grantee Quarterly Progress Report, 23534–23535

Pension Benefit Guaranty Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Multiemployer Plan Regulations, 23542–23543

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Initial Certification of Full-Time School Attendance, 23544
Survivor Annuity Election for a Spouse, 23544–23545
Verification of Adult Student Enrollment Status, 23543–23544

Postal Service
NOTICES
Meetings; Sunshine Act, 23545

Securities and Exchange Commission
NOTICES
Applications:
FS Credit Income Fund, et al., 23553–23557
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 23581–23583
Cboe C2 Exchange, Inc., 23571–23573
Cboe EDGA Exchange, Inc., 23560–23564
Cboe Exchange, Inc., 23557–23560
Nasdaq GEMX, LLC, 23545–23553
Nasdaq ISE, LLC, 23573–23580
Nasdaq PHLX, LLC, 23564–23571
New York Stock Exchange, LLC, 23583–23587

Small Business Administration
RULES
Business Loan Program Temporary Changes; Paycheck Protection Program:
Requirements: Promissory Notes, Authorizations, Affiliation, and Eligibility, 23450–23452
PROPOSED RULES
List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act, 23487–23489

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 23587–23589

State Department
NOTICES
Call for Reviewers of the World Ocean Assessment, 23589

Surface Transportation Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act, 23589–23590
Household Goods Movers' Disclosure Requirements, 23590–23591
Petitions for Declaratory Order and Petitions for Relief Not Otherwise Specified, 23591–23592

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service

U.S. Customs and Border Protection
NOTICES
Commercial Gaugers; Approval:
Intertek USA, Inc. (Wilmington, NC), 23527

U.S.-China Economic and Security Review Commission
NOTICES
Public Hearing, 23602–23603

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Designation of Beneficiary Government Life Insurance, and Supplemental Designation of Beneficiary Government Life Insurance, 23604–23605
Foreign Medical Program Registration Form and Claim Cover Sheet, 23603–23604

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 23608–23668

Part III
Transportation Department, Federal Motor Carrier Safety Administration, 23670–23698

Part IV
Environmental Protection Agency, 23700–23730

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

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

12 CFR
Ch. II 23448
204 23445

13 CFR
120 23450
121 23450

Proposed Rules:
124 23487
125 23487
126 23487

14 CFR
39 23452
71 (3 documents) 23454, 23456, 23458

Proposed Rules:
39 (2 documents) 23489, 23492
71 23495

15 CFR
732 23459
734 23459
738 23459
740 23470
742 23459
744 23459
758 23459
774 (2 documents) 23459, 23470

Proposed Rules:
740 23496

32 CFR
114 23473

40 CFR
52 23700

Proposed Rules:
52 23498

47 CFR
1 23486
73 23486

49 CFR

Proposed Rules:
382 23670
383 23670
384 23670
390 23670
392 23670

50 CFR

Proposed Rules:
17 23608

Rules and Regulations

Federal Register

Vol. 85, No. 82

Tuesday, April 28, 2020

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

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1715; RIN 7100–AF 89]

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule, request for public comment.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is amending its Regulation D (Reserve Requirements of Depository Institutions) to delete the numeric limits on certain kinds of transfers and withdrawals that may be made each month from ''savings deposits.'' The amendments are intended to allow depository institution customers more convenient access to their funds and to simplify account administration for depository institutions. There are no mandatory changes to deposit reporting associated with the amendments.

DATES: *Effective date:* This rule is effective on April 24, 2020.

Comment date: Comments must be received on or before June 29, 2020.

Applicability date: The changes to the numeric limits on certain kinds of transfers and withdrawals that may be made each month from accounts characterized as ''savings deposits'' were applicable on April 23, 2020.

ADDRESSES: You may submit comments, identified by Docket Number R–1715; RIN 7100- AF 89, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number and RIN in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Special Counsel (202–452–3565), Legal Division, or Matthew Malloy (202–452–2416), or Heather Wiggins (202–452–3674), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 19 of the Federal Reserve Act (the ''Act'') authorizes the Board to impose reserve requirements on certain types of deposits and other liabilities of depository institutions solely for the purpose of implementing monetary policy. Specifically, section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities, as prescribed by Board regulations. Reserve requirement ratios for nonpersonal time deposits and Eurocurrency liabilities have been set at zero percent since 1990 and, as discussed below, were recently set to zero percent for transaction accounts.

Section 11(a)(2) of the Act authorizes the Board to require any depository institution ''to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates.'' [1] These provisions are specifically implemented in the computation and maintenance provisions of Regulation D (12 CFR 204.4 and 204.5, respectively) and in the Board's ''FR 2900'' series of deposit reports (''FR 2900 reports'').[2]

Regulation D distinguishes between reservable ''transaction accounts'' and non-reservable ''savings deposits'' based on the ease with which the depositor may make transfers (payments to third parties) or withdrawals (payments directly to the depositor) from the account. Prior to this interim final rule, Regulation D limited the number of certain convenient kinds of transfers or withdrawals that an account holder may make from a ''savings deposit'' to not more than six per month (six transfer limit).[3] Similarly, prior to this interim final rule, Regulation D also imposed requirements on depository institutions for either preventing transfers in excess of six transfer limit or for monitoring such accounts *ex post* for violations of the limit.[4]

[1] 12 U.S.C. 248(a).

[2] ''Report of Transaction Accounts, Other Deposits, and Vault Cash—FR 2900'' (OMB Number 7100–0087). *See, e.g.,* FR 2900 (Commercial Banks) at *https://www.federalreserve.gov/reportforms/forms/FR_2900cb20180630_f.pdf.*

[3] ''Convenient'' transfers or withdrawals for this purpose include preauthorized or automatic transfers (such as overdraft protection transfers or arranging to have bill payments deducted directly from the depositor's savings account), telephonic transfers (made by the depositor telephoning or sending a fax or online instruction to the bank and instructing the transfer to be made), and transfers by check, debit card, or similar order payable to third parties. 12 CFR 204.2(d)(2).

[4] 12 CFR 204.2(d)(2) note 4 explains that in order to ensure that no more than the permitted number of withdrawals or transfers are made, for an account to come within the definition of ''savings deposit,'' a depository institution must either, prevent withdrawals or transfers of funds from this account that are in excess of the limits established by § 204.2(d)(2), or to adopt procedures to monitor those transfers on an ex post basis and contact customers who exceed the established limits on more than occasional basis. For customers who continue to violate those limits after they have been contacted by the depository institution, the depository institution must either close the account and place the funds in another account that the depositor is eligible to maintain or take away the transfer and draft capacities of the account. An account that authorizes withdrawals or transfers in excess of the permitted number is a transaction account regardless of whether the authorized number of transactions is actually made. For accounts described in § 204.2(d)(2) the institution at its option may use, on a consistent basis, either the date on the check, draft, or similar item, or the date the item is paid in applying the limits imposed by that section.

II. Discussion

A. Recent Developments

In January 2019, the FOMC announced its intention to implement monetary policy in an ample reserves regime. Reserve requirements do not play a role in this operating framework. In light of the shift to an ample reserves regime, the Board announced that, effective March 26, 2020, reserve requirement ratios were reduced to zero percent. This action eliminated reserve requirements for thousands of depository institutions and helped to support lending to households and businesses.

As a result of the elimination of reserve requirements on all transaction accounts, the retention of a regulatory distinction in Regulation D between reservable ''transaction accounts'' and non-reservable ''savings deposits'' is no longer necessary. In addition, financial disruptions arising in connection with the novel coronavirus situation have caused many depositors to have a more urgent need for access to their funds by remote means, particularly in light of the closure of many depository institution branches and other in-person facilities.

B. Interim Final Rule

Because of the elimination of reserve requirements and because of financial disruptions related to the novel coronavirus, the Board is amending Regulation D, effective immediately, to delete the six transfer limit from the ''savings deposit'' definition. This interim final rule includes deletion of the provisions in the ''savings deposit'' definition that require depository institutions either to prevent transfers and withdrawals in excess of the limit or to monitor savings deposits *ex post* for violations of the limit. The interim final rule also makes conforming changes to other definitions in Regulation D that refer to ''savings deposit'' as necessary.

The interim final rule allows depository institutions immediately to suspend enforcement of the six transfer limit and to allow their customers to make an unlimited number of convenient transfers and withdrawals from their savings deposits. The interim final rule permits, but does not require, depository institutions to suspend enforcement of the six transfer limit. The interim final rule also does not require any changes to the deposit reporting practices of depository institutions. Additional information on the impact of the interim final rule is set forth in the next section.

C. Impact of the Interim Final Rule

The Board anticipates that the adoption of the interim final rule could give rise to questions from depository institutions and their customers regarding the impact of the interim final rule on access to funds, account agreements, reporting practices, and other related matters. Some anticipated questions are set forth below, together with brief answers, in a ''frequently asked questions'' (FAQ) format. Concurrently with the adoption of the interim final rule, the Board is setting forth these FAQs on its existing ''Savings Deposit Frequently Asked Questions'' web page [5] and will update that page with FAQ revisions and additional FAQs as needed.

Q.1. Does the interim final rule require depository institutions to suspend enforcement of the six convenient transfer limit on accounts classified as ''savings deposits''?

A.1. No. The interim final rule permits depository institutions to suspend enforcement of the six transfer limit, but it does not require depository institutions to do so.

Q.2. May depository institutions continue to report accounts as ''savings deposits'' on their FR 2900 deposit reports even after they suspend enforcement of the six transfer limit on those accounts?

A.2. Yes. Depository institutions may continue to report these accounts as ''savings deposits'' on their FR 2900 reports after they suspend enforcement of the six transfer limit on those accounts.

Q.3. If a depository institution suspends enforcement of the six transfer limit on a ''savings deposit,'' may the depository institution report the account as a ''transaction account'' rather than as a ''savings deposit''?

A.3. Yes. If a depository institution suspends enforcement of the six transfer limit on a ''savings deposit,'' the depository institution may report that account as a ''transaction account'' on its FR 2900 reports. A depository institution may instead, if it chooses, continue to report the account as a ''savings deposit.''

Q.4. Does the interim final rule have any impact on the ''reservation of right'' provisions set forth in § 204.2(d)(1) of Regulation D? [6]

A.4. No. The interim final rule does not have any impact on § 204.2(d)(1) of Regulation D. The ''reservation of right'' continues to be a part of the definition of ''savings deposit'' under the interim final rule.

Q.5. If a depository institution suspends enforcement of the six transfer limit on a ''savings deposit,'' is the depository institution required to change the way that interest on the account is calculated or reported?

A.5. No. The interim final rule does not require a depository institution to change the way it calculates or reports interest on an account where the depository institution has suspended enforcement of the six transfer limit.

Q.6. Suppose a depository institution has account agreements with its ''savings deposit'' customers that require the depository institution to enforce the six transfer limit. Suppose further that the depository institution would like to amend those account agreements so that the depository institution no longer has a contractual obligation to enforce the six transfer limit on its ''savings deposit'' accounts. Does the interim final rule require the depository institution to amend those agreements in any particular way?

A.6. No. The interim final rule does not specify the manner in which depository institutions that choose to amend their account agreements may do so.

Q.7. If a depository institution chooses to suspend enforcement of the six transfer limit on a ''savings deposit,'' must the depository institution change the name of the account or product if the account or product name has the words ''savings'' or ''savings deposit'' in it?

A.7. No. The interim final rule does not require depository institutions to change the name of any accounts or products that have the words ''savings'' or ''savings deposit'' in the name of the account or product.

Q.9. May depository institutions suspend enforcement of the six transfer limit on a temporary basis, such as for six months?

A.9. Yes.

Q.10. Suppose that a depository institution currently has policies or provisions in their savings deposit account agreements pursuant to which

[5] *https://www.federalreserve.gov/supervisionreg/savings-deposits-frequently-asked-questions.htm.*

[6] The ''reservation of right'' refers to the provisions of § 204.2(d)(1) of Regulation D where a depository institution is not required to impose seven days' advance notice of withdrawals from ''savings deposits'' but reserves the right at any time to do so. Section 204.2(d)(1) provides that savings deposit means a deposit or account with respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. The term savings deposit includes a regular share account at a credit union and a regular account at a savings and loan association. 12 CFR 204.2(d)(1).

the depository institution charges fees to savings deposit customers for transfers and withdrawals that exceed the six transfer limit. May a depository institution that suspends enforcement of the six transfer limit continue to charge these fees when savings deposit customers make seven or more convenient transfers and withdrawals in a month?

A.10. Regulation D does not require or prohibit depository institutions from charging their customers fees for transfers and withdrawals in violation of the six transfer limit. Accordingly, the deletion of the six transfer limit does not have a direct impact on the policies or account agreements of depository institutions that charge such fees to their customers.

III. Request for Comment

The Board seeks comment on all aspects of this interim final rule. In particular, the Board seeks comment on the considerations that may lead depository institutions to choose, or to be required, to retain a numeric limit on the number of convenient transfers that may be made each month from a savings deposit.

IV. Administrative Procedure Act

In accordance with the Administrative Procedure Act (''APA'') section 553(b) (5 U.S.C. 553(b)), the Board finds, for good cause, that providing notice and an opportunity for public comment before the effective date of this rule would be contrary to the public interest. In addition, pursuant to APA section 553(d) (5 U.S.C. 553(d)), the Board finds good cause for making this amendment effective without 30 days advance publication. The amendments relieve depository institutions of a regulatory burden and permit all customers, particularly those impacted by the coronavirus situation, to have increased immediate access to their funds. Implementation of the rule without 30 days advance publication will help both depository institutions and their customers to deal with the unique pressures of the coronavirus situation and to alleviate the adverse impacts it has caused. The Board believes that any delay in implementing the rule would prove contrary to the public interest. The Board is requesting comment on all aspects of the rule and will make any changes that it considers appropriate or necessary after review of any comments received.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b), the Board certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The interim final rule eliminates the numeric limits on certain types of transfers that may be made each month from a ''savings deposit.'' All depository institutions, including small depository institutions, will benefit from the elimination of the transfer limits. There are no new reporting, recordkeeping, or other compliance requirements associated with the interim final rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the interim final rule under authority delegated to the Board by the Office of Management and Budget.

The interim final rule affects the following Board information collections: The Reports of Deposits (FR 2900 series; OMB Control Number 7100–0087); the Financial Statements for Holding Companies (FR Y–9 reports; OMB Control Number 7100–0128); and the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b; OMB Control Number 7100–0086). The Board has temporarily revised the instructions for the FR 2900 series, the FR Y–9 reports, and the FR 2886b to reflect accurately aspects of the interim final rule.

The interim final rule also affects the following Federal Financial Institutions Examination Council (''FFIEC'') reports, which are shared by the Board, the Federal Deposit Insurance Corporation (''FDIC''), and the Office of the Comptroller of the Currency (''OCC'') (together, the agencies): The Consolidated Reports of Condition and Income (''Call Reports'') (Board OMB Control Number: 7100–0036; FDIC OMB Control Number 3064–0052; and OCC OMB Control Number 1557–0081) and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB Control Number: 7100–0032). The agencies have determined that there are revisions that should be made to the affected FFIEC reports as a result of this rulemaking. Although there may be substantive changes to the affected FFIEC reports that result from the revised definition of the ''savings deposit'' definition in Regulation D, the changes should be minimal and result in a zero net change in hourly burden. Submissions will, however, be made by the agencies to OMB.

The changes to the affected Board and FFIEC reports and their instructions will be addressed in a separate **Federal Register** notice.

Plain Language

Section 772 of the Gramm-Leach-Bliley Act requires the Board to use ''plain language'' in all proposed and final rules. In light of this requirement, the Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comment on whether the Board could take additional steps to make the rule easier to understand.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. In § 204.2:

■ a. Remove paragraph (c)(1)(ii);

■ b. Redesignate paragraphs (c)(1)(iii) and (iv) as paragraphs (c)(1)(ii) and (iii); and

■ c. Revise paragraphs (d)(2), (e) introductory text, and (e)(2) through (4) and (6).

The revisions read as follows:

§ 204.2 Definitions.

* * * * *

(d) * * *

(2) The term ''savings deposit'' also means: A deposit or account, such as an account commonly known as a passbook savings account, a statement savings account, or as a money market deposit account (MMDA), that otherwise meets the requirements in paragraph (d)(1) of this section and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor may be permitted or authorized to make transfers and withdrawals to another

account (including a transaction account) of the depositor at the same institution or to a third party, regardless of the number of such transfers and withdrawals or the manner in which such transfers and withdrawals are made.

* * * * *

(e) *Transaction account* means a deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, or other similar device for the purpose of making payments or transfers to third persons or others or from which the depositor may make third party payments at an automated teller machine (ATM) or a remote service unit, or other electronic device, including by debit card. Transaction account includes:

* * * * *

(2) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and that are subject to check, draft, negotiable order of withdrawal, share draft, or other similar item, including accounts described in paragraph (d)(2) of this section (savings deposits) and including accounts authorized by 12 U.S.C. 1832(a) (NOW accounts).

(3) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer or credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such accounts, including accounts authorized by 12 U.S.C. 371a (automatic transfer accounts or ATS accounts).

(4) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and under the terms of which, or by practice of the depository institution, the depositor is permitted or authorized to make withdrawals for the purposes of transferring funds to another account of the depositor at the same institution (including transaction account) or for making payment to a third party, regardless of the number of such transfers and withdrawals and regardless of the manner in which such transfers and withdrawals are made.

* * * * *

(6) All deposits other than time deposits, including those accounts that are time deposits in form but that the Board has determined, by rule or order, to be transaction accounts.

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 23, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–09044 Filed 4–24–20; 11:15 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. OP–1716]

Temporary Actions To Support the Flow of Credit to Households and Businesses by Encouraging Use of Intraday Credit

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: Due to the extraordinary disruptions from the coronavirus disease 2019 (COVID–19), the Board of Governors of the Federal Reserve System (Board) is announcing temporary actions aimed at encouraging healthy depository institutions to utilize intraday credit extended by Federal Reserve Banks (Reserve Banks). The Board recognizes that the Federal Reserve has an important role in providing intraday balances and credit to foster the smooth operation of the payment system. These temporary actions are intended to support the provision of liquidity to households and businesses and the general smooth functioning of payment systems.

DATES: These temporary actions are effective on April 24, 2020, and will expire on September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Jason Hinkle, Assistant Director (202–912–7805), Brajan Kola, Senior Financial Institution Policy Analyst (202–736–5683) Division of Reserve Bank Operations and Payment Systems or Evan Winerman, Senior Counsel (202–872–7578), Legal Division, Board of Governors of the Federal Reserve System. For users of Telecommunications Device for the Deaf (TDD) only, please contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Part II of the Federal Reserve Policy on Payment System Risk (PSR policy) governs the provision of intraday credit (also known as daylight overdrafts) to depository institutions (institutions) with accounts at the Reserve Banks.[1] The Board recognizes that the Federal Reserve has an important role in providing intraday balances and credit to foster the smooth operation of the payment system. Under the PSR policy, an institution that is ''financially healthy'' and has regular access to the discount window is eligible for intraday credit.[2] The PSR policy establishes limits, or ''net debit caps,'' on the value of an institution's uncollateralized daylight overdrafts.[3] The PSR policy also allows an institution with a self-assessed net debit cap to request, at Reserve Bank discretion, collateralized capacity in addition to its uncollateralized net debit cap under the ''maximum daylight overdraft capacity'' (max cap) program.[4]

The spread of COVID–19 has disrupted economic activity in the United States and in many other countries. In addition, financial markets have experienced significant volatility. In light of these developments, institutions may face unanticipated intraday liquidity constraints and demands on collateral pledged to the Reserve Banks. In response, the Board has announced a series of actions to support the flow of credit to households and businesses to mitigate the disruptions from COVID–19.[5] As part of this response, the Board has encouraged ''institutions to utilize intraday credit extended by Reserve Banks, on both a collateralized and uncollateralized basis, to support the provision of liquidity to households and businesses and the general smooth functioning of payment systems.''[6]

As described below, the Board is taking temporary actions that will improve institutions' access to Reserve Bank intraday credit, provide institutions a ready and flexible source of intraday funds to efficiently manage their liquidity risk, and help institutions focus on other activities that support lending to households and businesses.

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[1] *See https://www.federalreserve.gov/paymentsystems/psr_about.htm.*

[2] *See* section II.D.1 of the PSR policy.

[3] *Id.*

[4] *See* section II.E of the PSR policy.

[5] For a summary of actions, *see https://www.federalreserve.gov/covid-19.htm.*

[6] *See Federal Reserve Actions to Support the Flow of Credit to Households and Businesses* press release, March 15, 2020, available at *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200315b.htm.*

The temporary actions can be deployed relatively quickly and will complement other Board initiatives to encourage use of Reserve Bank credit.

II. Discussion of Temporary Actions

A. Suspension of Net Debit Caps and Waiver of Fees

As noted above, the PSR policy provides access to intraday credit to healthy institutions, subject to net debit caps and fees for uncollateralized overdrafts. The Board is temporarily lifting net debit caps and fees for these institutions. For the sake of simplicity and to ensure immediate effectiveness, institutions that are eligible to borrow under the Federal Reserve's primary credit program for the discount window (primary credit institutions) are eligible for these temporary measures.[7] As a result, primary credit institutions will not be expected to manage activity in their Federal Reserve account to avoid daylight overdrafts in excess of their net debit caps, and Reserve Banks will not counsel primary credit institutions for daylight overdrafts that exceed their net debit caps.[8] Additionally, Reserve Banks will waive all fees for daylight overdrafts, including uncollateralized daylight overdrafts, incurred by primary credit institutions. The Reserve Banks will apply these temporary actions automatically.[9]

The Board does not believe that these actions will meaningfully increase credit risk to Reserve Banks because the provisions will only apply to financially healthy institutions, and the majority of daylight overdrafts during the period are likely to be collateralized.[10] Further, Reserve Banks will continue to monitor an institution's eligibility for primary credit using financial and supervisory information in order to manage the risk exposure to Reserve Banks. The Board expects that primary credit institutions will continue to use their own systems and procedures, as well as the Federal Reserve's systems, to monitor their Federal Reserve account balances and payment activities. Furthermore, primary credit institutions will continue to be expected to extinguish any daylight overdrafts prior to the close of the Fedwire operating day.

B. Streamlined Max Cap Procedure

The Board is also taking temporary actions to encourage usage of collateralized intraday credit by institutions that are eligible only for the Reserve Banks' secondary credit discount window program (secondary credit institutions).[11] Although secondary credit institutions will remain ineligible for uncollateralized net debit caps, the Board is adopting a streamlined process that will allow secondary credit institutions to request collateralized capacity from their Reserve Banks under the max cap program.[12] The Board is waiving the requirement that an institution first obtain a self-assessed net debit cap and a board of directors resolution before it requests a max cap.

The Board does not believe that this change will meaningfully increase credit risk to Reserve Banks because the intraday overdrafts would be collateralized. In order to manage their risk exposure, Reserve Banks will continue to monitor an institution's condition using financial and supervisory information. The Reserve Banks will also monitor an institution's account balance in real-time, rejecting or delaying certain transactions that would exceed the secondary credit institution's max cap.[13] Like primary credit institutions, secondary credit institutions will be expected to extinguish any daylight overdrafts prior to the close of the Fedwire operating day.

C. Termination of Temporary Actions

The temporary actions discussed above will terminate on September 30, 2020 unless the Board communicates otherwise prior to that date.

III. Competitive Impact Analysis

When considering changes to an existing service, the Board conducts a competitive impact analysis to determine whether there will be a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or the Federal Reserve's dominant market position deriving from such legal differences.[14]

The Board believes that the temporary actions will have no adverse effect on the ability of other service providers to compete with the Reserve Banks in providing similar services. While the temporary relaxation of the PSR policy will provide institutions with additional intraday credit in their Federal Reserve accounts, institutions may use this credit to fund payments activity using private sector or Reserve Bank services, at their discretion.

IV. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board is suspending the collection of information under the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225, OMB Number 7100–0216) and the Annual Report of Net Debit Cap (FR 2226, OMB Number 7100–0217). The Board has reviewed these temporary measures pursuant to the authority delegated by the OMB and has determined that they do not contain any new collections of information pursuant to the PRA.

By order of the Board of Governors of the Federal Reserve System, April 23, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–09052 Filed 4–24–20; 11:15 am]

BILLING CODE 6210–01–P

[7] The Reserve Banks' primary credit program is available to institutions that are in generally sound financial condition. 12 CFR 201.4(a).

[8] Except for several exceptions outlined in the PSR policy, the Federal Reserve considers all cap breaches to be violations of the PSR policy. A policy violation initiates a series of Reserve Bank counseling actions aimed at deterring an institution from exceeding its allowed capacity for intraday credit.

[9] The Reserve Banks generally monitor institutions' compliance with the PSR policy over each two-week reserve maintenance period. The temporary actions adopted in this document will apply to the current two-week reserve maintenance period.

[10] Approximately 95 percent of average daylight overdrafts are collateralized. *See https://www.federalreserve.gov/paymentsystems/psr_data.htm.*

[11] Secondary credit is a lending program that is available to depository institutions that are not eligible for primary credit. *See generally* 12 CFR 201.4(b). Institutions covered under section II.F of the PSR policy (Special Situations) will not be eligible for collateralized intraday credit.

[12] *See* Section II.E of the PSR policy. All collateral must be acceptable to the administrative Reserve Banks. Collateral eligibility and margins are the same for PSR policy purposes as for the discount window. *See http://www.frbdiscountwindow.org/* for more information.

[13] Pledging less collateral reduces the effective maximum daylight overdraft capacity level; however, pledging more collateral will not increase the maximum daylight overdraft capacity above the approved level.

[14] *See* The Federal Reserve in the Payments System (issued 1984; revised 1990), Federal Reserve Regulatory Service 9–1558.

SMALL BUSINESS ADMINISTRATION

[Docket Number SBA–2020–0021]

13 CFR Parts 120 and 121

RIN 3245–AH37

Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule (the First PPP Interim Final Rule) announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). The Act temporarily adds a new program, titled the ''Paycheck Protection Program,'' to the SBA's 7(a) Loan Program. The Act also provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). SBA posted additional interim final rules on April 3, 2020, and April 14, 2020. This interim final rule supplements the previously posted interim final rules with additional guidance. SBA requests public comment on this additional guidance.

DATES: *Effective date:* This rule is effective April 28, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

Comment date: Comments must be received on or before May 28, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0021 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@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 whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency. Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program.

II. Comments and Immediate Effective Date

The intent of the Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, it is critical to meet lenders' and borrowers' need for clarity concerning program requirements as rapidly as possible because the last day eligible borrowers can apply for and receive a loan is June 30, 2020.

This interim final rule supplements previous regulations and guidance on several important, discrete issues. The immediate effective date of this interim final rule will benefit lenders so that they can swiftly close and disburse loans to small businesses. This interim final rule is effective without advance notice and public comment because section 1114 of the Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before May 28, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the Paycheck Protection Program (PPP). Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans and any accrued interest may qualify for loan forgiveness. Additional information about the PPP is available in the First PPP Interim Final Rule (85 FR 20811), a second interim final rule (85 FR 20817) (the Second PPP Interim Final Rule), and a third interim final rule (the Third PPP Interim Final Rule) (85 FR 21747) (collectively, the PPP Interim Final Rules).

1. Requirements for Promissory Notes and Authorizations

This guidance is substantively identical to previously posted FAQ guidance.

a. Are lenders required to use a promissory note provided by SBA or may they use their own?

Lenders may use their own promissory note or an SBA form of promissory note. *See* FAQ 19 (posted April 8, 2020).

b. Are lenders required to use a separate SBA Authorization document to issue PPP loans?

No. A lender does not need a separate SBA Authorization for SBA to guarantee a PPP loan. However, lenders must have executed SBA Form 2484 (the Lender Application Form—Paycheck Protection Program Loan Guaranty) [1] to issue PPP loans and receive a loan number for each originated PPP loan. Lenders may include in their promissory notes for PPP loans any terms and conditions, including relating to amortization and disclosure, that are not inconsistent with Sections 1102 and 1106 of the CARES Act, the PPP Interim Final Rules and guidance, and SBA Form 2484. *See* FAQ 21 (posted April 13, 2020). The decision not to require a separate SBA Authorization in order to ensure that critical PPP loans are disbursed as efficiently as practicable.

2. Clarification Regarding Eligible Businesses

a. Is a hedge fund or private equity firm eligible for a PPP loan?

No. Hedge funds and private equity firms are primarily engaged in investment or speculation, and such businesses are therefore ineligible to receive a PPP loan. The Administrator, in consultation with the Secretary, does not believe that Congress intended for these types of businesses, which are generally ineligible for section 7(a) loans under existing SBA regulations, to obtain PPP financing.

b. Do the SBA affiliation rules prohibit a portfolio company of a private equity fund from being eligible for a PPP loan?

Borrowers must apply the affiliation rules that appear in 13 CFR 121.301(f), as set forth in the Second PPP Interim Final Rule (85 FR 20817). The affiliation rules apply to private equity-owned businesses in the same manner as any other business subject to outside ownership or control.[2] However, in addition to applying any applicable affiliation rules, all borrowers should carefully review the required certification on the Paycheck Protection Program Borrower Application Form (SBA Form 2483) stating that ''[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.''

c. *Is a hospital owned by governmental entities eligible for a PPP loan?*

A hospital that is otherwise eligible to receive a PPP loan as a business concern or nonprofit organization (described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code) shall not be rendered ineligible for a PPP loan due to ownership by a state or local government if the hospital receives less than 50% of its funding from state or local government sources, exclusive of Medicaid.

The Administrator, in consultation with the Secretary, determined that this exception to the general ineligibility of government-owned entities, 13 CFR 120.110(j), is appropriate to effectuate the purposes of the CARES Act.

d. Part III.2.b. of the Third PPP Interim Final Rule (85 FR 21747, 21751) is revised to read as follows:

Are businesses that receive revenue from legal gaming eligible for a PPP Loan?

A business that is otherwise eligible for a PPP Loan is not rendered ineligible due to its receipt of legal gaming revenues, and 13 CFR 120.110(g) is inapplicable to PPP loans. Businesses that received illegal gaming revenue remain categorically ineligible. On further consideration, the Administrator, in consultation with the Secretary, believes this approach is more consistent with the policy aim of making PPP loans available to a broad segment of U.S. businesses.

3. Business Participation in Employee Stock Ownership Plans

Does participation in an employee stock ownership plan (ESOP) trigger application of the affiliation rules?

No. For purposes of the PPP, a business's participation in an ESOP (as defined in 15 U.S.C. 632(q)(6)) does not result in an affiliation between the business and the ESOP. The Administrator, in consultation with the Secretary, determined that this is appropriate given the nature of such plans. Under an ESOP, a business concern contributes its stock (or money to buy its stock or to pay off a loan that was used to buy stock) to the plan for the benefit of the company's employees. The plan maintains an account for each employee participating in the plan. Shares of stock vest over time before an employee is entitled to them. However, with an ESOP, an employee generally does not buy or hold the stock directly while still employed with the company. Instead, the employee generally receives the shares in his or her personal account only upon the cessation of employment with the company, including retirement, disability, death, or termination.

4. Eligibility of Businesses Presently Involved in Bankruptcy Proceedings

Will I be approved for a PPP loan if my business is in bankruptcy?

No. If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan. If the applicant or the owner of the applicant becomes the debtor in a bankruptcy proceeding after submitting a PPP application but before the loan is disbursed, it is the applicant's obligation to notify the lender and request cancellation of the application. Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes.

The Administrator, in consultation with the Secretary, determined that providing PPP loans to debtors in bankruptcy would present an unacceptably high risk of an unauthorized use of funds or non-repayment of unforgiven loans. In addition, the Bankruptcy Code does not require any person to make a loan or a financial accommodation to a debtor in bankruptcy. The Borrower Application Form for PPP loans (SBA Form 2483), which reflects this restriction in the form of a borrower certification, is a loan program requirement. Lenders may rely on an applicant's representation concerning the applicant's or an owner of the applicant's involvement in a bankruptcy proceeding.

5. Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan Request

Consistent with section 1102 of the CARES Act, the Borrower Application Form requires PPP applicants to certify that ''[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.''

Any borrower that applied for a PPP loan prior to the issuance of this regulation and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

The Administrator, in consultation with the Secretary, determined that this safe harbor is necessary and appropriate

[1] This requirement is satisfied by a lender when the lender completes the process of submitting a loan through the E-Tran system; no transmission or retention of a physical copy of Form 2484 is required.

[2] However, the Act waives the affiliation rules if the borrower receives financial assistance from an SBA-licensed Small Business Investment Company (SBIC) in any amount. This includes any type of financing listed in 13 CFR 107.50, such as loans, debt with equity features, equity, and guarantees. Affiliation is waived even if the borrower has investment from other non-SBIC investors.

to ensure that borrowers promptly repay PPP loan funds that the borrower obtained based on a misunderstanding or misapplication of the required certification standard.

6. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at *www.sba.gov.* Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will not impose new or modify existing recordkeeping or reporting requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,
Administrator.

[FR Doc. 2020–09098 Filed 4–27–20; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0095; Product Identifier 2019–NM–192–AD; Amendment 39–19904; AD 2020–08–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–8 and 747–8F series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the skin lap joints at certain stringers are subject to widespread fatigue damage (WFD). This AD requires modifying the left and right side lap joints of the fuselage skin, repetitive post-modification inspections for cracking, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 2, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 2, 2020.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0095.

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–2020–0095; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is 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: Bill Ashforth, Senior Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3520; email: *bill.ashforth@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 certain The Boeing Company Model 747–8 and 747–8F series airplanes. The NPRM published in the **Federal Register** on February 13, 2020 (85 FR 8207). The NPRM was prompted by an evaluation by the DAH indicating that the skin lap joints at certain stringers are subject to WFD. The NPRM proposed to require modifying the left and right side lap joints of the fuselage skin, repetitive post-modification inspections for cracking, and applicable on-condition actions.

The FAA is issuing this AD to address undetected fatigue cracks, which could result in sudden decompression and reduced structural integrity of the airplane.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. Boeing indicated its support for the NPRM.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–53A2895 RB, dated September 12, 2019. This service information describes procedures for modifying the left and right side lap joints of the fuselage skin, repetitive post-modification internal detailed and surface high frequency eddy current (HFEC) inspections for cracking, and applicable on-condition actions. On-condition actions include repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification of S–6 and S–23	1,856 work-hours × $85 per hour = $157,760.	(*)	$157,760	$2,208,640.
Post-mod inspection of S-6 and S–23.	68 work-hours × $85 per hour = $5,780 per inspection cycle.	$0	$5,780 per inspection cycle	$80,920 per inspection cycle.
Modification of S–44	1,216 work-hours × $85 per hour = $103,360.	(*)	$103,360	$1,447,040.
Post-mod inspection of S-44	28 work-hours × $85 per hour = $2,380 per inspection cycle.	$0	$2,380 per inspection cycle	$33,320 per inspection cycle.

* The FAA has received no definitive data that would enable the agency to provide parts cost estimates for the modifications specified in this AD.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–08–12 The Boeing Company: Amendment 39–19904; Docket No. FAA–2020–0095; Product Identifier 2019–NM–192–AD.

(a) Effective Date

This AD is effective June 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–8 and 747–8F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–53A2895 RB, dated September 12, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the skin lap joints at certain stringers are subject to widespread fatigue damage (WFD). The FAA is issuing this AD to address undetected fatigue cracks, which could result in sudden decompression and reduced structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2895 RB, dated September 12, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2895 RB, dated September 12, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2895, dated September 12, 2019, which is referred to in Boeing Alert Requirements Bulletin 747–53A2895 RB, dated September 12, 2019.

(h) Exception to Service Information Specifications

Where Boeing Alert Requirements Bulletin 747–53A2895 RB, dated September 12, 2019, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Bill Ashforth, Senior Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3520; email: *bill.ashforth@faa.gov.*

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

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 747–53A2895 RB, dated September 12, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

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

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

Issued on April 20, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08930 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0850; Airspace Docket No. 18–AWP–17]

RIN 2120–AA66

Amendment of Multiple Air Traffic Service (ATS) Routes; Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends three domestic VHF Omnidirectional Range (VOR) Federal airways (V–113, V–137, and V–485) in the Western United States. The modifications are necessary due to the planned decommissioning of Priest, CA, VOR navigation aid (NAVAID), which provides navigation guidance for portions of the affected air traffic service (ATS) routes. The Priest, CA, VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, July 16, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations 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: Kenneth Ready, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 supports amending the air traffic service route structure in the western United States to maintain the efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2018–0850 (83 FR 63603; December 11, 2018), amending three Domestic VOR Federal airways (V–113, V–1137 and V–485) in the Western United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Domestic VOR Federal airways are published in paragraph 6010(a), 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 Domestic VOR Federal airways listed in this document will be subsequently published in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

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

Differences From the NPRM

The NPRM stated V–113 would remain unchanged after the Panoche, CA, VORTAC. The proposed new route in the NPRM inadvertently left out a portion of the route after the Panoche, CA, VORTCAC before the Linden, CA, VOR/DME due to a clerical error. The portion is reinserted back into the ATS route for continuity of the ATS route. The amended portion after Panoche, CA, is ''intersection Modesto 208° and El Nido 298° radials (PATYY intersection) to Modesto, CA, VOR/DME'' and then tie back into the Linden, CA, VOR/DME.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by amending domestic VOR Federal airways V–113, V–137 and V–485. The route changes are outlined below.

V–113: V–113 is amended between the Paso Robles, CA, VORTAC and the Panoche, CA, VORTAC causing a gap in the route. The new route stops at the Paso Robles, CA, VORTAC and resumes at the Panoche, CA, VORTAC. The unaffected portion of the existing route will remain as charted and as outlined in the differences to the NPRM.

V–137: V–137 is amended between the Avenal, CA, VOR/DME and the Salinas, CA, VORTAC. The new route will end at the Avenal, CA, VOR/DME. The unaffected portion of the existing route will remain as charted.

V–485: V–485 is amended between the Fellows, CA, VOR/DME and the San Jose, CA, VOR/DME. The new route will end at the Fellows, CA, VOR/DME. The unaffected portion of the existing route will remain as charted.

All radials in the route descriptions are unchanged and stated in True degrees.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 of amending three Domestic VOR Federal airways (V–113, V–137 and V–485) qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F—Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 6010(a)—Domestic VOR Federal Airways

V–113 [Amended]

From Morro Bay, CA; to Paso Robles, CA. From Panoche, CA.; INT Modesto 208° and El Nido 298° radials; Modesto, CA; Linden, CA; INT Linden 046° and Mustang, NV, 208° radials; Mustang; 42 miles, 24 miles, 115 MSL, 95 MSL, Sod House, NV; 67 miles, 95 MSL, 85 MSL, Rome, OR; 61 miles, 85 MSL, Boise, ID; Salmon, ID; Coppertown, MT; Helena, MT; to Lewistown, MT.

* * * * *

V–137 [Amended]

From Mexicali, Mexico; via Imperial, CA; INT Imperial 350° and Thermal, CA 144° radials; Palm Springs, CA; Palmdale, CA; Gorman, CA; Avenal, CA. The airspace within Mexico is excluded.

* * * * *

V–485 [Amended]

From Ventura, CA to Fellows, CA. The airspace within W–289 and R–2519 more than three (3) statute miles west of the airway centerline and the airspace within R–2519 below 5,000 feet MSL is excluded.

Issued in Washington, DC, on April 23, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–08947 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0039; Airspace Docket No. 19–ASO–18]

RIN 2120–AA66

Amendment and Removal of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends 10 jet routes, and removes 8 jet routes, in the eastern United States. This action is in support of the Northeast Corridor Atlantic Route Project to improve the efficiency of the National Airspace System (NAS) and reduce the dependency on ground-based navigational systems.

DATES: Effective date 0901 UTC, July 16, 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 Rules and Regulations 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: Paul Gallant, Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modifies the route structure in the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0039 in the **Federal Register** (85 FR 6118; February 4, 2020) amending and removing certain Air Traffic Service (ATS) routes in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Jet routes are published in paragraph 2004 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 jet routes listed in this document will be subsequently amended in, or removed from, the Order.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by amending 10 jet routes, and removing 8 jet routes in the eastern United States. This action supports the Northeast Corridor Atlantic Coast Route Project by removing or amending certain jet routes as a result of the continuing development of new high altitude RNAV routes (Q-routes) in the NAS. Additionally, the jet route changes will reduce aeronautical chart clutter by removing unneeded route segments.

The jet route changes are as follows:

J–14: J–14 currently extends between the Panhandle, TX, VORTAC; and the Patuxent, MD, VORTAC. This action removes the route segments between the Vulcan, AL, VORTAC and the Greensboro, NC, VORTAC. This splits the route into two separate parts. As amended, J–14 extends between Panhandle, TX, and Vulcan, AL; followed by a gap in the route, with a second part extending between Greensboro, NC, and Patuxent, MD.

J–20: J–20 currently extends between the Seattle, WA, VORTAC, and the Seminole, FL, VORTAC. This action removes the segments between the Montgomery, AL, VORTAC and Seminole, FL. The amended route extends between Seattle, WA, and Montgomery, AL.

J–40: J–40 currently extends between the Montgomery, AL, VORTAC, and the Richmond, VA, VOR/DME. This action removes the entire route.

J–41: J–41 currently extends between the Seminole, FL, VORTAC, and the Omaha, IA, VORTAC. This action removes the portion of the route between the Seminole, FL, VORTAC, and Montgomery, AL. The amended

route extends between the Montgomery, AL, VORTAC, and Omaha, IA.

J–43: J–43 currently extends between the intersection of the Cross City, FL VORTAC 322° and the Seminole, FL, VORTAC, 359° radials, and the Carleton, MI, VOR/DME. This action removes the segments between the intersection of the Cross City and the Seminole radials and the Volunteer, TN, VORTAC. The amended route extends between Volunteer, TN, and Carleton, MI.

J–45: J–45 currently extends between the Alma, GA, VORTAC and the Aberdeen, SD, VOR/DME. The action removes the segments between the Alma, GA, VORTAC and the Atlanta, GA, VORTAC. The amended route extends between Atlanta, GA and Aberdeen, SD.

J–51: J–51 currently extends between the intersection of the Columbia, SC, VORTAC, 042° and the Flat Rock, VA, VORTAC, 212° radials, and the Yardley, NJ, VOR/DME. This action removes the entire route.

J–52: J–52 currently extends, in two segments: between the Vancouver, BC, Canada, VOR/DME and the Columbia, SC, VORTAC; and between the intersection of the Columbia 042° and the Flat Rock, VA, VORTAC, 212° radials, and the Richmond, VA, VOR/DME. This removes the segments between the Vulcan, AL, VORTAC and the intersection of the Columbia, SC, VORTAC, 042° and the Flat Rock, VA, VORTAC, 212° radials. As amended J–52 extends, in two parts: Between Vancouver, BC, Canada, and Vulcan, AL; followed by a gap in the route, and resuming between the intersection of the Columbia, SC 042° and the Flat Rock, VA, 212° radials, and Richmond, VA. The portion within Canada is excluded.

J–53: J–53 currently extends between the intersection of the Craig, FL 347° and the Colliers, SC 174° radials, and the Pulaski, VA, VORTAC. This action removes the entire route.

J–73: J–73 currently extends between the intersection of the Seminole, FL, VORTAC, 344° and the Cross City, FL, VORTAC, 322° radials, and Northbrook, IL, VOR/DME. This action removes the segment between the intersection of the Seminole, FL, 344° and the Cross City, FL, 322° radials, and the La Grange, GA, VORTAC. As amended, the route extends between La Grange, GA, and Northbrook, IL.

J–75: J–75 currently extends between the Greensboro, NC, VORTAC and the Boston, MA, VOR/DME. This action removes the entire route.

J–81: J–81 currently extends between the intersection of the Craig, AL, VORTAC, 347° and the Colliers, SC, VORTAC, 174° radials, and Colliers, SC. This action removes the entire route.

J–85: J–85 currently extends between the Alma, GA, VORTAC, and the Dryer, OH, VOR/DME. This action removes the segments between Alma, GA, and the Spartanburg, SC, VORTAC. As amended, J–85 extends between Spartanburg, SC, and Dryer, OH.

J–89: J–89 currently extends between the intersection of the Atlanta, GA, VORTAC, 161° and the Alma, GA, VORTAC, 252° radials, and the Winnipeg, MB, Canada, VORTAC. This action removes the segments between the intersection of the Atlanta and the Alma radials, and the Atlanta VORTAC. The amended route extends between the Atlanta, GA, VORTAC and Winnipeg, MB, Canada. The portion within Canada is excluded.

J–91: J–91 currently extends between the intersection of the Cross City, FL, VORTAC, 338° and the Atlanta, GA, VORTAC, 169° radials, and the Henderson, WV, VORTAC. This action remove the segments between the intersection of the Cross City VORTAC and the Atlanta, GA, VORTAC radials, and the Volunteer, TN, VORTAC. The amended route extends between the Volunteer, TN, VORTAC and the Henderson VORTAC.

J–97: J–97 currently extends between lat. 39°07′00″ N., long. 67°00′00″ W. (the SLATN Fix) and the Boston, MA, VOR/DME. This action removes the entire route.

J–210: J–210 currently extends between the Vance, SC, VORTAC and the Wilmington, NC, VORTAC. This action removes the entire route.

J–575: J–575 currently extends between the Boston, MA, VOR/DME and the Yarmouth, NS, Canada, VOR/DME. This action removes the entire route.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 of modifying 10 jet routes, removing 8 jet routes in the eastern United States qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 2004 Jet Routes

* * * * *

J–14 [Amended]

From Panhandle, TX; via Will Rogers, OK; Little Rock, AR; to Vulcan, AL. From Greensboro, NC; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; to Patuxent.

J–20 [Amended]

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; Magnolia, MS; Meridian, MS; to Montgomery, AL.

J–40 [Removed]

J–41 [Amended]

From Montgomery, AL; Vulcan, AL; Memphis, TN; Springfield, MO, Kansas City, MO, to Omaha, IA.

J–43 [Amended]

From Volunteer, TN; Falmouth, KY; Rosewood, OH; to Carleton, MI.

J–45 [Amended]

From Atlanta, GA; Nashville, TN; St Louis, MO; Kirksville, MO; Des Moines, IA; Sioux Falls, SD; to Aberdeen, SD.

J–51 [Removed]

J–52 [Amended]

From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Texarkana, AR; Sidon, MS; Bigbee, MS; to Vulcan, AL. From INT Columbia 042° and Flat Rock, VA 212° radials; Raleigh-Durham, NC; to Richmond, VA. The portion within Canada is excluded.

J–53 [Removed]

J–73 [Amended]

From La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

J–75 [Removed]

J–81 [Removed]

J–85 [Amended]

From Spartanburg, SC; Charleston, WV; INT Charleston 357° and Dryer, OH, 172° radials; Dryer.

J–89 [Amended]

From Atlanta, GA; Louisville, KY; Boiler, IN; Northbrook, IL; Badger, WI; Duluth, MN; to Winnipeg, MB, Canada. The portion within Canada is excluded.

J–91 [Amended]

From Volunteer, TN; to Henderson, WV.

J–97 [Removed]

J–210 [Removed]

J–575 [Removed]

Issued in Washington, DC, on April 23, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–08948 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0986; Airspace Docket No. 18–AWP–20]

RIN 2120–AA66

Amendment of Air Traffic Service (ATS) Route T–333; Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Area Navigation (RNAV) Route (T–333) in the western United States. The modification is necessary due to the planned decommissioning of the Priest, CA, VOR navigation aid (NAVAID), which provides navigation guidance for portions of affected ATS route V–485. The decommissioning has rendered portions of V–485 unusable and amending T–333 will overcome affected portions of V–485. The Priest, CA, VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, July 16, 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 Rules and Regulations 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: Kenneth Ready, Rules and Regulations, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modifies the air traffic service route structure in the western United States to maintain the efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2018–0986 in the **Federal Register** (83 FR 60788; November 27, 2018), amending RNAV route T–333 in the western United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States Area Navigation Routes are published in paragraph 6011, 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 RNAV route listed in this document will be subsequently published in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

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

air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending RNAV route T–333. The route changes are outlined below.

T–333: T–333 is amended from the Fellows, CA, (FLW) VOR/DME to the BORED, CA, waypoint. The FAA extended the route to the southeast by 130 miles to connect to the Fellows CA, VOR/DME NAVAID, which is the starting point of the RNAV route. The extension is needed for navigation in the low altitude structure as V–485 is being gapped in a separate rulemaking action [Docket No. FAA–2018–0850 (83 FR 63603; December 11, 2018)] due to the decommissioning of the Priest, CA, VOR. The amendment removed the KLIDE, CA, FIX due to turn criteria for RNAV procedure development in order to rejoin T–333 at the BORED, CA, FIX.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 of modifying RNAV route T–333 in the western United States qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 6011—United States Area Navigation Routes

T 333 FELLOWS, CA to TIPRE, CA [Amended]

Fellows, CA (FLW)	VOR/DME	(Lat. 35°05′35.10″ N, long. 119°51′56.08″ W)
REDDE, CA	FIX	(Lat. 35°39′35.48″ N, long. 120°17′42.14″ W)
LKHRN, CA	WP	(Lat. 36°05′59.82″ N, long. 120°45′22.53″ W)
RANCK, CA	FIX	(Lat. 36°35′29.90″ N, long. 121°06′10.37″ W)
HENCE, CA	FIX	(Lat. 36°55′28.65″ N, long. 121°25′49.36″ W)
GILRO, CA	FIX	(Lat. 37°02′46.62″ N, long. 121°34′06.76″ W)
BORED, CA	FIX	(Lat. 37°18′34.16″ N, long. 121°27′48.06″ W)
SMONE, CA	WP	(Lat. 37°32′10.45″ N, long. 121°21′30.65″ W)
OOWEN, CA	WP	(Lat. 37°42′25.17″ N, long. 121°16′29.21″ W)
TIPRE, CA	WP	(Lat. 38°12′21.00″ N, long. 121°02′09.00″ W)

* * * * * * *

Issued in Washington, DC, on April 23, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulation Group.

[FR Doc. 2020–08946 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 738, 742, 744, 758, and 774

[Docket No. 180212164–9483–01]

RIN 0694–AH53

Expansion of Export, Reexport, and Transfer (in-Country) Controls for Military End Use or Military End Users in the People's Republic of China, Russia, or Venezuela

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to expand license requirements on exports, reexports, and transfers (in-country) of items intended for military end use or military end users in the People's Republic of China (China), Russia, or Venezuela. Specifically, this rule expands the licensing requirements for China to include ''military end users,'' in addition to ''military end use.'' It broadens the list of items for which the licensing requirements and review policy apply and expands the definition of ''military end use.'' Next, it creates a

new reason for control and the associated review policy for regional stability for certain items exported to China, Russia, or Venezuela, moving existing text related to this policy. Finally, it adds Electronic Export Information filing requirements in the Automated Export System for exports to China, Russia, and Venezuela. This rule supports the objectives discussed in the National Security Strategy of the United States.

DATES: This rule is effective June 29, 2020.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce. Phone: (202) 482–0092; Fax: (202) 482–3355; Email: *rpd2@bis.doc.gov.* For emails, include ''Military End Use or User'' in the subject line.

SUPPLEMENTARY INFORMATION:

Background

In December 2017, the White House issued the National Security Strategy of the United States of America (NSS), which states that ''The United States will respond to the growing political, economic, and military competitions we face around the world.'' The NSS, which can be found at *www.whitehouse.gov,* discusses four pillars—protect the homeland, promote American prosperity, preserve peace through strength, and advance American influence. The strategy notes that ''China and Russia challenge American power, influence, and interests, attempting to erode American security and prosperity. They are determined to make economies less free and less fair, to grow their militaries, and to control information and data to repress their societies and expand their influence.'' The NSS further notes, ''Both China and Russia support the dictatorship in Venezuela and are seeking to expand military linkages and arms sales across the region.''

BIS is publishing this rule to support the national security and foreign policy objectives of the United States by broadening the United States government's visibility into and ability to deny or condition exports, reexports, and transfers (in-country) involving certain items on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the Export Administration Regulations) that are destined to military end users or end uses in China, Russia, or Venezuela.

Expansion of Military End Use and End User Controls

End use (how will the product ultimately be used) and the end user (who will ultimately use the product) are important factors when determining license requirements. Examples of prohibited end use include restrictions on certain nuclear end uses, use of products in weapons of mass destruction, and use of microprocessors for military end use. For a full list of end-use and end-user prohibitions under the EAR, see Part 744 of the EAR. The EAR's current definition of military *end users* includes the army, navy, air force, marines and coast guard, plus the national guard/police, government intelligence and reconnaissance organizations; this rule does not modify that definition. The EAR's current definition of military *end use* refers both to direct use (for parts, components or subsystems of weapons and other defense articles) and indirect use (weapon design and development, testing, repair and maintenance). This rule broadens the definition of military end use beyond any item for the ''use,'' ''development,'' or ''production'' to include any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, ''development,'' or ''production,'' of military items.

On June 19, 2007, BIS published a rule imposing a license requirement on exports, reexports, and transfers (in-country) of certain items intended for military end use in China (72 FR 33646), in large part due to a continued lack of transparency regarding products and technologies intended for military end use as China strengthened its military activities and capabilities. On September 17, 2014, BIS expanded these license requirements to include military end uses and end users in Russia (79 FR 55608), to address that country's continuing policy of destabilization in Ukraine and occupation of Crimea. On November 7, 2014, BIS expanded these license requirements to include military end uses and end users in Venezuela (79 FR 66288) as the actions and policies of the Venezuelan military, including its continued and increased repression and complicity in human rights violations, undermined democratic processes and institutions and thereby constituted an unusual and extraordinary threat to the national security and foreign policy of the United States.

This rule further expands license requirements for exports, reexports, and transfers (in-country) of items intended for military end use or military end users in the People's Republic of China (China), Russia, or Venezuela by broadening the license requirement in § 744.21 of the Export Administration Regulations (15 CFR parts 730–774) (EAR) to include military end users in China. This expansion will require increased diligence with respect to the evaluation of end users in China, particularly in view of China's widespread civil-military integration.

In addition, this rule broadens the scope of the items subject to license requirements in § 744.21 by adding items to the list of items subject to the military end-use and end-user license requirements in Supplement No. 2 to part 744. Specifically, this rule adds the following Export Control Classification Numbers (ECCNs) in the categories of materials processing, electronics, telecommunications, information security, sensors and lasers, and propulsion to the supplement: 2A290, 2A291, 2B999, 2D290, 3A991, 3A992, 3A999, 3B991, 3B992, 3C992, 3D991, 5B991, 5A992, 5D992, 6A991, 6A996, and 9B990. Additionally, this rule expands the range of items under ECCNs 3A992, 8A992, and 9A991 included in Supplement No. 2 to part 744.

This rule adopts a license review policy of presumption of denial in § 744.21(e). This change makes the review policy consistent with the review policy for certain exports, reexports, and transfers (in-country) of microprocessors and associated software and technologies for military end uses and end users in § 744.17(c). Further, this rule broadens the definition of ''military end use'' by identifying each element of the definition of ''use'' so that any one of the six elements, standing alone, is sufficient. As amended, the definition of ''military end use'' in § 744.21(f) will include any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, ''development,'' or ''production,'' of military items described on the United States Munitions List (International Traffic in Arms Regulations (22 CFR 126.1)), or items classified under ECCNs ending in ''A018'' or under ''600 series'' ECCNs.

Clarification of Controls on ''600 series'' .y and 9x515.y Items

Additionally, to help the public comply with EAR § 744.21, this rule would relocate the existing license requirement for items described in a .y paragraph of a 9x515 or ''600 series'' ECCN to China, Russia, or Venezuela from § 744.21 to the License Requirements sections of the relevant ECCNs on the CCL.

The license requirement in § 744.21 for ''600 series'' .y items was imposed in an April 16, 2013 rule that initially implemented ''600 series'' controls (*Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform,* 78 FR 22660, at 22723) because such items were presumptively for military end use. The license requirement in § 744.21 for 9x515.y items was imposed in a May 13, 2014 rule that implemented CCL controls on certain spacecraft (*Revisions to the Export Administration Regulations: Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML),* 79 FR 27418, at 27436), prohibiting the export of all items described in 9A515.y to China. As noted previously, subsequent rules broadened the application of § 744.21 to Russia and Venezuela. This relocation of the existing license requirement from EAR § 744.21 to the CCL would not change its scope, which was intended to result in a license requirement for all 9x515.y or ''600 series'' .y items to those destinations. Although the rules imposing controls on ''600 series'' .y and 9x515.y items did not assign a ''reason for control'' as that term is used on the CCL, BIS believes such items should require a license in order to support U.S. foreign policy to maintain regional stability. Accordingly, the reason for control is regional stability (RS) as described in new EAR § 742.6(a)(7). The associated review policy is described in new § 742.6(b)(8). The license review policy reflects current regional stability policy for ''600'' series and 9x515 items. The addition of new § 742.6(a)(7) would require redesignation of the following paragraphs in the section (as well as conforming changes): §§ 732.3(b)(4), 734.3(c), 738.1(a)(3), and ECCNs 0A521, 0B521, 0C521, 0D521, 0E521, 9A515, and 9E515.

Expansion of Electronic Export Information Filing Requirements

Finally, this rule expands Electronic Export Information (EEI) filing requirements in the Automated Export System (AES) for exports to China, Russia, or Venezuela. Existing provisions exempt exporters from both filing EEI for many shipments valued under $2,500 (unless an export license is required) and from entering the ECCN in the EEI when the reason for control is only anti-terrorism (AT). To promote transparency with respect to shipments to these destinations, this rule revises § 758.1 of the EAR to require filing for items destined to China, Russia, or Venezuela regardless of the value of the shipment, unless the shipment is eligible for License Exception GOV. In addition, even if no license is required to ship an item to those destinations, the EEI filing must include the correct ECCN regardless of reason for control. Certain exemptions from filing found in both the EAR and Foreign Trade Regulations (see § 758.1(c) of the EAR), such as for personally-owned baggage, are retained in this rule.

Export Control Reform Act of 2018

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

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866.

2. This final rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. As discussed in the background section, this rule supports the objectives laid out in the National Security Strategy of the United States of America (NSS) by broadening the United States government's visibility into transactions involving certain items on the CCL and exports, reexports and transfers (in-country) to military end users or end uses in China, Russia, or Venezuela. Specifically, the expansion of controls would enhance the national security of the United States by reducing the risk that exports, reexports, and transfers (in-country) of items subject to the EAR could contribute to the military capability of China, Russia, or Venezuela contrary to U.S. national security interests. It allows the United States government to review transactions involving military end uses or end users in those destinations prior to their completion to mitigate this risk. Therefore, the cost-benefit analysis required pursuant to Executive Orders 13563 and 12866 indicates this rule is intended to improve national security as its primary direct benefit. Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing Executive Order 13771 (82 FR 9339, February 3, 2017), regarding what constitutes a regulation issued ''with respect to a national security function of the United States'' and it is, therefore, exempt from the requirements of Executive Order 13771.

3. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS receives very few license applications for military end uses in China or for military end uses or end users in Russia or Venezuela (approximately two to three annually). BIS believes that the reason for this small number is the

likelihood that that such applications will be denied. BIS anticipates that broadening the range of items and parties subject to these military end-use and end-user license requirements will increase the number of licenses submitted; however, BIS also believes that, due to continuing likelihood of denials, this increase is not expected to exceed the existing estimates currently associated with OMB control number 0694–0088.

Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

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

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

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on June 29, 2020, pursuant to actual orders for exports, reexports and transfers (in-country) to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported, reexported or transferred (in-country) before July 27, 2020. Any such items not actually exported, reexported or transferred (in-country) before midnight, on July 27, 2020 require a license in accordance with this final rule.

List of Subjects

15 CFR Parts 732 and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology.

15 CFR Part 738

Exports.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR chapter VII, subchapter C is amended as follows:

PART 732—STEPS FOR DETERMINING LICENSING REQUIREMENTS

■ 1. The authority citation for part 732 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783).

§ 732.3 [Amended]

■ 2. In § 732.3, in paragraph (b)(4), remove the reference to ''§ 742.6(a)(7)'' and add in its place ''§ 742.6(a)(8)''.

PART 734—SCOPE OF THE EAR

■ 3. The authority citation for part 734 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

§ 734.3 [Amended]

■ 4. In § 734.3, in paragraph (c), remove the reference to ''§ 742.6(a)(7)'' and add in its place ''§ 742.6(a)(8)''.

PART 738—COMMERCE CONTROL LIST AND THE COUNTRY CHART

■ 5. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

§ 738.1 [Amended]

■ 6. In § 738.1, in paragraph (a)(3), remove the reference to ''§ 742.6(a)(7)'' and add in its place ''§ 742.6(a)(8)''.

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 7. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 8. In § 742.6:
■ a. Revise paragraph (a)(1);
■ b. Redesignate paragraphs (a)(7) and (8) as paragraphs (a)(8) and (9) and add new paragraph (a)(7);
■ c. Revise newly redesignated paragraph (a)(8)(i);
■ d. Revise paragraph(b)(1)(i); and
■ e. Add paragraph (b)(8).

The revisions and additions read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 license requirements in general.* A license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include RS Column 1 in the Country Chart column of the ''License Requirements'' section. Transactions described in paragraph (a)(2), (3), or (9) of this section are subject to the RS Column 1 license requirements set forth in those paragraphs rather than the license requirements set forth in this paragraph (a)(1).

* * * * *

(7) *RS requirement that applies to the People's Republic of China (China), Russia, or Venezuela.* A license is required to export or reexport to China, Russia, or Venezuela any item described in a .y paragraph of a 9x515 or ''600 series'' ECCN, except for exports or

reexports to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS. (See § 740.11(e)(1) of the EAR for a definition of the ISS.)

(8) * * *

(i) *Scope.* This paragraph (a)(8) supplements the information in the 0Y521 ECCNs and in Supplement No. 5 to part 774 (Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521). This paragraph alerts exporters, reexporters and transferors to the procedures that apply to items classified under the 0Y521 ECCNs.

* * * * *

(b) * * *

(1) * * *

(i) Applications for exports and reexports of ECCN 0A501, 0A504, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505 items; 9x515 and ''600 series'' items will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world. Other applications for exports and reexports described in paragraph (a)(1), (2), (6), or (8) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States. Applications for reexports of items described in paragraph (a)(3) of this section will be reviewed applying the policies for similar commodities that are subject to the ITAR. Applications for export or reexport of items classified under any 9x515 or ''600 series'' ECCN requiring a license in accordance with paragraph (a)(1) or (9) of this section will also be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR (22 CFR 126.1) if destined to a country set forth in Country Group D:5 in Supplement No. 1 to part 740 of the EAR. Applications for export or reexport of ''parts,'' ''components,'' ''accessories,'' ''attachments,'' ''software,'' or ''technology'' ''specially designed'' or otherwise required for the F–14 aircraft will generally be denied. When destined to China or a country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR, items classified under ECCN 0A501, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505 or any 9x515 ECCN will be subject to a policy of denial. In addition, applications for exports and reexports of ECCN 0A501, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505 items when there is reason to believe the transaction involves criminal organizations, rebel groups, street gangs, or other similar groups or individuals, that may be disruptive to regional stability, including within individual countries, will be subject to a policy of denial.

* * * * *

(8) *China, Russia, or Venezuela.* Applications to export or reexport items described in paragraph (a)(7) of this section to China, Russia, or Venezuela will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world. Such applications will also be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR (22 CFR 126.1) if destined to a country set forth in Country Group D:5 in Supplement No. 1 to part 740 of the EAR. When destined to China, items classified under any 9x515.y ECCN will be subject to a policy of denial consistent with paragraph (b)(1) of this section.

* * * * *

PART 744—CONTROL POLICY: END USER AND END USE BASED

■ 9. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2019, 83 FR 49633 (September 20, 2019); Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 10. In § 744.1, revise the last two sentences of paragraph (a)(1) to read as follows:

§ 744.1 General provisions.

(a)(1) * * * Section 744.21 imposes restrictions for exports, reexports and transfers (in-country) of items on the CCL for a 'military end use' or 'military end user' in the People's Republic of China (PRC or China), Russia, or Venezuela. Section 744.22 imposes restrictions on exports, reexports and transfers to persons whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448, or 13464.

* * * * *

■ 11. Section 744.21 is revised to read as follows:

§ 744.21 Restrictions on certain 'military end use' or 'military end user' in the People's Republic of China, Russia, or Venezuela.

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) any item subject to the EAR listed in Supplement No. 2 to part 744 to the People's Republic of China (China), Russia, or Venezuela without a license if, at the time of the export, reexport, or transfer (in-country), you have ''knowledge,'' as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for a 'military end use,' as defined in paragraph (f) of this section, or 'military end user,' as defined in paragraph (g) of this section, in China, Russia, or Venezuela.

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notice published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in China, Russia, or Venezuela. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) *License exception.* Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) of the EAR.

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the ''additional information'' block of the application that ''this application is submitted because of the license

requirement in § 744.21 of the EAR (Restrictions on a 'Military End Use' or 'Military End User' in the People's Republic of China, Russia, or Venezuela).'' In addition, either in the additional information block of the application or in an attachment to the application, you must include all known information concerning the 'military end use' and 'military end user(s)' of the item(s). If you submit an attachment with your license application, you must reference the attachment in the ''additional information'' block of the application.

(e) *License review standards.* (1) Applications to export, reexport, or transfer (in-country) items described in paragraph (a) of this section will be reviewed with a presumption of denial.

(2) Applications may be reviewed under chemical and biological weapons, nuclear nonproliferation, or missile technology review policies, as set forth in §§ 742.2(b)(4), 742.3(b)(4), and 742.5(b)(4) of the EAR, if the end use may involve certain proliferation activities.

(3) Applications for items requiring a license for any reason that are destined to China, Russia, or Venezuela for a 'military end use' or 'military end user' also will be subject to the review policy stated in paragraph (e)(1) of this section.

(f) *Military end use.* In this section, 'military end use' means: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into items classified under ECCNs ending in ''A018'' or under ''600 series'' ECCNs; or any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, ''development,'' or ''production,'' of military items described on the USML, or items classified under ECCNs ending in ''A018'' or under ''600 series'' ECCNs.

(g) *Military end user.* In this section, the term 'military end user' means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support 'military end uses' as defined in paragraph (f) of this section.

(h) *Effects on contracts.* Venezuela: Transactions involving the export, reexport, or transfer (in country) of items to or within Venezuela are not subject to the provisions of § 744.21 if the contracts for such transactions were signed prior to November 7, 2014.

■ 12. Supplement No. 2 to part 744 is revised to read as follows:

Supplement No. 2 to Part 744—List of Items Subject to the Military End Use or End User License Requirement of § 744.21

The following items, as described, are subject to the military end use or end user license requirement in § 744.21.

(1) Category 1 Materials, Chemicals, Microorganisms, and Toxins

(i) 1A290 Depleted uranium (any uranium containing less than 0.711% of the isotope U 235) in shipments of more than 1,000 kilograms in the form of shielding contained in X ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

(ii) 1C990 Fibrous and filamentary materials, not controlled by 1C010 or 1C210, for use in ''composite'' structures and with a specific modulus of $3.18x10^6$m or greater and a specific tensile strength of $7.62x10^4$m or greater.

(iii) 1C996 Hydraulic fluids containing synthetic hydrocarbon oils, having all the characteristics in the List of Items Controlled.

(iv) 1D993 ''Software'' specially designed for the ''development'', ''production'', or ''use'' of equipment or materials controlled by 1C210.b, or 1C990.

(v) 1D999 Limited to specific software controlled by 1D999.b for equipment controlled by 1B999.e that is specially designed for the production of prepregs controlled in Category 1, n.e.s.

(vi) 1E994 Limited to ''technology'' for the ''development'', ''production'', or ''use'' of fibrous and filamentary materials other than glass, aramid or polyethylene controlled by 1C990.

(2) Category 2 Materials Processing

(i) 2A290 Generators and other equipment ''specially designed,'' prepared, or intended for use with nuclear plants.

(ii) 2A291 Equipment, except items controlled by 2A290, related to nuclear material handling and processing and to nuclear reactors, and ''parts,'' ''components'' and ''accessories'' therefor (see List of Items Controlled).

(iii) 2A991 Limited to bearings and bearing systems not controlled by 2A001 and with operating temperatures above 573 K (300 °C).

(iv) 2B991 Limited to ''numerically controlled'' machine tools having ''positioning accuracies'', with all compensations available, less (better) than 9 µm along any linear axis; and machine tools controlled under 2B991.d.1.a.

(v) 2B992 Non ''numerically controlled'' machine tools for generating optical quality surfaces, and specially designed components therefor.

(vi) 2B996 Limited to dimensional inspection or measuring systems or equipment not controlled by 2B006 with measurement uncertainty equal to or less (better) than (1.7 + L/1000) micrometers in any axes (L measured Length in mm).

(vii) 2B999 Specific processing equipment, n.e.s. (see List of Items Controlled).

(viii) 2D290 ''Software'' ''specially designed'' or modified for the ''development,'' ''production,'' or ''use'' of items controlled by 2A290 or 2A291.

(3) Category 3 Electronics Design, Development and Production

(i) 3A991 Electronic devices, and ''components'' not controlled by 3A001.

(ii) 3A992 General purpose electronic equipment not controlled by 3A002.

(iii) 3A999 Specific processing equipment, n.e.s. (see List of Items Controlled).

(iv) 3B991 Equipment not controlled by 3B001 for the manufacture of electronic ''parts,'' ''components'' and materials, and ''specially designed'' ''parts,'' ''components'' and ''accessories'' therefor.

(v) 3B992 Equipment not controlled by 3B002 for the inspection or testing of electronic ''components'' and materials, and ''specially designed'' ''parts,'' ''components'' and ''accessories'' therefor.

(vi) 3C992 Positive resists designed for semiconductor lithography specially adjusted (optimized) for use at wavelengths between 370 and 245 nm.

(vii) 3D991 ''Software'' ''specially designed'' for the ''development'', ''production'', or ''use'' of electronic devices, ''parts'' or ''components'' controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 and 3B992; or ''software'' ''specially designed'' for the ''use'' of equipment controlled by 3B001.g and .h.

(viii) 3E991 Limited to ''technology'' according to the General Technology Note for the ''development'', ''production'', or ''use'' of digital oscilloscopes and transient recorders with sampling rates greater than 2.5 giga samples per second, which are controlled by 3A992.g.

(4) Category 4 Computers

(i) 4A994 Limited to computers not controlled by 4A001 or 4A003, with an Adjusted Peak Performance (''APP'') exceeding 0.5 Weighted TeraFLOPS (WT).

(ii) 4D993 ''Program'' proof and validation ''software'', ''software'' allowing the automatic generation of ''source codes'', and operating system ''software'' that are specially designed for real time processing equipment.

(iii) 4D994 Limited to ''software'' specially designed or modified for the ''development'', ''production'', or ''use'' of equipment controlled by 4A101.

(5) Category 5 (Part 1) Telecommunications and Category 5 (Part 2) Information Security

(i) 5A991 Limited to telecommunications equipment designed to operate outside the temperature range from 219K (-54 °C) to 397K (124 °C), which is controlled by 5A991.a., radio equipment using Quadrature-amplitude-modulation (QAM) techniques, which is controlled by 5A991.b.7., and phased array antennae, operating above 10.5 Ghz, except landing systems meeting ICAO standards (MLS), which are controlled by 5A991.f.

(ii) 5B991 Telecommunications test equipment, n.e.s.

(iii) 5D991 Limited to ''software'' specially designed or modified for the ''development'', ''production'', or ''use'' of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f., or of ''software'' specially designed or modified for the ''development'', ''production'', or ''use'' of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f. (iv) 5E991 Limited to ''technology''

for the ''development'', ''production'' or ''use'' of equipment controlled by 5A991.a., 5A991.b.7., or 5A991.f., or of ''software'' specially designed or modified for the ''development'', ''production'', or ''use'' of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f.

(v) 5A992 Equipment not controlled by 5A002 (see List of Items Controlled).

(vi) 5D992 ''Information Security'' ''software'' not controlled by 5D002 (see List of Items Controlled).

(6) Category 6 Sensors and Lasers

(i) 6A991 Marine or terrestrial acoustic equipment, n.e.s., capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and ''specially designed'' ''parts'' and ''components,'' n.e.s.

(ii) 6A993 Cameras, not controlled by 6A003 or 6A203 (see List of Items Controlled).

(iii) 6A995 ''Lasers'', not controlled by 6A005 or 6A205.

(iv) 6A996 ''Magnetometers'' not controlled by ECCN 6A006, ''Superconductive'' electromagnetic sensors, and ''specially designed'' ''components'' therefor, as follows (see List of Items Controlled).

(v) 6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a ''beat length'' of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by ''mole fraction.''

(7) Category 7 Navigation and Avionics

(i) 7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.

(ii) 7B994 Other equipment for the test, inspection, or ''production'' of navigation and avionics equipment.

(iii) 7D994 ''Software'', n.e.s., for the ''development'', ''production'', or ''use'' of navigation, airborne communication and other avionics.

(iv) 7E994 ''Technology'', n.e.s., for the ''development'', ''production'', or ''use'' of navigation, airborne communication, and other avionics equipment.

(8) Category 8 Marine

(i) 8A992 Vessels, marine systems or equipment, not controlled by 8A001 or 8A002, and ''specially designed'' ''parts'' and ''components'' therefor, and marine boilers and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' therefor (see List of Items Controlled).

(ii) 8D992 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 8A992.

(iii) 8E992 ''Technology'' for the ''development'', ''production'' or ''use'' of equipment controlled by 8A992.

(9) Category 9 Propulsion Systems, Space Vehicles and Related Equipment

(i) 9A991 ''Aircraft'', n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and ''parts'' and ''components,'' n.e.s. (see List of Items Controlled).

(ii) 9B990 Vibration test equipment and ''specially designed'' ''parts'' and ''components,'' n.e.s.

(iii) 9D991 ''Software'', for the ''development'' or ''production'' of equipment controlled by 9A991 or 9B991.

(iv) 9E991 ''Technology'', for the ''development'', ''production'' or ''use'' of equipment controlled by 9A991 or 9B991.

PART 758—EXPORT CLEARANCE REQUIREMENTS

■ 13. The authority citation for part 758 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 14. In § 758.1, add paragraph (b)(10) and revise paragraph (g)(3) to read as follows:

§ 758.1 The Electronic Export Information (EEI) filing to the Automated Export System (AES).

* * * * *

(b) * * *

(10) For all exports of items on the Commerce Control List to the People's Republic of China, Russia, or Venezuela, regardless of value, unless the export may be made under the exemption listed under paragraph (c)(4) of this section.

* * * * *

(g) * * *

(3) *No License Required (NLR) exports.* You must report on any required EEI filing to the AES the correct license code/license exception code when using the ''NLR'' designation for the items that are subject to the EAR but not listed on the Commerce Control List (CCL) (*i.e.,* items are designated as EAR99) (FTR license code ''C33''), and when the items to be exported are listed on the CCL but are not subject to a license requirement. In addition, you must enter the correct ECCN on any required EEI filing for all items being exported under the NLR provisions that have a reason for control other than or in addition to anti-terrorism (AT), unless the items are destined to China, Russia, or Venezuela. For items destined to China, Russia, or Venezuela, you must enter the correct ECCN on any required EEI filing regardless of reason for control.

* * * * *

PART 774—THE COMMERCE CONTROL LIST

■ 15. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Supplement No. 1 to Part 774—[Amended]

■ 16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 0, remove the reference to ''§ 742.6(a)(7)'' in ECCNs 0A521, 0B521, 0C521, 0D521, and 0E521 and add in its place ''§ 742.6(a)(8)''.

■ 17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 0, the License Requirements sections of ECCNs 0A606, 0A617, 0D606, 0D617, 0E606, and 0E617 are revised to read as follows:

0A606 GROUND VEHICLES AND RELATED COMMODITIES, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).XXXXXXXXX

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except 0A606.b and .y.	NS Column 1
NS applies to 0A606.b.	NS Column 2
RS applies to entire entry, except 0A606.b and .y.	RS Column 1
RS applies to 0A606.b.	RS Column 2
RS applies to 0A606.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0A606.y.	See § 746.1(b) for UN controls

* * * * *

0A617 MISCELLANEOUS ''EQUIPMENT,'' MATERIALS, AND RELATED COMMODITIES (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except 0A617.y.	NS Column 1
RS applies to entire entry, except 0A617.y.	RS Column 1
RS applies to 0A617.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1

Control(s)	Country chart (see Supp. No. 1 to part 738)
UN applies to entire entry, except 0A617.y	See § 764.1(b) for UN controls

* * * * *

0D606 ''SOFTWARE'' ''SPECIALLY DESIGNED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, OR MAINTENANCE OF GROUND VEHICLES AND RELATED COMMODITIES CONTROLLED BY 0A606, 0B606, OR 0C606 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except 0D606.y.	NS Column 1
RS applies to entire entry, except 0D606.y.	RS Column 1
RS applies to 0D606.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0D606.y.	See § 746.1(b) for UN controls

* * * * *

0D617 ''SOFTWARE'' ''SPECIALLY DESIGNED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, OR MAINTENANCE OF COMMODITIES CONTROLLED BY 0A617, ''EQUIPMENT'' CONTROLLED BY 0B617, OR MATERIALS CONTROLLED BY 0C617 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except 0D617.y.	NS Column 1
RS applies to entire entry, except 0D617.y.	RS Column 1
RS applies to 0D617.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0D617.y.	See § 746.1(b) for UN controls

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0E606 ''TECHNOLOGY'' ''REQUIRED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, MAINTENANCE, REPAIR, OVERHAUL, OR REFURBISHING OF GROUND VEHICLES AND RELATED COMMODITIES IN 0A606, 0B606, 0C606, OR SOFTWARE IN 0D606 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except 0E606.y.	NS Column 1
RS applies to entire entry, except 0E606.y.	RS Column 1
RS applies to 0E606.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0E606.y.	See § 746.1(b) for UN controls

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0E617 ''TECHNOLOGY'' ''REQUIRED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, MAINTENANCE, REPAIR, OVERHAUL, OR REFURBISHING OF COMMODITIES CONTROLLED BY ECCN 0A617, ''EQUIPMENT'' CONTROLLED BY 0B617, OR MATERIALS CONTROLLED BY 0C617, OR ''SOFTWARE'' CONTROLLED BY ECCN 0D617 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except 0E617.y.	NS Column 1
RS applies to entire entry, except 0E617.y.	RS Column 1
RS applies to 0E617.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0E617.y.	See § 746.1(b) for UN controls

* * * * *

■ 18. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, the License Requirements sections of ECCNs 1A613, 1D613, and 1E613 are revised to read as follows:

1A613 ARMORED AND PROTECTIVE ''EQUIPMENT'' AND RELATED COMMODITIES, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 1A613.y.	NS Column 1
RS applies to entire entry except 1A613.y.	RS Column 1
RS applies 1A613.y	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 1A613.y.	See § 746.1(b) for UN controls

* * * * *

1D613 ''SOFTWARE'' ''SPECIALLY DESIGNED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, OR MAINTENANCE OF COMMODITIES CONTROLLED BY 1A613 OR 1B613, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 1D613.y.	NS Column 1
RS applies to entire entry except 1D613.y.	RS Column 1
RS applies to 1D613.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 1D613.y.	See § 746.1(b) for UN controls

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1E613 ''TECHNOLOGY'' ''REQUIRED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, MAINTENANCE, REPAIR, OVERHAUL, OR REFURBISHING OF COMMODITIES CONTROLLED BY 1A613 OR 1B613 OR ''SOFTWARE'' CONTROLLED BY 1D613, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 1E613.y.	NS Column 1
RS applies to entire entry except 1E613.y.	RS Column 1
RS applies to 1E613.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 1E613.y.	See § 746.1(b) for UN controls

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■ 19. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, the License Requirements sections of ECCNs 3A611, 3D611, and 3E611 are revised to read as follows:

3A611 MILITARY ELECTRONICS, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 3A611.y.	NS Column 1
RS applies to entire entry except 3A611.y.	RS Column 1
RS applies to 3A611.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 3A611.y.	See § 746.1(b) for UN controls

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3D611 ''SOFTWARE'' ''SPECIALLY DESIGNED'' FOR MILITARY ELECTRONICS, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 3D611.y.	NS Column 1
RS applies to entire entry except 3D611.y.	RS Column 1
RS applies to 3D611.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 3D611.y.	See § 746.1(b) for UN controls

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3E611 ''TECHNOLOGY'' ''REQUIRED'' FOR MILITARY ELECTRONICS, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 3E611.y.	NS Column 1
RS applies to entire entry except 3E611.y.	RS Column 1
RS applies to 3E611.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 3E611.y.	See § 746.1(b) for UN controls

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■ 20. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, the License Requirements sections of ECCNs 7A611, 7D611, and 7E611 are revised to read as follows:

7A611 MILITARY FIRE CONTROL, LASER, IMAGING, AND GUIDANCE EQUIPMENT, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, MT, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 7A611.y.	NS Column 1
MT applies to commodities in 7A611.a that meet or exceed the parameters in 7A103.b or .c.	MT Column 1
RS applies to entire entry except 7A611.y.	RS Column 1
RS applies to 7A611.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 7A611.y.	See § 746.1(b) for UN controls

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7D611 ''SOFTWARE'' ''SPECIALLY DESIGNED'' FOR COMMODITIES CONTROLLED BY 7A611 OR EQUIPMENT CONTROLLED BY 7B611, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, MT, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 7D611.y.	NS Column 1
MT applies to 7D611.a ''software'' ''specially designed'' for 7A611.a commodities controlled for MT reasons.	MT Column 1
RS applies to entire entry except 7D611.y.	RS Column 1
RS applies to 7D611.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 7D611.y.	See § 746.1(b) for UN controls

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7E611 ''TECHNOLOGY'' ''REQUIRED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, MAINTENANCE, REPAIR, OVERHAUL OR REFURBISHING OF COMMODITIES CONTROLLED BY 7A611, COMMODITIES CONTROLLED BY 7B611, OR SOFTWARE CONTROLLED BY 7D611, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, MT, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 7E611.y.	NS Column 1
MT applies to ''technology'' in 7E611.a if ''required'' for items controlled for MT reasons in 7A611.a, 7B611.a, or 7D611.a.	MT Column 1
RS applies to entire entry except 7E611.y.	RS Column 1
RS applies to 7E611.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 7E611.y.	See § 746.1(b) for UN controls

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■ 21. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 8, the License Requirements sections of ECCNs 8A609, 8A620, 8D609, 8D620, 8E609, and 8E620 are revised to read as follows:

8A609 SURFACE VESSELS OF WAR AND RELATED COMMODITIES (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except 8A609.y.	NS Column 1
RS applies to entire entry, except 8A609.y.	RS Column 1

Control(s)	Country chart (see Supp. No. 1 to part 738)
RS applies to 8A609.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8A609.y.	See § 746.1(b) for UN controls

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8A620 SUBMERSIBLE VESSELS, OCEANOGRAPHIC AND ASSOCIATED COMMODITIES (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except 8A620. b and .y.	NS Column 1
RS applies to entire entry, except 8A620.y.	RS Column 1
RS applies to 8A620.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8A620.y.	See § 746.1(b) for UN controls

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8D609 ''SOFTWARE'' ''SPECIALLY DESIGNED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION OR MAINTENANCE OF COMMODITIES CONTROLLED BY 8A609, 8B609, OR 8C609 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except 8D609.y.	NS Column 1
RS applies to entire entry, except 8D609.y.	RS Column 1
RS applies to 8D609.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8D609.y.	See § 746.1(b) for UN controls

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8D620 ''SOFTWARE'' ''SPECIALLY DESIGNED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, OR MAINTENANCE OF COMMODITIES CONTROLLED BY 8A620 OR 8B620 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except 8D620.b and .y.	NS Column 1
RS applies to entire entry, except 8D620.y.	RS Column 1
RS applies to 8D620.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8D620.y.	See § 746.1(b) for UN controls

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8E609 ''TECHNOLOGY'' ''REQUIRED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, MAINTENANCE, REPAIR, OVERHAUL, OR REFURBISHING OF COMMODITIES CONTROLLED BY 8A609, 8B609, OR 8C609, OR ''SOFTWARE'' CONTROLLED BY 8D609 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: **NS, RS, AT, UN**

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except 8E609.y.	NS Column 1
RS applies to entire entry, except 8E609.y.	RS Column 1
RS applies to 8E609.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8E609.y.	See § 746.1(b) for UN controls

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8E620 ''TECHNOLOGY'' ''REQUIRED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, MAINTENANCE, REPAIR, OVERHAUL, OR REFURBISHING OF COMMODITIES CONTROLLED BY 8A620 OR 8B620, OR ''SOFTWARE'' CONTROLLED BY 8D620 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except 8E620.b and .y.	NS Column 1
RS applies to entire entry, except 8E620.y.	RS Column 1
RS applies to 8E620.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8E620.y.	See § 746.1(b) for UN controls

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■ 22. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, remove the reference to ''§ 742.6(a)(8)'' in the License Requirement Notes in ECCNs 9A515 and 9E515 and add in its place ''§ 742.6(a)(9)''.

■ 23. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, the License Requirements sections of ECCNs 9A515, 9D515, 9E515, 9A610, 9A619, 9B619, 9D610, 9D619, 9E610, and 9E619 are revised to read as follows:

9A515 ''SPACECRAFT'' AND RELATED COMMODITIES, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except .e and .y.	NS Column 1
RS applies to entire entry, except .e and .y.	RS Column 1
RS applies to 9A515.e.	RS Column 2
RS applies to 9A515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia, or Venezuela (see § 742.6(a)(7))
MT applies to microcircuits in 9A515.d and 9A515.e.2 when ''usable in'' ''missiles'' for protecting ''missiles'' against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). MT also applies to 9A515.h when the total impulse capacity is equal to or greater than 8.41x10∧5 newton seconds.	MT Column 1
AT applies to entire entry.	AT Column 1

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9D515 ''SOFTWARE'' ''SPECIALLY DESIGNED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, MAINTENANCE, REPAIR, OVERHAUL, OR REFURBISHING OF ''SPACECRAFT'' AND RELATED COMMODITIES, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 9D515.y..	NS Column 1
RS applies to entire entry except 9D515.y..	RS Column 1
RS applies to 9D515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1

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9E515 ''TECHNOLOGY'' ''REQUIRED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, REPAIR, OVERHAUL, OR REFURBISHING OF ''SPACECRAFT'' AND RELATED COMMODITIES, AS FOLLOWS (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 9E515.y.	NS Column 1
MT applies to technology for items in 9A515.d, 9A515.e.2, and 9B515.a controlled for MT reasons.	MT Column 1
RS applies to entire entry except 9E515.y.	RS Column 1
RS applies to 9E515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1

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9A610 MILITARY AIRCRAFT AND RELATED COMMODITIES, OTHER THAN THOSE ENUMERATED IN 9A991.A (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except:. 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y.	NS Column 1
RS applies to entire entry except:. 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y.	RS Column 1
RS applies to 9A610.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
MT applies to 9A610.t, .u, .v, and .w.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A610.y.	See § 746.1(b) for UN controls

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9A619 MILITARY GAS TURBINE ENGINES AND RELATED COMMODITIES (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 9A619.y.	NS Column 1
RS applies to entire entry except 9A619.y.	RS Column 1
RS applies to 9A619.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A619.y.	See § 746.1(b) for UN controls

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9B619 TEST, INSPECTION, AND PRODUCTION ''EQUIPMENT'' AND RELATED COMMODITIES ''SPECIALLY DESIGNED'' FOR THE ''DEVELOPMENT'' OR ''PRODUCTION'' OF COMMODITIES ENUMERATED OR OTHERWISE DESCRIBED IN ECCN 9A619 OR USML CATEGORY XIX (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 9B619.y.	NS Column 1
RS applies to entire entry except 9B619.y.	RS Column 1
RS applies to 9B619.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9B619.y.	See § 746.1(b) for UN controls

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9D610 SOFTWARE ''SPECIALLY DESIGNED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, OR MAINTENANCE OF MILITARY AIRCRAFT AND RELATED COMMODITIES CONTROLLED BY 9A610, EQUIPMENT CONTROLLED BY 9B610, OR MATERIALS CONTROLLED BY 9C610 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 9D610.y.	NS Column 1
MT applies to software "specially designed" for the operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled for MT reasons in 9A610 or 9B610.	MT Column 1
RS applies to entire entry except 9D610.y.	RS Column 1
RS applies to 9D610.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9D610.y.	See § 746.1(b) for UN controls

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9D619 SOFTWARE ''SPECIALLY DESIGNED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION OR MAINTENANCE OF MILITARY GAS TURBINE ENGINES AND RELATED COMMODITIES CONTROLLED BY 9A619, EQUIPMENT CONTROLLED BY 9B619, OR MATERIALS CONTROLLED BY 9C619 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry except 9D619.y.	NS Column 1
RS applies to entire entry except 9D619.y.	RS Column 1
RS applies to 9D619.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9D619.y.	See § 746.1(b) for UN controls

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9E610 TECHNOLOGY ''REQUIRED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, MAINTENANCE, REPAIR, OVERHAUL, OR REFURBISHING OF MILITARY AIRCRAFT AND RELATED COMMODITIES CONTROLLED BY 9A610, EQUIPMENT CONTROLLED BY 9B610, MATERIALS CONTROLLED BY 9C610, OR SOFTWARE CONTROLLED BY 9D610 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry except 9E610.y.	NS Column 1
RS applies to entire entry except 9E610.y.	RS Column 1
RS applies to 9E610.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
MT applies to ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled for MT reasons in 9A610, 9B610, or 9D610 for MT reasons.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9E610.y.	See § 746.1(b) for UN controls

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9E619 ''TECHNOLOGY'' ''REQUIRED'' FOR THE ''DEVELOPMENT,'' ''PRODUCTION,'' OPERATION, INSTALLATION, MAINTENANCE, REPAIR, OVERHAUL, OR REFURBISHING OF MILITARY GAS TURBINE ENGINES AND RELATED COMMODITIES CONTROLLED BY 9A619, EQUIPMENT CONTROLLED BY 9B619, MATERIALS CONTROLLED BY 9C619, OR SOFTWARE CONTROLLED BY 9D619 (SEE LIST OF ITEMS CONTROLLED).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry except 9E619.y.	NS Column 1
RS applies to entire entry except 9E619.y.	RS Column 1
RS applies to 9E619.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9E619.y.	See § 746.1(b) for UN controls

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–07241 Filed 4–27–20; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 774

[Docket No. 190513446–9446–01]

RIN 0694–AH84

Elimination of License Exception Civil End Users (CIV)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by removing License Exception Civil End Users (CIV) and requiring a license for national security-controlled items on the Commerce Control List (CCL) to countries of national security concern. This will advance U.S. national security interests by allowing U.S. government review of these transactions to these countries prior to export, reexport or transfer (in-country) in accordance with current licensing policy for national security-controlled items on the CCL. This rule also makes conforming changes to the CCL by removing the CIV paragraph from each Export Control Classification Number on the CCL where it appears.

DATES: This rule is effective June 29, 2020.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092 or by email at *eileen.albanese@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce's Bureau of Industry and Security (BIS) administers U.S. laws, regulations and policies governing the export, reexport, and transfer (in-country) of commodities, software, and technology (collectively ''items'') falling under the jurisdiction of the Export Administration Regulations (EAR) (15 CFR, subchapter C, parts 730 through 774). The primary goal of this effort is to advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership. Items subject to the EAR may require a license or other type of authorization prior to export, reexport, or transfer (in-country).

An export license exception is an authorization allowing export, re-export, or transfer (in-country) under stated conditions, of items subject to the EAR otherwise requiring a license. Because there are a number of circumstances under which a license exception may replace the need for a license, there are several types of license exceptions. A description of each of the license exception types, as well as information regarding license exceptions more generally, can be found in 15 CFR part 740, which is available at *https://www.bis.doc.gov/index.php/documents/regulations-docs/2341-740-2/file.*

As described in 15 CFR part 736, transactions involving items subject to the EAR must abide by 10 general prohibitions. Obligations under the ten general prohibitions rely largely on knowledge of the details of a transaction, including the classification and destination of the item as well as the end-user and end-use of the item. The EAR contains a definition of ''knowledge'' and its variants ''know'', ''reason to know'', or ''reason to believe'' in part 772.

Removal of License Exception CIV (§ 740.5 Civil End Users)

In this final rule, BIS is removing License Exception Civil End-Users (CIV) (§ 740.5 of the EAR), which authorized exports, reexports, and transfers (in-country) of certain national security-controlled items, without prior review by BIS provided the exception's criteria were met, to most civil end users for civil end uses in Country Group D:1. As

set forth in Supplement No. 1 to part 740 of the EAR, countries listed in Country Group D:1 are of concern for national security reasons. To advance the objectives discussed in the Administration's National Security Strategy released in December 2017 available on *www.whitehouse.gov* as well as address the challenges discussed in the Administration's National Defense Strategy released in January 2018 at *https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf,* BIS is removing License Exception CIV due to the increasing integration of civilian and military technology development in these countries of concern.

BIS acknowledges many countries seek to align civil and defense technology development for many reasons—to achieve greater efficiency, innovation, and growth. This can present an economic challenge to nations that export high-tech products, including the United States, as individual country goals could also directly support military modernization goals contrary to U.S. national security or foreign policy interests. This integration also makes it more difficult for industry to know or determine whether the end use and end users of items proposed for export, reexport or transfer (in-country) will not be or are not intended for military uses or military end users. BIS is making this determination based on the following data:

- An evaluation of export data from current CIV end-users,
- publicly available strategies of D:1 countries currently implementing civil-military integration strategies to obscure U.S. exporters from easily determining if a national-security controlled item will not be or is not intended to be exported, reexported or transferred (in-country) to military uses or military end users, and
- U.S. Government enforcement actions identifying diversion of U.S.-origin items to military end uses and military end users by purported civil end users in these countries.

Based on the above discussion, and in line with the objectives discussed in the National Security Strategy and National Defense Strategy, BIS has determined that transactions involving the national security-controlled items currently permitted under CIV should be reviewed by the U.S. Government prior to export, reexport or transfer (in-country). By removing License Exception CIV and requiring a license for national security-controlled items to Country Group D:1 destinations, U.S. national security interests are maintained as the Government will then review each transaction prior to export in accordance with the licensing policy set forth in § 742.4(b) of the EAR.

Changes To Conform the CCL for the Removal of License Exception CIV

This final rule makes conforming changes to Supplement No. 1 to part 774 (the Commerce Control List). The Commerce Control List identifies controlled items by Export Control Classification Number (ECCN). An ECCN is typically made up of four sections, including a section for the list-based license exceptions, which, where applicable, provide eligibility for the ECCN-driven License Exceptions. As a conforming change to the removal of License Exception CIV, this final rule by amendatory instruction removes the CIV paragraph from the List-Based License Exceptions section wherever it appears in ECCNs on the CCL.

Export Control Reform Act of 2018

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

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866.

2. This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. As described in this rule and consistent with the Administration's National Security Strategy and National Defense Strategy, removing and modifying the license exception CIV for D:1 countries would enhance United States' national security by reducing the risk that exports, reexports, and transfers (in-country) of items subject to the EAR could be diverted and contribute to the military capability of countries of concern. Review of these transactions before completion enhances the Government's visibility in this area and mitigates the risk associated with certain items on the CCL being used contrary to U.S. national security interests. Thus, the cost-benefit analysis required pursuant to Executive Orders 13563 and 12866 indicate this rule is intended to improve national security as its primary direct benefit. Accordingly, this rule meets the requirements set forth in the April 5, 2017, Office of Management and Budget (OMB) guidance implementing E.O. 13771 (82 FR 9339, February 3, 2017), regarding what constitutes a regulation issued ''with respect to a national security function of the United States,'' and it is, therefore, exempt from the requirements of E.O. 13771.

3. Notwithstanding any other provision of law, no person is required to respond to, nor may be made subject to a penalty for failure to comply, with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 42.5 minutes for a manual or electronic submission.

BIS expects the total burden hours associated with this collection to increase. BIS notes for the purposes of

discussing change in burden that exports can be more than physical overseas shipments of commodities. Exports may be either ''tangible'' or ''intangible''. Tangible items can be exported by ship or aircraft, sent by post or courier, or carried in checked-in or hand-held luggage. They can include technology stored on a physical medium such as a USB or computer hard drive or in the form of blueprints, diagrams, or notes. An ''intangible export'' occurs when a person in the U.S. releases or transfers controlled technology by to a foreign person verbally or electronic means by email, fax, telephone, video conferencing, or providing access to electronic files that contain technology.

Tangible shipments that were previously authorized for export, reexport or transfer (in-country) under License Exception CIV will require a license or other license authorization under the EAR. BIS expects the burden hours on these tangible transactions to increase but anticipates a limited impact based on evaluation of current export data regarding CIV usage and the fact that once issued, BIS licenses typically have a four-year validity period and may include prospective sales. Additionally, while BIS recognizes that there may be increased burden hours relating to the intangible exports, as well as the tangible and intangible re-exports and in-country transfers currently authorized by License Exception CIV, there is no readily available data at this time to estimate the increase as there are no filing requirements for these types of transactions. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

5. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C 4801–4852, at 4821), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232, 132 Stat. 1636), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

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

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 740 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

§ 740.5 [Removed and Reserved]

■ 2. Remove and reserve § 740.5.

PART 774—[AMENDED]

■ 3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Supplement No. 1 to Part 774 [Amended]

■ 4. In Supplement No. 1 to part 774, remove the CIV paragraph from the List-based License Exceptions section in the following ECCNs: 0A018, 0A501, 0A502, 0A503, 0A504, 0A505, 0A602, 0A604, 0A606, 0A614, 0A617, 0A919, 0A978, 0A979, 0A981, 0A982, 0A983, 0A998, 0A999, 0B501, 0B505, 0B602, 0B604, 0B606, 0B614, 0B617, 0B999, 0C606, 0C617, 0D001, 0D501, 0D505, 0D602, 0D604, 0D606, 0D614, 0D617, 0D999, 0E001, 0E501, 0E502, 0E504, 0E505, 0E602, 0E604, 0E606, 0E614, 0E617, 0E982, 1A001, 1A002, 1A003, 1A004, 1A005, 1A006, 1A007, 1A008, 1A101, 1A202, 1A225, 1A226, 1A227, 1A231, 1A290, 1A607, 1A613, 1A984, 1A985, 1A995, 1A999, 1B001, 1B002, 1B003, 1B018, 1B101, 1B102, 1B115, 1B116, 1B117, 1B118, 1B119, 1B201, 1B225, 1B226, 1B228, 1B229, 1B230, 1B231, 1B232, 1B233, 1B234, 1B607, 1B608, 1B613, 1B999, 1C001, 1C002, 1C003, 1C004, 1C005, 1C006, 1C007, 1C008, 1C009, 1C010, 1C011, 1C101, 1C107, 1C111, 1C116, 1C117, 1C118, 1C202, 1C210, 1C216, 1C225, 1C226, 1C227, 1C228, 1C229, 1C230, 1C231, 1C232, 1C233, 1C234, 1C235, 1C236, 1C237, 1C239, 1C240, 1C241, 1C298, 1C350, 1C351, 1C353, 1C354, 1C355, 1C395, 1C607, 1C608, 1C990, 1C991, 1C992, 1C995, 1C996, 1C997, 1C998, 1C999, 1D001, 1D002, 1D003, 1D018, 1D101, 1D103, 1D201, 1D390, 1D607, 1D608, 1D613, 1D993, 1D999, 1E001, 1E002, 1E101, 1E102, 1E103, 1E104, 1E201, 1E202, 1E203, 1E350, 1E351, 1E355, 1E607, 1E608, 1E613, 1E994, 1E998, 2A001, 2A101, 2A225, 2A226, 2A290, 2A291, 2A983, 2A984, 2A991, 2A992, 2A993, 2A994, 2A999, 2B001, 2B002, 2B003, 2B004, 2B005, 2B006, 2B007, 2B008, 2B009, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119, 2B120, 2B121, 2B122, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225, 2B226, 2B227, 2B228, 2B229, 2B230, 2B231, 2B232, 2B233, 2B350, 2B351, 2B352, 2B991, 2B992, 2B993, 2B996, 2B997, 2B998, 2B999, 2D001, 2D002, 2D003, 2D101, 2D201, 2D202, 2D290, 2D351, 2D983, 2D984, 2D991, 2D992, 2D993, 2D994, 2E001, 2E002, 2E003, 2E018, 2E101, 2E201, 2E290, 2E301, 2E983, 2E984, 2E991, 2E993, 2E994, 3A001, 3A002, 3A003, 3A101, 3A201, 3A225, 3A226, 3A227, 3A228, 3A229, 3A230, 3A231, 3A232, 3A233, 3A234, 3A611, 3A980, 3A981, 3A991, 3A992, 3A999, 3B001, 3B002, 3B611, 3B991, 3B992, 3C001, 3C002, 3C003, 3C004, 3C005, 3C006, 3C992, 3D001, 3D002, 3D003, 3D004, 3D005, 3D101, 3D201, 3D202, 3D611, 3D980, 3D991, 3E001, 3E002, 3E003, 3E101, 3E102, 3E201, 3E202, 3E611, 3E980, 3E991, 4A001, 4A003, 4A004, 4A101, 4A980, 4A994, 4D001, 4D980, 4D993, 4D994, 4E001, 4E980, 4E992, 4E993, 5A001, 5A101, 5A980, 5A991, 5B001, 5B991, 5C991, 5D001, 5D101, 5D980, 5D991, 5E001, 5E101, 5E980, 5E991, 5A002, 5A992, 5A003, 5A004, 5B002, 5D002, 5D992, 5E002, 5E992, 6A001, 6A002, 6A003, 6A004, 6A005, 6A006, 6A007, 6A008, 6A102, 6A107, 6A108, 6A202, 6A203, 6A205, 6A225, 6A226, 6A991, 6A992, 6A993, 6A994, 6A995, 6A996, 6A997, 6A998, 6A999, 6B004, 6B007, 6B008, 6B108, 6B619, 6B995, 6C002, 6C004, 6C005, 6C992, 6C994, 6D001, 6D002, 6D003, 6D102, 6D103, 6D201, 6D619, 6D991, 6D992, 6D993, 6E001, 6E002, 6E003, 6E101, 6E201, 6E202, 6E619, 6E991, 6E992, 6E993, 7A001, 7A002, 7A003, 7A004, 7A005, 7A006, 7A008, 7A101, 7A102,

7A103, 7A104, 7A105, 7A107, 7A116, 7A611, 7A994, 7B001, 7B002, 7B003, 7B101, 7B102, 7B611, 7B994, 7D001, 7D002, 7D003, 7D004, 7D005, 7D101, 7D102, 7D611, 7D994, 7E001, 7E002, 7E003, 7E004, 7E101, 7E102, 7E611, 7E994, 8A001, 8A002, 8A609, 8A620, 8A992, 8B001, 8B609, 8B620, 8C001, 8C609, 8D001, 8D002, 8D609, 8D620, 8D992, 8D999, 8E001, 8E002, 8E609, 8E620, 8E992, 9A001, 9A002, 9A003, 9A004, 9A012, 9A101, 9A102, 9A106, 9A110, 9A115, 9A120, 9A515, 9A604, 9A610, 9A619, 9A620, 9A980, 9A990, 9A991, 9A992, 9B001, 9B002, 9B003, 9B004, 9B005, 9B006, 9B007, 9B008, 9B009, 9B010, 9B104, 9B105, 9B106, 9B115, 9B116, 9B117, 9B515, 9B604, 9B610, 9B619, 9B620, 9B990, 9B991, 9C110, 9C610, 9C619, 9D001, 9D002, 9D003, 9D004, 9D101, 9D104, 9D515, 9D604, 9D610, 9D619, 9D620, 9D990, 9D991, 9E001, 9E002, 9E003, 9E101, 9E102, 9E515, 9E604, 9E610, 9E619, 9E620, 9E990, 9E991, *and* 9E993.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–07240 Filed 4–27–20; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 114

[Docket ID: DOD–2014–OS–0131]

RIN 0790–AJ31

Victim and Witness Assistance

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), DoD.

ACTION: Final rule.

SUMMARY: This final rule adds a part to the Code of Federal Regulations which assists victims and witnesses of alleged crimes committed in violation of the Uniform Code of Military Justice (UCMJ), and discusses the rights of crime victims under the UCMJ which are more extensive than those of witnesses. The rule also describes notification and assistance available to victims and witnesses of crime from initial contact with the local responsible official, law enforcement officer, or criminal investigation officer through the investigation of the crime and the prosecution, acquittal or confinement, and release of the accused. Finally, the rule includes annual reporting requirements for assistance provided across the DoD to victims of and witnesses to sex-related crime, and legal assistance for sex-related crime victims.

DATES: This rule is effective on May 28, 2020.

FOR FURTHER INFORMATION CONTACT: Lt Col Ryan A. Hendricks, Office of Legal Policy, 703–571–9301.

SUPPLEMENTARY INFORMATION:

Background

The Military Services are required to provide legal counsel, known as Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC), to assist victims of alleged sex-related offenses under Articles 120, 120a, 120b, 120c, and 125 of the UCMJ, to include victims of alleged attempts to commit the enumerated offenses, who are eligible for legal assistance. The Military Services are also required to establish a special victim capability comprised of specially trained criminal investigators, judge advocates, paralegals, and victim/witness assistance personnel to support victims of covered special victim offenses. To de-conflict with victims' counsel programs, this distinct group of recognizable professionals will be referred to, at the DoD level, as the ''Special Victim Investigation and Prosecution (SVIP)'' capability.

Authority

This rule implements all of the following requirements under law: 10 U.S.C. chapter 47, the UCMJ; 10 U.S.C. 1034, 1044, 1044e 1058, 1059, and 1408; 18 U.S.C. 1514; and section 573 of Public Law 112–239, requiring the Military Services to establish a special victim capability comprised of specially trained investigators, judge advocates, paralegals, and victim witness assistance personnel to support victims of covered alleged offenses. Sections 1701 and 1716 of Public Law 113–66 strengthened the rights of victims of alleged crimes committed under the UCMJ, and provided for the designation of SVC/VLC for victims of covered offenses. Section 533 of Public Law 113–291 extended eligibility for SVC/VLC services to members of a reserve component of the armed forces.

Major Provisions of the Regulatory Action

This rule describes the responsibilities that the USD(P&R), Inspector General of the Department of Defense, and other DoD component heads have when dealing with the procedures described in the regulatory text. The rule also discusses procedures involving local responsible officials, comprehensive information and services to be provided to victims and witnesses, SVIP capability, legal assistance for crime victims, and special victims' counsel programs.

This regulation: (1) Provides a complete victim and witness assistance policy, to ensure the consistent and effective management of DoD victim and witness assistance programs operated by DoD Components. The final rule implements statutory requirements for the DoD victim assistance programs. It revises the rights for crime victims of alleged offenses committed under the UCMJ, requires the Military Services to create enforcement mechanisms, provides for legal assistance for crime victims entitled to legal services, requires that Military Services provide SVC/VLC to assist victims of covered alleged offenses, and further implements the SVIP capability, which provides enhanced support to victims of sexual assault, serious domestic violence, and child abuse alleged offenses. VWAP provides guidance for assisting victims and witnesses of alleged crimes from initial contact through investigation, prosecution, confinement, and release, until the victim specifies to the local responsible official that he or she no longer requires or desires services. Particular attention is paid to victims of serious and violent alleged crimes, including child abuse, domestic violence, and sexual assault.

(2) Strengthens the rights of crime victims in the military justice system and requires the establishment mechanisms for enforcement of these rights in each Military Department, in accordance with section 1701 of Public Law 113–66. These provisions ensure victims have a right to be reasonably heard at public hearings concerning the continuation of confinement before the trial of the accused, preliminary hearings under section 832 (Article 32) of the UCMJ, and court-martial proceedings relating to the Military Rules of Evidence (M.R.E.) 412, 513, and 514 of the Manual for Courts-Martial (MCM) (available at *http://www.apd.army.mil/pdffiles/mcm.pdf*) and that all victims are treated with fairness and respect for their dignity and privacy.

(3) Orients victims and witnesses to the military justice system, about the military criminal justice process, on the role of the victim or witness in the process, and how the victim or witness can obtain additional information concerning the process and the case.

(4) Provides for timely notification of information and assistance available to victims and witnesses of alleged crimes from initial contact through investigation, prosecution, and confinement.

(5) Enables victims to confer with the attorney for the U.S. Government in the case before preliminary and trial proceedings, and to express their views to the commander or convening authority as to disposition of the case.

(6) Assists victims with prompt return of personal property held as evidence during a military criminal investigation and court-martial.

(7) Provides eligible victims and military families with access to transitional compensation in accordance with Federal law and 32 CFR part 111, ''Transitional Compensation for Abused Dependents.'' Internal DoD policy related to that program is contained in DoD Instruction 1342.24 of the same name (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/134224p.pdf*).

(8) Ensures victims are aware of procedures to receive restitution as provided in accordance with State, local, and Federal crime victims' funds, and the procedures for applying for such funds. Restitution may also be available from, or offered by, an accused as a condition in the terms of a pretrial agreement, during the sentencing process, or as a part of post-trial clemency requests under Rule for Courts-Martial 1105, of the MCM. Under Article 139, UCMJ, victims may also be provided with relief if the property loss or damage resulted from wrongful taking or willful damage by a member of the Armed Forces due to riotous, violent, or disorderly conduct.

(9) Mandates compliance with DoD standards for victim assistance services in the military community established in DoD Instruction 6400.07 ''Standards for Victim Assistance Services in the Military Community,'' November 25, 2013, as revised (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640007p.pdf?ver=2018-07-06-073608-400*).

(10) Provides that crime victims who are entitled to military legal assistance under sections 1044 and 1044e of title 10, U.S.C., and as further prescribed by the Military Departments and National Guard Bureau policies, may consult with a military legal assistance attorney.

(11) Provides legal counsel, known as Special Victims' Counsel or Victims' Legal Counsel (SVC/VLC), to assist victims of alleged sex-related offenses in violation of Articles 120, 120a, 120b, 120c, and 125 (before January 1, 2019) of the UCMJ, and attempts to commit any of these offenses under Article 80 of the UCMJ, regardless of whether the report of the offense is restricted or unrestricted. Individuals entitled to SVC/VLC representation include any of the following:

(a) Individuals eligible for military legal assistance under sections 1044 and 1044e of title 10, U.S.C., and as further prescribed by the Military Departments' and National Guard Bureau policies.

(b) Members of a reserve component of the armed forces, in accordance with section 533 of the National Defense Authorization Act for Fiscal Year 2015, and as further prescribed by the Military Departments and National Guard Bureau policies.

(12) Establishes a SVIP capability in each Military Service comprised of specially trained criminal investigators, judge advocates, paralegals, and victim and witness assistance personnel to work with specially trained military criminal investigators to support victims of alleged adult sexual assault, domestic violence, and child abuse. To de-conflict with the names of SVC/VLC programs, this distinct group of recognizable professionals will be referred to as SVIP at the DoD level. Ensures SVIP training programs meet established DoD and Military Service standards for special prosecutors, paralegals, VWAP coordinators and providers, and legal support personnel.

(13) Establishes local Victim and Witness Assistance Councils, when practicable, at each military installation, to ensure victim and witness service providers follow an interdisciplinary approach. This will ensure effective coordination between VWAP coordinators and DoD personnel providing related services, including sexual assault prevention and response coordinators, family advocacy personnel, military treatment facility health care providers and emergency room personnel, family service center personnel, chaplains, military equal opportunity personnel, judge advocates, SVC/VLCs, unit commanding officers, corrections personnel, and other persons designated by the Secretaries of the Military Departments.

(14) Maintains annual reporting requirements on assistance provided across the DoD to victims and witnesses of alleged crimes, which will be provided to the Department of Justice Office of Victims of Crime and the Bureau of Justice Statistics.

Comments and Responses

On May 22, 2015, the Department of Defense published a proposed rule titled ''Victim and Witness Assistance'' (80 FR 29571–29582) for a 60-day public comment period. This section addresses the three public comments received. No changes were made to the rule based on public comment.

Comment: Two respondents argued for extension of legal assistance to civilian victims with no military connection to ensure all victims can enforce their rights in the military justice process, not just those eligible for Special Victims' Counsel/Victims' Legal Counsel (SVC\VLC).

Response: Congress amended 10 U.S.C. 1044e in the National Defense Authorization Act for Fiscal Year 2016 (section 532, Pub. L. 114–92) to specifically authorize Military Departments to provide civilian employees of the Department, who are victims of a sex-related offense, with SVC services. The proposed rule included the eligibility of civilian employees to receive SVC/VLC services at § 114.6, paragraph (d)(i), because they are eligible under 10 U.S.C. 1044e. This content is located in this final rule at § 114.6, paragraph (e)(i) due to the correction of a formatting error in the proposed rule.

Comment: One respondent suggested amending the policy statement in § 114.4, paragraph (c) to require each DoD Component to provide particular attention and support to victims of ''serious or violent crimes'' instead of ''serious, violent crimes.'' The respondent expressed concern that victims of serious financial crimes suffer grave harm and should be afforded the same basic rights of notification as other violent crimes. The respondent further recommended expressly including stalking as a crime and requested DoD require training on the dynamics and impact of stalking.

Response: The rights of victims and witnesses are generally the same except that sexual assault victims have been granted some additional rights in recent years. Financial crime victims, therefore, have the same rights as other non-sexual assault victims. The list of training requirements is also not exhaustive and stalking could be included within the training on sexual assaults, domestic violence, or in the section on identifying safety concerns and specific needs of a victim. No changes were made to the rule text because the Department believes this rule sets minimum standards and permits the Military Departments some flexibility to tailor training as needed to maximize effectiveness for target populations and locations.

Comment: One respondent called for dedicated Victim-Witness Liaisons (VWLs) in each prosecution office in order to relieve over-burdened prosecutors from VWL duties.

Response: The Department believes the Military Departments are well-suited

to determine the best allocation of their resources to fulfill requirements.

Comment: One respondent requested clarification on the interaction between the Freedom of Information Act and the Privacy Act, and specific identification of what documents may be provided to victims.

Response: The comment is too broad and encompasses too many variable possibilities to provide a narrow answer. The Department prioritizes protecting personally identifying information, and/or sensitive personal information. However, the Department shall comply with the established law under both the Freedom of Information Act and the Privacy Act in responding to requests for information related to the former. Additional information about the Department's implementation of the Freedom of Information Act is available at 32 CFR part 286, and its implementation of the Privacy Act is available at 32 CFR part 310.

Comment: One respondent expressed concern that the forms referenced in this policy blur the rights of victims and witnesses and insufficiently distinguish trial rights from those that may exist in administrative forums.

Response: The Department appreciates this feedback on the forms and will consider it when the forms are next revised.

Comment: One respondent requested further guidance on designations of guardians when there are no appropriate family members to be designated.

Response: The Department believes the final rule provides sufficient guidance and considerations for the appropriate designations of guardians. This guidance can be found in § 114.6(c)(11)(ii) of this final rule.

Additional Edits

Following further coordination within the Department of Defense, edits were made to correct citations, clarify provisions, improve the accuracy of the sample letter in Figure 1, and harmonize the rule with the following Department of Defense Forms: DD Form 2701, ''Initial Information for Victims and Witnesses of Crime'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2701.pdf*); DD Form 2702, ''Court-Martial Information for Victims and Witnesses of Crime (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2702.pdf*); DD Form 2703, ''Post-Trial Information for Victims and Witnesses of Crime'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2703.pdf*); DD Form 2704, ''Victim/Witness Certification and Election Concerning Prisoner Status'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2704.pdf*); DD Form 2704–1, ''Victim Election of Post-Trial Rights'' (one finalized, will be made available at *https://www.esd.whs.mil/Directives/forms/dd2500_2999/*); DD Form 2705, ''Notification to Victim/Witness of Prisoner Status'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2705.pdf*); and DD Form 2706, ''Annual Report on Victim and Witness Assistance'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2706.pdf*).

Additional edits to the provision regarding who can assume the rights of a victim who is under 18 years of age, incompetent, incapacitated, or deceased were made to comply with the National Defense Authorization Act (NDAA) for Fiscal Year 2017 (section 5105, Pub. L. 114–328). Previously, NDAA Fiscal Year 2015 language required a military judge to make such a designation even if a civilian judge already made a legal designation, or if there are already legal guardians and no one disputes who should act for the victim. The NDAA Fiscal Year 2017 language removes the requirement of the military judge designation, and § 114.6(c)(11) was edited to remove text relating to the military judge.

Section 114.6(b)(1), ''Rights of crime victims,'' was also amended to include additional victims' rights provided by 18 U.S.C. 3772 and page 758 of the NDAA Fiscal Year 2015. These rights pertain to medical forensic examinations, sexual assault evidence collection kits, and the victim's preference for whether prosecution occurs in a military or civilian court. Publishing these amendments for public comment is impracticable, unnecessary, and contrary to public interest because the amendments are based upon a decision made by Congress which DoD has no discretion to alter or expand upon.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action,'' under Section 3(f) of E.O. 12866 and was reviewed by the Office of Management and Budget.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

The rule is not expected to be an E.O. 13771 regulatory action, because it is not significant under E.O. 12866.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended 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. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520) applies to collections of information using

identical questions posed to, or reporting or recordkeeping requirements imposed on, ten or more members of the public. This rule does not impose requirements under the PRA.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 114

Child welfare, Military law, Uniform Code of Military Justice.

■ Accordingly, 32 CFR part 114 is added to read as follows:

PART 114—VICTIM AND WITNESS ASSISTANCE

Sec.
114.1 Purpose.
114.2 Applicability.
114.3 Definitions.
114.4 Policy.
114.5 Responsibilities.
114.6 Procedures.

Authority: 10 U.S.C. chapter 47; 10 U.S.C. 113, 1034, 1044, 1044e, 1058, 1059, and 1408; 18 U.S.C. 1512 through 1514; section 573 of Pub. L. 112–239, 126 Stat. 1632; sections 1701 and 1706 of Pub. L. 113–66, 127 Stat. 672; and section 533 of Pub. L. 113–291, 128 Stat. 3292.

§ 114.1 Purpose.

This part:

(a) Establishes policy, assigns responsibilities, and prescribes procedures to assist victims and witnesses of alleged crimes committed in violation of 10 U.S.C. chapter 47, also known and referred to in this part as the Uniform Code of Military Justice (UCMJ).

(b) Establishes policy, assigns responsibilities, and prescribes procedures for:

(1) The rights of crime victims under the UCMJ and required mechanisms for enforcement, in accordance with section 1701 of Public Law 113–66, ''National Defense Authorization Act for Fiscal Year 2014,'' and in accordance with DoD standards for victim witness assistance services in the military community established in DoD Instruction 6400.07, ''Standards for Victim Assistance Services in the Military Community,'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640007p.pdf?ver=2018-07-06-073608-400*).

(2) Providing timely notification of information and assistance available to victims and witnesses of crime from initial contact through investigation, prosecution, and confinement in accordance with 18 U.S.C. 1512 through 1514, 32 CFR part 286, ''DoD Freedom of Information Act (FOIA) Program,'' 32 CFR part 111, ''Transitional Compensation for Abused Dependents,'' DoD Instruction 1325.07, ''Administration of Military Correctional Facilities and Clemency and Parole Authority,'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132507p.pdf?ver=2019-02-19-075650-100*), DoD Directive 7050.06, ''Military Whistleblower Protection,'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/705006p.pdf*), and 10 U.S.C. 113, 1034, 1059, and 1408; and section 1706 of Public Law 113–66.

(3) Annual reporting requirements on assistance provided across the DoD to victims and witnesses of alleged crimes.

(c) Provides for legal assistance for crime victims entitled to such services pursuant to 10 U.S.C. 1044 and 1044e, and in accordance with Under Secretary of Defense for Personnel and Readiness (USD(P&R)) Memorandum, ''Legal Assistance for Victims of Crimes'' (available at *http://www.sapr.mil/public/docs/directives/Legal_Assistance_for_Victims_of_Crime-Memo.pdf*), and 10 U.S.C. 1565b, and as further prescribed by the Military Departments and National Guard Bureau policies.

(d) Adopts section 573 of Public Law 112–239, ''The National Defense Authorization Act for Fiscal Year 2013,'' January 2, 2013, requiring each Military Service to establish a special victim capability comprised of specially trained criminal investigators, judge advocates, paralegals, and victim and witness assistance personnel to support victims of covered special victim offenses. To de-conflict with victims' counsel programs, this distinct group of recognizable professionals will be referred to, at the DoD level, as the Special Victim Investigation and Prosecution (SVIP) capability.

(e) Adopts the victim and witness portion of the special victim capability in accordance with) DoDI 5505.19, ''Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs),'' March 23, 2017 (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/550519p.pdf?ver=2019-08-12-152401-387*), and Directive-type Memorandum (DTM) 14–003, ''DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support,'' February 12, 2014, Incorporating Change 6, August 15, 2019 (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dtm/DTM-14-003.pdf?ver=2019-08-15-102432-590*).

(f) Adopts section 1716 of Public Law 113–66, and section 533 of the National Defense Authorization Act for 2015 (NDAA 2015), requiring the Military Services to provide legal counsel, known as Special Victims' Counsel or Victims' Legal Counsel, (SVC/VLC) to assist victims of alleged sex-related offenses in violation of Articles 120, 120a, 120b, 120c, 125 (before January 1, 2019) of the UCMJ, and attempts to commit any of these offenses under Article 80 of the UCMJ, who are eligible for legal assistance in accordance with 10 U.S.C. 1044 and 1044e, and as further prescribed by the Military Departments and National Guard Bureau policies.

§ 114.2 Applicability.

This part applies to any military or civilian victims or witnesses of alleged offenses under the UCMJ. This part also applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the ''DoD Components'').

§ 114.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part:

__*Central repository.* A headquarters office, designated by Service regulation, to serve as a clearinghouse of information on a confinee's status and to collect and report data on the delivery of victim and witness assistance, including notification of confinee status changes.

__*Confinement facility victim witness assistance coordinator.* A staff member at a military confinement facility who is responsible for notifying victims and witnesses of changes in a confinee's status and reporting those notifications to the central repository.

__*Court proceeding.* A preliminary hearing held pursuant to Article 32 of the UCMJ; a hearing under Article 39(a) of the UCMJ; a court-martial; a military presentencing hearing; or a military appellate hearing. Conferences, such as those between attorneys and the military judge pursuant to Rule for

Courts-Martial (R.C.M.) 802 or between attorneys and preliminary hearing officers pursuant to Article 32, are not court proceedings for purposes of this part. If all or part of a court proceeding has been closed to the public by the military judge, preliminary hearing officer, or other official, the victims and witnesses will still be notified of the closed hearing as provided in this part, and of the reasons for the closure. In such a case, the military judge, preliminary hearing officer, or other official may place reasonable limits on the reasons disclosed, if such limits are necessary to protect the safety of any person, the fairness of the proceeding, or are otherwise in the interests of national security.

__*DoD Component responsible official.* Person designated by each DoD Component head to be primarily responsible in the DoD Component for coordinating, implementing, and managing the victim and witness assistance program established by this part.

__*Equal opportunity.* The right of all persons to participate in, and benefit from, programs and activities for which they are qualified. These programs and activities will be free from social, personal, or institutional barriers that prevent people from rising to the highest level of responsibility possible. Persons will be evaluated on individual merit, fitness, and capability, regardless of race, color, sex, national origin, or religion.

__*Local responsible official.* Person designated by the DoD Component responsible official who has primary responsibility for identifying victims and witnesses of crime and for coordinating the delivery of services described in this part through a multidisciplinary approach. The position or billet of the local responsible official will be designated in writing by Service regulation. The local responsible official may delegate responsibilities in accordance with this part.

__*Local Victim and Witness Assistance Council.* A regular forum held at the DoD installation, or regional command level, that promotes efficiencies, coordinates victim assistance-related programs, and assesses the implementation of victim assistance standards and victim assistance-related programs, in accordance with this part, DoD Instruction 6400.07, and any other applicable Service guidance.

__*Military Department Clemency and Parole Board.* In accordance with DoD Instruction 1325.07, a board which assists the Military Department Secretary as the primary authority for administration and execution of clemency, parole, and mandatory supervised release policy and programs.

__*Military services.* Refers to the Army, the Navy, the Air Force, and the Marine Corps, the Coast Guard, and the Reserve Components, which include the Army and Air National Guards of the United States.

__*Protected communication.* (1) Any lawful communication to a Member of Congress or an IG.

(2) A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to any of the following:

(i) A Member of Congress, an IG, or a member of a DoD audit, inspection, investigation, or law enforcement organization.

(ii) Any person or organization in the chain of command; or any other person designated pursuant to regulations or other established administrative procedures to receive such communications.

__*Reprisal.* Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication.

__*Restricted reporting.* Defined in 32 CFR part 103.

__*Special victim investigation and prosecution (SVIP) capability.* A distinct, recognizable group of appropriately skilled professionals, consisting of specially trained and selected military criminal investigative organization (MCIO) investigators, judge advocates, victim witness assistance personnel, and administrative paralegal support personnel who work collaboratively to:

(1) Investigate allegations of adult sexual assault, domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm, and child abuse involving sexual assault and/or aggravated assault with grievous bodily harm.

(2) Provide support for the victims of such covered offenses.

__*Special victim offenses.* The designated criminal offenses of sexual assault, domestic violence involving sexual assault, and/or aggravated assault with grievous bodily harm, and child abuse involving sexual assault and/or aggravated assault with grievous bodily harm, in violation of the UCMJ. Sexual assault includes offenses under Articles 120 (rape and sexual assault in general), 120b (rape and sexual assault of a child), and 120c (other sexual misconduct), or forcible sodomy under Article 125 (before January 1, 2019) of the UCMJ or attempts to commit such offenses under Article 80 of the UCMJ. Aggravated assault with grievous bodily harm, in relation to domestic violence and child abuse cases, includes an offense as specified under Article 128 of the UCMJ (assault). The Military Services and National Guard Bureau may deem other UCMJ offenses appropriate for SVIP support, based on the facts and circumstances of specific cases, and the needs of victims.

__*Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC).* Legal counsel provided to assist eligible victims of alleged sex-related offenses in violation of Articles 120, 120a, 120b, 120c, and 125 (before January 1, 2019) of the UCMJ and attempts to commit any of these offenses under Article 80 of the UCMJ (or other offenses as defined by the Military Services), in accordance with 10 U.S.C. 1044, 1044e, and 1565b; section 1716 of Public Law 113–66; and section 533 of Public Law 113–291.

__*Specially trained prosecutors.* Experienced judge advocates detailed by Military Department Judge Advocates Generals (TJAGs), the Staff Judge Advocate to the Commandant of the Marine Corps, or other appropriate authority to litigate or assist with the prosecution of special victim cases and provide advisory support to MCIO investigators and responsible legal offices. Before specially trained prosecutors are detailed, their Service TJAG, Staff Judge Advocate to the Commandant of the Marine Corps, or other appropriate authority has determined they have the necessary training, maturity, and advocacy and leadership skills to carry out those duties.

__*Unrestricted reporting.* Defined in 32 CFR part 103.

__*Victim.* A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ. Victim assistance is limited to individuals eligible for military legal assistance under 10 U.S.C. 1044 and 1044e, and as further prescribed by the Military Departments' and National Guard Bureau's policies. Federal Departments and State and local agencies, as entities, are not eligible for services available to individual victims.

__*Victim assistance personnel.* Personnel who are available to provide support and assistance to victims of alleged crimes consistent with their assigned responsibilities and in accordance with this part. They include part-time, full-time, collateral duty, and other authorized individuals, and may be domestic violence or sexual assault prevention and response coordinators (to include unit and uniformed victim advocates), Sexual Assault Response Coordinators, victim-witness assistance personnel, or military equal opportunity advisors.

__*Victim assistance-related programs.* The SAPR Program; FAP; and the VWAP. A complainant under the DoD MEO Program may be referred by the MEO office to one of the victim assistance-related programs for additional assistance.

__*Witness.* A person who has information or evidence about a criminal offense within the investigative jurisdiction of a DoD Component and who provides that knowledge to a DoD Component. When the witness is a minor, that term includes a parent or legal guardian, or other person responsible for the child. The term does not include an individual involved in the crime as an alleged perpetrator or accomplice.

§ 114.4 Policy.

It is DoD policy that:

(a) The DoD is committed to protecting the rights of victims and witnesses of alleged crimes and supporting their needs in the criminal justice process. The DoD Components will comply with all statutory and policy mandates and will take all additional actions within the limits of available resources to assist victims and witnesses of alleged crimes without infringing on the constitutional or other legal rights of a suspect or an accused.

(b) DoD victim assistance services will focus on the victim and will respond, protect, and care for the victim from initiation of a report through offense disposition, if applicable, and will continue such support until the victim is no longer eligible for such services or the victim specifies to the local responsible official that he or she no longer requires or desires services.

(c) Each DoD Component will provide particular attention and support to victims of serious, violent alleged crimes, including child abuse, domestic violence, and sexual assault. In order to ensure the safety of victims, and their families, victim assistance personnel shall respect the dignity and the privacy of persons receiving services, and carefully observe any safety plans and military or civilian protective orders in place.

(d) Victim assistance services must meet DoD competency, ethical, and foundational standards established in DoD Instruction 6400.07, ''Standards for Victim Assistance Services in the Military Community,'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640007p.pdf*).

(e) Making or preparing to make or being perceived as making or preparing to make a protected communication, to include reporting a violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct, in violation of 10 U.S.C. 920 through 920c, sexual harassment, or unlawful discrimination, in accordance with 10 U.S.C. 1034, section 1709 of Public Law 113–66, and DoD Directive 7050.06, ''Military Whistleblower Protection,'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/705006p.pdf*), shall not result in reprisal activity from management officials.

(f) This part is not intended to, and does not, create any entitlement, cause of action, or defense at law or in equity, in favor of any person or entity arising out of the failure to accord to a victim or a witness the assistance outlined in this part. No limitations are hereby placed on the lawful prerogatives of the DoD or its officials.

§ 114.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

(1) Establishes overall policy for victim and witness assistance and monitors compliance with this part.

(2) Approves procedures developed by the Secretaries of the Military Departments that implement and are consistent with this part.

(3) Maintains the DoD Victim Assistance Leadership Council, in accordance with DoD Instruction 6400.07, which advises the Secretary of Defense on policies and practices related to the provision of victim assistance and provides a forum that promotes efficiencies, coordinates victim assistance-related policies, and assesses the implementation of victim assistance standards across the DoD's victim assistance-related programs.

(4) Submits an annual report to the Office for Victims of Crime, Department of Justice, identifying the number of specified notifications made to victims and witnesses of alleged crimes.

(b) The Director, DoD Human Resources Activity, through the Defense Manpower Data Center, and under the authority, direction, and control of the USD(P&R), assists in formulating a data collection mechanism to track and report victim notifications from initial contact through investigation to disposition, to include prosecution, confinement, and release.

(c) The Inspector General of the Department of Defense (DoD IG):

(1) Establishes investigative policy and performs appropriate oversight reviews of the management of the Victim Witness Assistance Program (VWAP) by the DoD military criminal investigative organizations (MCIOs). This is not intended to substitute for the routine managerial oversight of the program provided by the MCIOs, the USD(P&R), the DoD Component heads, the DoD Component responsible officials, or the local responsible officials.

(2) Investigates and oversees DoD Component Inspector General investigations of allegations or reprisal for making or preparing to make or being perceived as making or preparing to make a protected communication, in accordance with 10 U.S.C. 1034.

(d) The DoD Component heads:

(1) Ensure compliance with this part, and establish policies and procedures to implement the VWAP within their DoD Components.

(2) Designate the DoD Component responsible official for the VWAP, who will report annually to the USD(P&R) using DD Form 2706, ''Victim and Witness Assistance Annual Report'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2706.pdf*)

(3) Provide for the assignment of personnel in sufficient numbers to enable those programs identified in the 10 U.S.C. 113 note to be carried out effectively.

(4) Designate a central repository for confinee information for each Military Service, and establish procedures to ensure victims who so elect are notified of changes in inmate status.

(5) Maintain a Victim and Witness Assistance Council, when practicable, at each military installation, to ensure victim and witness service providers follow an interdisciplinary approach. These providers may include chaplains, sexual assault prevention and response personnel, family advocacy personnel, military treatment facility health care providers and emergency room personnel, family service center personnel, military equal opportunity personnel, judge advocates, SVC/VLCs, unit commanding officers, corrections personnel, and other persons designated by the Secretaries of the Military Departments.

(6) Maintain training programs to ensure Victim Witness Assistance Program (VWAP) providers receive instruction to assist them in complying with this part. Training programs will include specialized training for VWAP personnel assigned to the SVIP capability, in accordance with § 114.6(c).

(7) Designate local responsible officials in writing in accordance with Military Service regulations and § 114.6(a)(1).

(8) Maintain oversight procedures to ensure establishment of an integrated support system capable of providing the services outlined in § 114.6, and meet the competency, ethical, and foundational standards established in DoD Instruction 6400.07. Such oversight may include coverage by DoD Component Inspectors General, staff assistance visits, surveys, and status reports.

(9) Establish mechanisms for ensuring that victims are notified of and afforded the rights specified in the UCMJ, including the rights specified in Article 6b of the UCMJ (10 U.S.C. 806b) and R.C.M. 306.

(10) Establish mechanisms for the enforcement of the rights specified in the UCMJ, including mechanisms for the application for such rights and for consideration and disposition of applications for such rights. At a minimum, such enforcement mechanisms will include the designation of an authority within each Military Service to receive and investigate complaints relating to the provision or violation of such rights and the establishment of disciplinary sanctions for responsible military and civilian personnel who wantonly fail to comply with the requirements relating to such rights.

§ 114.6 Procedures.

(a) *Local responsible officials.* Local responsible officials:

(1) Will coordinate to ensure that systems are in place at the installation level to provide information on available benefits and services, assist in obtaining those benefits and services, and provide other services required by this section.

(2) May delegate their duties as appropriate, but retain responsibility to coordinate the delivery of required services.

(3) May use an interdisciplinary approach involving the various service providers listed in paragraph (b)(7) of this section, to coordinate the delivery of information and services to be provided to victims and witnesses.

(b) *Comprehensive information and services to be provided to victims and witnesses*—(1) *Rights of crime victims.* Personnel directly engaged in the prevention, detection, investigation, and disposition of offenses, to include courts-martial, including law enforcement and legal personnel, commanders, trial counsel, and staff judge advocates, will ensure that victims are accorded their rights in accordance with Article 6b of UCMJ. A crime victim has the right to:

(i) Be reasonably protected from the accused offender.

(ii) Be provided with reasonable, accurate, and timely notice of:

(A) A public hearing concerning the continuation of confinement before the trial of the accused.

(B) A preliminary hearing pursuant to Article 32 of the UCMJ relating to the offense.

(C) A court-martial relating to the offense.

(D) A public proceeding of the Military Department Clemency and Parole Board hearing relating to the offense.

(E) The release or escape of the accused, unless such notice may endanger the safety of any person.

(iii) Be present at, and not be excluded from any public hearing or proceeding described in paragraph (b)(1)(ii) of this section, unless the military judge or preliminary hearing officer of a hearing conducted pursuant to Article 32 of the UCMJ determines, after receiving clear and convincing evidence, that testimony by the victim would be materially altered if the victim observed that hearing or proceeding.

(iv) Be reasonably heard, personally or through counsel at:

(A) A public hearing concerning the continuation of confinement before the court-martial of the accused.

(B) Preliminary hearings conducted pursuant to Article 32 of the UCMJ and court-martial proceedings relating to Rules 412, 513, and 514 of the Military Rules of Evidence (M.R.E.) or regarding other rights provided by statute, regulation, or case law.

(C) A public sentencing hearing relating to the offense.

(D) A public Military Department Clemency and Parole Board hearing relating to the offense. A victim may make a personal appearance before the Military Department Clemency and Parole Board or submit an audio, video, or written statement.

(v) Confer with the attorney for the U.S. Government in the case. This will include the reasonable right to confer with the attorney for the U.S. Government at any proceeding described in paragraph (b)(1)(ii) of this section.

(A) Crime victims who are eligible for legal assistance may consult with a military legal assistance attorney in accordance with paragraph (c)(1) of this section.

(B) Victims of an alleged offense under Articles 120, 120a, 120b, or 120c or forcible sodomy under the UCMJ or attempts to commit such offenses under Article 80 of the UCMJ, who are eligible for legal assistance per Military Department or National Guard Bureau policies or in accordance with 10 U.S.C. 1044 or 1044e, may consult with a SVC/VLC in accordance with paragraph (d)(1) of this section. Victims of these covered alleged offenses shall be informed by a sexual assault response coordinator (SARC), victim advocate, victim witness liaison, military criminal investigator, trial counsel, or other local responsible official that they have the right to consult with a SVC/VLC as soon as they seek assistance from the individual in accordance with 10 U.S.C. 1565b, and as otherwise authorized by Military Department and National Guard Bureau policy.

(C) All victims may also elect to seek the advice of a private attorney, at their own expense.

(vi) Receive restitution as provided in accordance with State and Federal law.

(vii) Proceedings free from unreasonable delay.

(viii) Be treated with fairness and respect for his or her dignity and privacy.

(ix) Express his or her views to the commander or convening authority as to disposition of the case.

(x) Be prevented from, or charged for, receiving a medical forensic examination.

(xi) Have a sexual assault evidence collection kit or its probative contents preserved, without charge.

(xii) Be informed of any result of a sexual assault evidence collection kit, including a DNA profile match, toxicology report, or other information collected as part of a medical forensic examination, if such disclosure would not impede or compromise an ongoing investigation.

(xiii) Be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit.

(xiv) Upon written request, receive written notification from the appropriate official with custody not later than 60 days before the date of the intended destruction or disposal.

(xv) Upon written request, be granted further preservation of the kit or its probative contents.

(xvi) Express a preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense (for a victim of an alleged sex-related offense that occurs in the United States).

(A) Victims expressing a preference for prosecution of the offense in a civilian court shall have the civilian authority with jurisdiction over the offense notified of the victim's preference for civilian prosecution by the convening authority.

(B) The convening authority shall notify the victim of any decision by the civilian authority to prosecute or not prosecute the offense in a civilian court, if the convening authority learns of any decision.

(2) *Initial information and services.* (i) Immediately after identification of a crime victim or witness, the local responsible official, law enforcement officer, or criminal investigation officer will explain and provide information to each victim and witness, as appropriate, including:

(A) The DD Form 2701, ''Initial Information for Victims and Witnesses of Crime'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2701.pdf*) or computer-generated equivalent will be used as a handout to convey basic information. Specific points of contact will be recorded on the appropriate form authorized for use by the particular Military Service.

(B) Proper completion of this form serves as evidence that the local responsible official or designee, law enforcement officer, or criminal investigative officer notified the victim or witness of his or her rights, as described in paragraph (b)(1) of this section. The date the form is given to the victim or witness shall be recorded by the delivering official. This serves as evidence the victim or witness was timely notified of his or her statutory rights.

(ii) The local responsible official will explain the form to victims and witnesses at the earliest opportunity. This will include:

(A) Information about available military and civilian emergency medical and social services, victim advocacy services for victims of domestic violence or sexual assault, and, when necessary, assistance in securing such services.

(B) Information about restitution or other relief a victim may be entitled to, and the manner in which such relief may be obtained.

(C) Information to victims of intra-familial abuse offenses on the availability of limited transitional compensation benefits and possible entitlement to some of the active duty Service member's retirement benefits pursuant to 10 U.S.C. 1059 and 1408 and 32 CFR part 111.

(D) Information about public and private programs available to provide counseling, treatment, and other support, including available compensation through Federal, State, and local agencies.

(E) Information about the prohibition against intimidation and harassment of victims and witnesses, and arrangements for the victim or witness to receive reasonable protection from threat, harm, or intimidation from an accused offender and from people acting in concert with or under the control of the accused offender.

(F) Information concerning military and civilian protective orders, as appropriate.

(G) Information about the military criminal justice process, the role of the victim or witness in the process, and how the victim or witness can obtain additional information concerning the process and the case in accordance with section 1704 of Public Law 113–66. This includes an explanation of:

(*1*) Victims' roles and rights during pretrial interviews with law enforcement, investigators, government counsel, and defense counsel and during preliminary hearings pursuant to Article 32 of the UCMJ, and section 1702 of Public Law 113–66.

(*2*) Victims' rights when action is taken by the convening authority pursuant to Article 60 of the UCMJ, and during the post-trial/clemency phase of the process.

(H) If necessary, assistance in contacting the people responsible for providing victim and witness services and relief.

(I) If necessary, how to file a military whistleblower complaint with an Inspector General regarding suspected reprisal for making, preparing to make, or being perceived as making or preparing to make a protected communication in accordance with 10 U.S.C. 1034 and DoD Directive 7050.06.

(J) Information about the victim's right to seek the advice of an attorney with respect to his or her rights as a crime victim pursuant to Federal law and DoD policy. This includes the right of Service members and their dependents to consult a military legal assistance attorney in accordance with paragraph (d)(1) of this section, or a SVC/VLC in accordance with paragraph (e)(1) of this section.

(3) *Information to be provided during investigation of a crime.* (i) If a victim or witness has not already received the DD Form 2701 from the local responsible official or designee, it will be provided by a law enforcement officer or investigator.

(ii) Local responsible officials or law enforcement investigators and criminal investigators will inform victims and witnesses, as appropriate, of the status of the investigation of the crime, to the extent providing such information does not interfere with the investigation.

(4) *Information and services to be provided concerning the prosecution of a crime.* (i) The DD Form 2702, ''Court-Martial Information for Victims and Witnesses of Crime'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2702.pdf*) will be used as a handout to convey basic information about the court-martial process. The date it is given to the victim or witness shall be recorded by the delivering official. If applicable, the following will be explained and provided by the U.S. Government attorney, or designee, to victims and witnesses:

(A) Notification of crime victims' rights, to include the victim's right to express views as to disposition of the case to the responsible commander and convening authority.

(B) Notification of the victim's right to seek the advice of an attorney with respect to his or her rights as a crime victim pursuant to Federal law and DoD policy. This includes the right of service members and their dependents to consult a military legal assistance attorney in accordance with paragraph (d)(1) of this section or a SVC/VLC in accordance with paragraph (e)(1) of this section.

(C) Consultation concerning the decisions to prefer or not prefer charges against the accused offender and the disposition of the offense if other than a trial by court-martial.

(D) Consultation concerning the decision to refer or not to refer the charges against the accused offender to trial by court-martial and notification of the decision to pursue or not pursue court-martial charges against the accused offender.

(E) Notification of the initial appearance of the accused offender before a reviewing officer or military judge at a public pretrial confinement hearing or at a preliminary hearing in accordance with Article 32 of the UCMJ.

(F) Notification of the release of the suspected offender from pretrial confinement.

(G) Explanation of the court-martial process.

(H) Before any court proceedings (as defined to include preliminary hearings conducted pursuant to Article 32 of the

UCMJ, pretrial hearings conducted pursuant to Article 39(a) of the UCMJ, trial, and presentencing hearings), help with locating available services such as transportation, parking, child care, lodging, and courtroom translators or interpreters that may be necessary to allow the victim or witness to participate in court proceedings.

(I) During the court proceedings, a private waiting area out of the sight and hearing of the accused and defense witnesses. In the case of proceedings conducted aboard ship or in a deployed environment, provide a private waiting area to the greatest extent practicable.

(J) Notification of the scheduling, including changes and delays, of a preliminary hearing conducted pursuant to Article 32 of the UCMJ, and each court proceeding the victim is entitled to or required to attend will be made without delay. On request of a victim or witness whose absence from work or inability to pay an account is caused by the alleged crime or cooperation in the investigation or prosecution, the employer or creditor of the victim or witness will be informed of the reasons for the absence from work or inability to make timely payments on an account. This requirement does not create an independent entitlement to legal assistance or a legal defense against claims of indebtedness.

(K) Notification of the recommendation of a preliminary hearing officer when an Article 32 preliminary hearing is held.

(L) Consultation concerning any decision to dismiss charges or to enter into a pretrial agreement.

(M) Notification of the disposition of the case, to include the acceptance of a plea of ''guilty,'' the rendering of a verdict, the withdrawal or dismissal of charges, or disposition other than court-martial, to specifically include non-judicial punishment under Article 15 of the UCMJ, administrative processing or separation, or other administrative actions.

(N) Notification to victims of the opportunity to present to the court at sentencing, in compliance with applicable law and regulations, a statement of the impact of the crime on the victim, including financial, social, psychological, and physical harm suffered by the victim. The right to submit a victim impact statement is limited to the sentencing phase and does not extend to the providence (guilty plea) inquiry before findings.

(O) Notification of the offender's sentence and general information regarding minimum release date, parole, clemency, and mandatory supervised release.

(P) Notification of the opportunity to receive a copy of proceedings. The convening authority or subsequent responsible official must authorize release of a copy of the record of trial without cost to a victim of sexual assault as defined in R.C.M. 1104 of the MCM and Article 54(e) of the UCMJ. Victims of offenses other than sexual assault, and witnesses of any offenses, may also receive a copy of the record of trial, without cost, as determined by the Military Departments, which may be on a case-by-case basis, in categories of cases, or on the basis of particular criteria, for example, when it might lessen the physical, psychological, or financial hardships suffered as a result of a criminal act.

(ii) After court proceedings, the local responsible official will take appropriate action to ensure that property of a victim or witness held as evidence is safeguarded and returned as expeditiously as possible.

(iii) Except for information that is provided by law enforcement officials and U.S. Government counsel in accordance with paragraphs (b)(3) and (4) of this section, requests for information relating to the investigation and prosecution of a crime (*e.g.,* investigative reports and related documents) from a victim or witness will be processed in accordance with 32 CFR part 286.

(iv) Any consultation or notification required by paragraph (b)(5)(i) of this section may be limited to avoid endangering the safety of a victim or witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. Although the victim's views should be considered, this part is not intended to limit the responsibility or authority of the Military Service or the Defense Agency officials to act in the interest of good order and discipline.

(5) *Information and services to be provided on conviction.* (i) Trial counsel will explain and provide services to victims and witnesses on the conviction of an offender in a court-martial. The DD Form 2703, ''Post-Trial Information for Victims and Witnesses of Crime'' (*http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2703.pdf*), will be used as a handout to convey basic information about the post-trial process.

(ii) When appropriate, the following will be provided to victims and witnesses:

(A) General information regarding the convening authority's action, the appellate process, the corrections process, work release, furlough, probation, parole, mandatory supervised release, or other forms of release from custody, and eligibility for each.

(B) Specific information regarding the election to be notified of further actions in the case, to include the convening authority's action, hearings and decisions on appeal, changes in inmate status, and consideration for parole. The DD Form 2704, ''Victim/Witness Certification and Election Concerning Prisoner Status'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2704.pdf*) will be explained and used for victims and appropriate witnesses to elect to be notified of these actions, hearings, decisions, and changes in the offender's status in confinement. The DD Form 2704–1, ''Victim Election of Post-Trial Rights'' (under development, will be available at *http://www.esd.whs.mil/Directives/forms/dd2500_2999/* once finalized) will be explained and used for victims to make elections about records of trial, submission of matters in clemency, and notifications of certain appellate proceedings.

(*1*) For all cases resulting in a sentence to confinement, the DD Form 2704 will be completed and forwarded to the Service central repository, the gaining confinement facility, the local responsible official, and the victim or witness, if any, with appropriate redactions made by the delivering official.

(*i*) Incomplete DD Forms 2704 received by the Service central repository must be accompanied by a signed memorandum detailing the reasons for the incomplete information, or they will be sent back to the responsible legal office for correction.

(*ii*) Do not allow an inmate access to DD Forms 2704 or attach a copy of the forms to any record to which the inmate has access. Doing so could endanger the victim or witness.

(*2*) For all cases resulting in conviction but no sentence to confinement, the DD Form 2704 will be completed and forwarded to the Service central repository, the local responsible official, and the victim or witness, if any.

(*3*) For all convictions with a qualifying victim, a DD Form 2704–1 will be completed for each victim and forwarded to the appropriate points of contact, as determined by the Military Department. This form may be included in the record of trial with appropriate redactions. If a qualifying victim personally signs and initials a declination to receive the record of trial or to submit matters in clemency, this form may satisfy the requirement for a

written waiver. *See.* Rules for Courts-Martial 1103(g)(3)(C) and 1105A(f)(3).

(*4*) The DD Forms 2704, 2704–1, and 2705, ''Notification to Victim/Witness of Prisoner Status'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2705.pdf*), are exempt from release in accordance with 32 CFR part 286.

(C) Specific information regarding the deadline and method for submitting a written statement to the convening authority for consideration when taking action on the case in accordance with Article 60 of the UCMJ and R.C.M. 1105A.

(6) *Information and services to be provided on entry into confinement facilities.* (i) The victim and witness assistance coordinator at the military confinement facility will:

(A) On entry of an offender into post-trial confinement, obtain the DD Form 2704 to determine victim or witness notification requirements. If the form is unavailable, ask the Service central repository whether any victim or witness has requested notification of changes in inmate status in the case.

(B) When a victim or witness has requested notification of changes in inmate status on the DD Form 2704, and one of the events listed in paragraph (b)(6) of this section occurs, use the DD Form 2705, ''Notification to Victim/Witness of Prisoner Status,'' to notify the victim or witness.

(*1*) The date the DD Form 2705 is given to the victim or witness shall be recorded by the delivering official. This serves as evidence that the officer notified the victim or witness of his or her statutory rights.

(*2*) Do not allow the inmate access to DD Form 2705 or attach a copy of the forms to any record to which the inmate has access. Doing so could endanger the victim or witness.

(C) Provide the earliest possible notice of:

(*1*) The scheduling of a clemency or parole hearing for the inmate.

(*2*) The results of the Service Clemency and Parole Board.

(*3*) The transfer of the inmate from one facility to another.

(*4*) The escape, immediately on escape, and subsequent return to custody, work release, furlough, or any other form of release from custody of the inmate.

(*5*) The release of the inmate to supervision.

(*6*) The death of the inmate, if the inmate dies while in custody or under supervision.

(*7*) A change in the scheduled release date of more than 30 days from the last notification due to a disposition or disciplinary and adjustment board.

(D) Make reasonable efforts to notify all victims and witnesses who have requested notification of changes in inmate status of any emergency or special temporary home release granted an inmate.

(E) On transfer of an inmate to another military confinement facility, forward the DD Form 2704 to the gaining facility, with an information copy to the Service central repository.

(ii) The status of victim and witness notification requests will be reported annually to the Service central repository.

(7) *Information and services to be provided on appeal.* (i) When an offender's case is docketed for review by a Court of Criminal Appeals, or is granted review by the Court of Appeals for the Armed Forces (C.A.A.F.) or by the U.S. Supreme Court, the U.S. Government appellate counsel or appropriate Military Service designee will ensure that all victims who have indicated a desire to be notified receive this information, if applicable:

(A) Notification of the scheduling, including changes and delays, of each public court proceeding that the victim is entitled to attend.

(B) Notification of the decision of the court.

(ii) When an offender's case is reviewed by the Office of the Judge Advocate General (TJAG) of the Military Department concerned, pursuant to Article 69 and Article 73 of the UCMJ, TJAG will ensure that all victims who have indicated a desire to be notified on DD Form 2704–1 receive notification of the outcome of the review.

(iii) The Military Services may use the sample appellate notification letter found at Figure 1 of this section, or develop their own templates to keep victims informed of appellate court proceedings and decisions.

(8) *Information and services to be provided on consideration for parole or supervised release.* (i) Before the parole or supervised release of a prisoner, the military confinement facility staff will review the DD Form 2704 to ensure it has been properly completed. If there is a question concerning named persons or contact information, it will be immediately referred to the appropriate staff judge advocate for correction.

(ii) When considering a prisoner for release on supervision, the military confinement facility commander will ensure that all victims and witnesses on the DD Form 2704 indicating a desire to be notified were given an opportunity to provide information to the Military Department Clemency and Parole Board in advance of its determination, as documented in the confinement file.

(9) *Reporting procedures.* (i) The DoD Component responsible official will submit an annual report using the DD Form 2706 to: Office of the Under Secretary of Defense for Personnel and Readiness, Attention: Legal Policy Office, 4000 Defense Pentagon, Washington, DC 20301–4000.

(ii) The report will be submitted by March 15 for the preceding calendar year and will address the assistance provided to victims and witnesses of crime.

(iii) The report will include:

(A) The number of victims and witnesses who received a DD Form 2701 from law enforcement or criminal investigations personnel.

(B) The number of victims and witnesses who received a DD Form 2702 from U.S. Government counsel, or designee.

(C) The number of victims and witnesses who received a DD Form 2703 from U.S. Government counsel or designee.

(D) The number of victims and witnesses who elected via the DD Form 2704 to be notified of changes in inmate status.

(E) The number of victims who received a DD Form 2704–1 from U.S. Government counsel or designee.

(F) The number of victims and witnesses who were notified of changes in inmate status by the confinement facility victim witness assistance coordinators via the DD Form 2705 or a computer-generated equivalent.

(G) The cumulative number of inmates in each Military Service for whom victim witness notifications must be made by each Service's confinement facilities. These numbers are derived by totaling the number of inmates with victim or witness notification requirements at the beginning of the year, adding new inmates with the requirement, and then subtracting those confinees who were released, deceased, or transferred to another facility (*e.g.,* Federal, State, or sister Military Service) during the year.

(iv) The Office of the USD(P&R) will consolidate all reports submitted by each Military Service, and submit an annual report to the Bureau of Justice Statistics, and Office for Victims of Crime, Department of Justice.

(c) *Special victim investigation and prosecution (SVIP) capability.* (1) In accordance with DTM 14–003, section 573 of Public Law 112–239, and DoD Instruction 5505.19, the Military Services will maintain a distinct, recognizable group of professionals to provide effective, timely, and

responsive worldwide victim support, and a capability to support the investigation and prosecution of special victim offenses within the respective Military Departments.

(2) Covered special victim offenses include:

(i) Unrestricted reports of adult sexual assault.

(ii) Unrestricted reports of domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm.

(iii) Child abuse involving child sexual abuse and/or aggravated assault with grievous bodily harm.

(3) Military Service SVIP programs will include, at a minimum, specially trained and selected:

(i) Investigators from within MCIOs of the Military Departments.

(ii) Judge advocates to serve as prosecutors.

(iii) VWAP personnel.

(iv) Paralegal or administrative legal support personnel.

(4) Each Military Service will maintain standards for the selection, training, and certification of personnel assigned to provide this capability. At a minimum, SVIP training must:

(i) Focus on the unique dynamics of sexual assault, aggravated domestic violence, and child abuse cases.

(ii) Promote methods of interacting with and supporting special victims to ensure their rights are understood and respected.

(iii) Focus on building advanced litigation, case management, and technical skills.

(iv) Ensure that all SVIP legal personnel understand the impact of trauma and how this affects an individual's behavior and the memory of a traumatic incident when interacting with a victim.

(v) Train SVIP personnel to identify any safety concerns and specific needs of victims.

(vi) Ensure SVIP personnel understand when specially trained pediatric forensic interviewers are required to support the investigation and prosecution of complex child abuse and child sexual abuse cases.

(5) Each Military Service will maintain and periodically review measures of performance and effectiveness to objectively assess Service programs, policies, training, and services. At a minimum, these Service-level review measures will include:

(i) Percentage of all preferred court-martial cases that involve special victim offenses in each fiscal year.

(ii) Percentage of special victim offense courts-martial tried by, or with the direct advice and assistance of, a specially trained prosecutor.

(iii) Compliance with DoD VWAP informational, notification, and reporting requirements specified in paragraphs (b)(1) through (9) of this section, to ensure victims are consulted with and regularly updated by special victim capability legal personnel.

(iv) Percentage of specially trained prosecutors and other legal support personnel having received additional and advanced training in topical areas.

(6) The Military Services will also consider victim feedback on effectiveness of special victim prosecution and legal support services and recommendations for possible improvements, as provided in DoD survivor experience surveys or other available feedback mechanisms. This information will be used by the Military Services to gain a greater understanding of the reasons why a victim elected to participate or declined to participate at trial, and whether SVIP, VWAP, and other legal support services had any positive impact on this decision.

(7) Designated SVIP capability personnel will collaborate with local DoD SARCs, sexual assault prevention and response victim advocates, Family Advocacy Program (FAP) managers, and domestic abuse victim advocates during all stages of the military justice process to ensure an integrated capability.

(8) To support this capability, active liaisons shall be established at the installation level with these organizations and key individuals:

(i) Local military and civilian law enforcement agencies.

(ii) SARCs.

(iii) Victim advocates.

(iv) FAP managers.

(v) Chaplains.

(vi) Sexual assault forensic examiners and other medical and mental health care providers.

(vii) Unit commanding officers.

(viii) Other persons designated by the Secretaries of the Military Departments necessary to support special victims.

(9) In cases of adult sexual assault the staff judge advocate or designated representative of the responsible legal office will participate in case management group meetings, in accordance with 32 CFR part 105, on a monthly basis to review individual cases. Cases involving victims who are assaulted by a spouse or intimate partner will be reviewed by FAP.

(10) The staff judge advocate or designated representative of the responsible legal office will participate in FAP case review or incident determination meetings of domestic violence, spouse or intimate partner sexual assault, and child abuse cases in accordance with DoD Instruction 6400.06, ''Domestic Abuse Involving DoD Military and Certain Affiliated Personnel'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640006p.pdf*).

(11) In the case of a victim who is under 18 years of age and not a member of the Military Services, or who is incompetent, incapacitated, or deceased, the legal guardians of the victim or the representatives of the victim's estate, family members, or any other person designated as suitable by proper authority, may assume the victim's legal rights. Under no circumstances will an individual designated as representative have been accused of any crime against the victim.

(i) The Secretaries of the Military Departments may publish additional guidance or regulation regarding who, before referral, may designate an appropriate representative, such as the convening authority or other qualified local responsible official.

(ii) In making a decision to appoint a representative, the designating authority should consider:

(A) The age and maturity, relationship to the victim.

(B) The physical proximity to the victim.

(C) The costs incurred in effecting the appointment.

(D) The willingness of the proposed designee to serve in such a role.

(E) The previous appointment of a guardian by a court of competent jurisdiction or appropriate designating authority.

(F) The preference of the victim, if known.

(G) Any potential delay in any proceeding that may be caused by a specific appointment.

(H) Any other relevant information.

(iii) The representative, legal guardian, or equivalent of a victim who is eligible, or in the case of a deceased victim, was eligible at the time of death for legal assistance provided by SVC/VLC, may elect legal representation for a SVC/VLC on behalf of the victim.

(iv) A military judge's responsibilities for designating a representative are listed in R.C.M. 801(a)(6).

(v) In the absence of an appointment of a legal representative, the victim may exercise his/her own legal and regulatory rights, as described herein. Where an appointment is required or discretionary, nothing in this policy precludes a victim from being appointed as his/her own legal representative, as appropriate.

(d) *Legal assistance for crime victims*—(1) *Eligibility.* Active and retired Service members and their

dependents are eligible to receive legal assistance pursuant to 10 U.S.C. 1044 and 1565b and Under Secretary for Defense for Personnel and Readiness Memorandum, ''Legal Assistance for Sexual Assault Victims,'' October 17, 2011.

(2) *Information and services.* Legal assistance services for crime victims will include confidential advice and assistance for crime victims to address:

(i) Rights and benefits afforded to the victim under law and DoD policy.

(ii) Role of the VWAP coordinator or liaison.

(iii) Role of the victim advocate.

(iv) Privileges existing between the victim and victim advocate.

(v) Differences between restricted and unrestricted reporting, if applicable.

(vi) Overview of the military justice system.

(vii) Services available from appropriate agencies for emotional and mental health counseling and other medical services.

(viii) The right to an expedited transfer, if applicable.

(ix) Availability of and protections offered by civilian and military protective orders.

(e) *Special Victims' Counsel/Victims' Legal Counsel programs*—(1) *Eligibility.* In accordance with 10 U.S.C. 1044, 1044e, and 1565b, section 1716 of Public Law 113–66, and section 533 of the Public Law 113–291, the Military Services provide legal counsel, known as SVC/VLC, to assist victims of alleged sex-related offenses including Articles 120, 120a, 120b, and 120c, forcible sodomy under Article 125 (before January 1, 2019) of the UCMJ, attempts to commit such offenses under Article 80 of the UCMJ, or other crimes under the UCMJ as authorized by the Service, who are eligible for legal assistance pursuant to 10 U.S.C. 1044e and as further prescribed by the Military Departments and National Guard Bureau policies. Individuals eligible for SVC/VLC representation include any of the following:

(i) Individuals entitled to military legal assistance under 10 U.S.C. 1044 and 1044e, and as further prescribed by the Military Departments and National Guard Bureau policies.

(ii) Members of a reserve component of the armed forces, in accordance with section 533 of Public Law 113–291, and as further prescribed by the Military Departments and National Guard Bureau policies.

(iii) Civilian employees of the Department of Defense not otherwise entitled to legal assistance, as provided for in section 532 of Public Law 114–92.

(2) *Attorney-client information and services.* The types of legal services provided by SVC/VLC programs in each Military Service will include:

(i) Legal consultation regarding the VWAP, including:

(A) The rights and benefits afforded the victim.

(B) The role of the VWAP liaison.

(C) The nature of communication made to the VWAP liaison in comparison to communication made to a SVC/VLC or a legal assistance attorney pursuant to 10 U.S.C. 1044.

(ii) Legal consultation regarding the responsibilities and support provided to the victim by the SARC, a unit or installation sexual assault victim advocate, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.

(iii) Legal consultation regarding the potential for civil litigation against other parties (other than the DoD).

(iv) Legal consultation regarding the military justice system, including, but not limited to:

(A) The roles and responsibilities of the military judge, trial counsel, the defense counsel, and military criminal investigators.

(B) Any proceedings of the military justice process in which the victim may observe or participate in person or through his or her SVC/VLC.

(v) Accompanying or representing the victim at any proceedings when necessary and appropriate, including interviews, in connection with the reporting, investigation, and prosecution of the alleged sex-related offense.

(vi) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.

(vii) Legal representation or consultation and assistance:

(A) In personal civil legal matters in accordance with 10 U.S.C. 1044.

(B) In any proceedings of the military justice process in which a victim can participate as a witness or other party.

(C) In understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders.

(D) In understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in 10 U.S.C. 1059, 32 CFR part 111, ''Transitional Compensation for Abused Dependents,'' and other State and Federal victims' compensation programs.

(E) The victim's rights and options at trial, to include the option to state a preference to decline participation or withdraw cooperation as a witness and the potential consequences of doing so.

(viii) Legal representation or consultation regarding the potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense (collateral misconduct), regardless of whether the report of that offense is restricted or unrestricted in accordance with 32 CFR part 105. Victims may also be referred to the appropriate defense services organization for consultation on the potential criminal implications of collateral misconduct.

(ix) Other legal assistance as the Secretary of Defense or the Secretaries of the Military Departments may authorize.

Figure 1 to §114.6. Sample Appellate Notification Letter

[Victim Name]
[Address]

Dear [Mr.][Mrs.][Ms.] [Victim Name]:

The United States [Military Department] believes it is important to keep victims of crimes under the Uniform Code of Military Justice informed of court proceedings and decisions. Based on your election, and in accordance with Department of Defense Instruction 1030.02, "Victim and Witness Assistance," we are providing you with information about the military appellate process. An appeal is a legal proceeding by which a case is brought before a higher court for review of a decision made by a lower court. Convicted military members are generally entitled to appellate review even if they do not specifically allege any errors in the trial process.

[Name of Accused]'s case was submitted for appellate review on [Date] at the [Military Department] Court of Criminal Appeals. The Court of Criminal Appeals may consider briefs about the case or ask for briefs on specific issues in the case. The Court may also decide to hold a public courtroom proceeding to hear arguments about the case. If the Court determines a courtroom proceeding is warranted, you will be notified of the date and location so that you may attend. If the Court declines to hold a courtroom proceeding and decides the issue on the basis of briefs (or in the absence of any briefs), you will be notified of the ultimate decision.

A decision by the [Military Department] Court of Criminal Appeals is not necessarily the final resolution of this case. There are two superior courts from which the Appellant could also seek review. The [Military Department] Court of Criminal Appeals' decision may be appealed to the Court of Appeals for the Armed Forces (C.A.A.F.). If C.A.A.F. declines to review the appeal, the case becomes final and you will be informed. If C.A.A.F. decides to consider the appeal, you will be informed of the review taking place, of any courtroom proceedings, and of the final decision. If C.A.A.F. renders a decision on the case, further review may be sought from the Supreme Court of the United States. If this were to occur, you will be notified. Cases are also sometimes returned to the [Military Department] Court of Criminal Appeals for further proceedings. In addition, the Appellant may also petition the [Military Department Judge Advocate General] for a new trial based on newly discovered evidence or fraud upon the court. If that were to occur, you will be notified.

Right now, the case is before the [Military Department] Court of Criminal Appeals. Nothing is required of you but if you have questions or desire additional information, please contact [DESIGNATED REPRESENTATIVE/OFFICE] at [CONTACT INFORMATION].

Sincerely,
(Military Department designee)

Dated: April 7, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–07608 Filed 4–27–20; 8:45 am]

BILLING CODE 5001–06–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[AU Docket No. 19–290; DA 20–327; FRS 16645]

Auction 106 Postponed; Delay of Auction of FM Broadcast Construction Permits Initially Scheduled To Begin on April 28, 2020

AGENCY: Federal Communications Commission.

ACTION: Notice; auction postponed.

SUMMARY: This document summarizes the public notice that announces the indefinite postponement of Auction 106, an auction of construction permits in the FM broadcast service, in light of the COVID–19 pandemic.

DATES: Bidding in Auction 106 was scheduled to begin on April 28, 2020. A revised auction schedule will be announced in a future public notice.

FOR FURTHER INFORMATION CONTACT: For general auction questions, the Auctions Hotline at (888) 225–5322, option 2; or (717) 338–2868. For upfront payment refund questions, Scott Radcliffe at (202) 418–7518, *Scott.Radcliffe@fcc.gov;* or Theresa Meeks at (202) 418–2945, *Theresa.Meeks@fcc.gov,* in the FCC Revenue & Receivables Operations Group/Auctions. For press information, Janice Wise at (202) 418–8165.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 106 Postponement Public Notice,* AU Docket No. 19–290, DA 20–327, released on March 25, 2020. The complete text of the *Auction 106 Postponement Public Notice* is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, located in Room CY–A257, of the FCC Headquarters, 445 12th Street SW, Washington, DC 20554, except when FCC Headquarters is otherwise closed to visitors. *See, e.g., Public Notice, Restrictions on Visitors to FCC Facilities* that appeared on the Commission website March 12, 2020. The *Auction 106 Postponement Public Notice* and related documents also are available on the internet at the Commission's website: *www.fcc.gov/auction/106* or by using the search function for AU Docket No. 19–290 on the Commission's ECFS web page at *http://www.fcc.gov/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

I. General Information

1. The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), announces an indefinite postponement of bidding in Auction 106, an auction of construction permits in the FM broadcast service, which had been scheduled to begin on Tuesday, April 28, 2020. OEA and MB take this action to protect the health and safety of Commission staff during the auction and so that parties have additional time to prepare to participate in Auction 106 given the COVID–19 pandemic. *See* Proclamation No. 9994, 85 FR 153337 (Mar. 13, 2020). OEA and MB will announce a revised schedule in a future public notice.

2. *Refund of Upfront Payments.* Auction 106 applicants that had submitted upfront payments may obtain a refund of those deposits after submitting a written request with the information specified below. All refunds of upfront payments will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Each applicant can provide this information by using the FCC auction application system to file its refund information electronically using the Refund Form icon found on the Auction Application Manager page in the FCC auction application system. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by fax, email, or mail as instructed in the public notice. Refund processing generally takes up to two weeks to complete.

3. *Short-Form Applications Dismissed, Prohibited Communications Rule Suspended.* All short-form applications (FCC Form 175s) filed for Auction 106 are dismissed. OEA and MB will announce procedures for filing applications and other procedures to participate in Auction 106 in a future announcement.

4. The rules prohibiting certain communications set forth in 47 CFR 1.2105(c) no longer apply to each applicant that filed a short-form application in Auction 106.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07745 Filed 4–27–20; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 85, No. 82
Tuesday, April 28, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 124, 125, and 126

[Docket #s: SBA–2020–0016; SBA–2020–0017; SBA–2020–0018]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: U.S. Small Business Administration.

ACTION: Regulatory review; request for comments.

SUMMARY: The U.S. Small Business Administration (''SBA'' or ''Agency'') is publishing a list of rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act. SBA is seeking public comment on whether the rules should be continued without change, amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities.

DATES: Comments should be submitted by July 27, 2020.

ADDRESSES: You may submit comments by any of the methods listed below. In your comment, please use the following reference(s): For comments related to part 124, reference docket number SBA–2020–0016; for comments related to part 125, reference docket number SBA–2020–0017; for comments related to part 126, reference docket number SBA–2020–0018.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Brenda Fernandez, U.S. Small Business Administration, 409 Third Street SW, 2nd Floor, Washington, DC 20416.

All comments will be posted on *https://www.regulations.gov.* If you wish to submit Confidential Business Information (CBI) as defined in the User Notice at *https://www.regulations.gov,* you must submit such information either by mail to Brenda Fernandez, U.S. Small Business Administration, 409 Third Street SW, 2nd Floor, Washington, DC 20416, or by email to Brenda Fernandez. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW, Washington, DC 20416; (202) 205–7337; *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act of 1980 (''RFA''), codified at 5 U.S.C. 601–612, requires agencies to consider the impact of regulatory actions on small entities when developing rules. When an agency issues a proposed rule, the agency must ''prepare and make available for public comment an initial regulatory flexibility analysis'' to ''describe the impact of the proposed rule on small entities.'' [1] For the rules listed in this document, SBA's initial regulatory flexibility analysis indicated that the rule could have a significant impact on a substantial number of small entities. During the development of each final rule, SBA considered the public's comments in analyzing and determining how to mitigate small entity impact to the extent possible while still fulfilling SBA's statutory mandates. In each final rule, SBA again found that the rulemaking may have a significant economic impact on a substantial number of small entities within the meaning of the RFA and therefore included a final regulatory flexibility analysis in the rule.

Under the RFA, agencies must review rules that may have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is ''to determine whether such rules should be continued without change or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities.'' 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

SBA has identified the rules listed below for review pursuant to section 610 of the RFA. The description for each of these rules is organized by CFR Part and includes links to the rules associated with that Part. In addition to the factors listed above, SBA particularly solicits public comment on whether these rules affect small businesses in new or different ways than when they were first adopted.

A. Rules Amending 13 CFR Part 124

Title: 8(a) Business Development (Section 610 Review).
Docket Number: SBA–2020–0016.
RIN: 3245–AH19.
Citation: 13 CFR 124.
Authority: 15 U.S.C. 637.
Description: Under part 124, 8(a) Business Development/Small Disadvantaged Business Status Determinations, SBA has promulgated several rules that the Agency found would have a significant economic impact on a substantial number of small entities within the meaning of the RFA. These rules established eligibility requirements for participation in the 8(a) programs and application, certification, and protest procedures, among other things. Each of these rules is listed below; for ease of access, SBA has provided the web address for the proposed and final publications of each rule.

(1) Rule: Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-1997-08-14/pdf/FR-1997-08-14.pdf#page=138 (62 FR 43584, August 14, 1997).

[1] Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Final Rule: https://www.govinfo.gov/content/pkg/FR-1998-06-30/pdf/98-17196.pdf#page=1 (63 FR 35726, June 30, 1998).

(2) Rule: Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2009-10-28/pdf/E9-25416.pdf#page=1 (74 FR 55694, October 28, 2009).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2011-02-11/pdf/2011-2581.pdf#page=1 (76 FR 8222, February 11, 2011).

(3) Rule: Small Business, Small Disadvantaged Business, HUBZone, and Service-Disabled Veteran-Owned Business Status Protest and Appeal Regulations

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2010-03-01/pdf/FR-2010-03-01.pdf#page=52 (75 FR 9129, March 1, 2010).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2011-02-02/pdf/FR-2011-02-02.pdf#page=9 (76 FR 5680, February 2, 2011).

(4) Rule: Small Business Size and Status Integrity

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2011-10-07/pdf/FR-2011-10-07.pdf#page=41 (76 FR 62313, October 7, 2011).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2013-06-28/pdf/FR-2013-06-28.pdf#page=9 (78 FR 38811, June 28,2013).

(5) Rule: Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2012-05-16/pdf/FR-2012-05-16.pdf#page=378 (77 FR 29130, May 16, 2012).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2013-10-02/pdf/FR-2013-10-02.pdf#page=469 (78 FR 61114, (October 2, 2013).

(6) Rule: Small Business Mentor Protégé Programs; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/Small Disadvantaged Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2015-02-05/pdf/FR-2015-02-05.pdf#page=196 (80 FR 6618, February 5, 2015).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/FR-2016-07-25.pdf#page=248 (81 FR 48558, July 25, 2016).

B. Rules Impacting 13 CFR Part 125

Title: Government Contracting Programs (Section 610 Review).

Docket Number: SBA–2020–0017.

RIN: 3245–AH20.

Citation: 13 CFR 125.

Authority: 15 U.S.C. 634, 637 and 644.

Description: Under part 125, Government Contracting Programs, SBA has promulgated several rules that the Agency determined would have a significant economic impact on a substantial number of small entities within the meaning of the RFA. These rules established requirements for participation in SBA's government contracting programs, contracting provisions, and protest procedures, among other things. Each of these rules is listed below; for ease of access, SBA has provided the web address for the proposed and final publications of each rule.

(1) Rule: HUBZone Empowerment Contracting Program

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-1998-04-02/pdf/FR-1998-04-02.pdf#page=72 (63 FR 16148, April 2, 1998).

Final Rule: https://www.govinfo.gov/content/pkg/FR-1998-06-11/pdf/98-15581.pdf#page=1 (63 FR 31896, June 11, 1998).

(2) Rule: Small Business Size Regulations and Government Contracting Assistance Regulations; Very Small Business Concern

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-1997-01-21/pdf/FR-1997-01-21.pdf#page=96 (62 FR 2979, January 21, 1997).

Final Rule: https://www.govinfo.gov/content/pkg/FR-1998-09-02/pdf/FR-1998-09-02.pdf#page=19 (63 FR 46640, September 2, 1998).

(3) Rule: Government Contracting Programs

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-1999-01-13/pdf/99-560.pdf (64 FR 2153, January 13, 1999).

Interim Final Rule: https://www.govinfo.gov/content/pkg/FR-1999-10-25/pdf/FR-1999-10-25.pdf#page=13 (64 FR 57366, October 25, 1999).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2000-07-26/pdf/FR-2000-07-26.pdf#page=9 (65 FR 45831, July 26, 2000).

(4) Rule: Small Business Government Contracting Programs

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2003-01-31/pdf/03-2158.pdf#page=2 (68 FR 5134, January 31, 2003).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2003-10-20/pdf/FR-2003-10-20.pdf#page=156 (68 FR 60006, October 20, 2003).

(5) Rule: Small Business Size Regulations; Government Contracting Programs; HUBZone Program

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2002-01-28/pdf/FR-2002-01-28.pdf#page=38 (67 FR 3826, January 28, 2002).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2004-05-24/pdf/FR-2004-05-24.pdf#page=8 (69 FR 29411, May 24, 2004).

(6) Rule: Women-Owned Small Business Federal Contract Program

Proposed Rule:[2] *https://www.govinfo.gov/content/pkg/FR-2010-03-04/pdf/FR-2010-03-04.pdf#page=285* (75 FR 10030, March 4, 2010).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2010-10-07/pdf/FR-2010-10-07.pdf#page=289 (75 FR 62258, October 7, 2010).

(7) Rule: Small Business, Small Disadvantaged Business, HUBZone, and Service-Disabled Veteran-Owned Business Status Protest and Appeal Regulations

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2010-03-01/pdf/FR-2010-03-01.pdf#page=52 (75 FR 9129, March 1, 2010).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2011-02-02/pdf/FR-2011-02-02.pdf#page=9 (76 FR 5680, February 2, 2011).

(8) Rule: Small Business Size and Status Integrity

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2011-10-07/pdf/FR-2011-10-07.pdf#page=41 (76 FR 62313, October 7, 2011).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2013-06-28/pdf/FR-2013-06-28.pdf#page=9 (78 FR 38811, June 28, 2013).

[2] This Proposed Rule included a withdrawal of SBA Final Rule, Women-Owned Small Business Federal Contract Assistance Procedures (October 1, 2008; 73 FR 56940). SBA published a final regulatory flexibility analysis with the Final Rule and determined that the rulemaking may have a significant impact on a substantial number of small entities. As the rule was later withdrawn, SBA has not included it in its section 610 review.

(9) Rule: Small Business Subcontracting

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2011-10-05/pdf/FR-2011-10-05.pdf#page=79 (76 FR 61626, October 5, 2011).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2013-07-16/pdf/FR-2013-07-16.pdf#page=10 (78 FR 42391, July 16, 2013).

(10) Rule: Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2012-05-16/pdf/FR-2012-05-16.pdf#page=378 (77 FR 29130, May 16, 2012).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2013-10-02/pdf/FR-2013-10-02.pdf#page=469 (78 FR 61114, October 2, 2013).

(11) Rule: Small Business Mentor Protégé Programs; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/Small Disadvantaged Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals (February 5, 2015; 80 FR 6618

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2015-02-05/pdf/FR-2015-02-05.pdf#page=196 (80 FR 6618, February 5, 2015).

Final Rule: Small Business Mentor Protégé Programs (July 25, 2016; 81 FR 48558); *https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/FR-2016-07-25.pdf#page=248.*

C. Rules Related to 13 CFR Part 126

Title: HUBZone Program (Section 610 Review).

Docket Number: SBA–2020–0018.

RIN: 3245–AH21.

Citation: 13 CFR 126.

Authority: 15 U.S.C. 632 and 657a.

Description: Under part 126, HUBZone program, SBA has promulgated several rules that the Agency determined would have a significant economic impact on a substantial number of small entities within the meaning of the RFA. These rules established eligibility requirements for qualified HUBZone small business concerns, procedures for certification program examinations and protests, and provisions relating to HUBZone contracts, among other things. Each of these rules is listed below; for ease of access, SBA has provided the web address for the proposed and final publications of each rule.

(1) Rule: HUBZone Empowerment Contracting Program

Proposed Rule: HUBZone Empowerment Contracting Program (April 2, 1998; 63 FR 16148); *https://www.govinfo.gov/content/pkg/FR-1998-04-02/pdf/FR-1998-04-02.pdf#page=72.*

Final Rule: HUBZone Empowerment Contracting Program (June 11, 1998; 63 FR 31896); *https://www.govinfo.gov/content/pkg/FR-1998-06-11/pdf/98-15581.pdf#page=1.*

(2) Rule: Small Business Size Regulations; Government Contracting Programs; HUBZone Program

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2002-01-28/pdf/FR-2002-01-28.pdf#page=38 (67 FR 3826, January 28, 2002).

Final Rule: Small Business Size Regulations; Government Contracting Programs; HUBZone Program *https://www.govinfo.gov/content/pkg/FR-2004-05-24/pdf/FR-2004-05-24.pdf#page=8* (69 FR 29411, May 24, 2004).

(3) Rule: Women-Owned Small Business Federal Contract Program

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2010-03-04/pdf/FR-2010-03-04.pdf#page=285 (75 FR 10030, March 4, 2010).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2010-10-07/pdf/FR-2010-10-07.pdf#page=289 (75 FR 62258, October 7, 2010).

(4) Rule: Small Business, Small Disadvantaged Business, HUBZone, and Service-Disabled Veteran-Owned Business Status Protest and Appeal Regulations

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2010-03-01/pdf/FR-2010-03-01.pdf#page=52 (75 FR 9129, March 1, 2010).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2011-02-02/pdf/FR-2011-02-02.pdf#page=9 (76 FR 5680, February 2, 2011).

(5) Rule: Small Business Size and Status Integrity

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2011-10-07/pdf/FR-2011-10-07.pdf#page=41 (76 FR 62313, October 7, 2011).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2013-06-28/pdf/FR-2013-06-28.pdf#page=9 (78 FR 38811, June 28, 2013).

(6) Rule: Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2012-05-16/pdf/FR-2012-05-16.pdf#page=378 (77 FR 29130, May 16, 2012).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2013-10-02/pdf/FR-2013-10-02.pdf#page=469 (78 FR 61114, October 2, 2013).

(7) Rule: Small Business Mentor Protégé Programs; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/Small Disadvantaged Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

Proposed Rule: https://www.govinfo.gov/content/pkg/FR-2015-02-05/pdf/FR-2015-02-05.pdf#page=196 (80 FR 6618, February 5, 2015).

Final Rule: https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/FR-2016-07-25.pdf#page=248 (81 FR 48558, July 25, 2016).

Dated: April 16, 2020.

Barbara Carson,

Deputy Associate Administrator, Office of Government Contracting and Business Development.

[FR Doc. 2020–08475 Filed 4–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0342; Product Identifier 2019–SW–078–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH 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 all Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters. This proposed AD was prompted by a report of an erroneous low rotor revolutions per minute (RPM) indication after establishing a one engine inoperative (OEI) condition. This proposed AD would require a software (SW) modification for the aircraft management computer (AMC). 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 June 12, 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 Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* 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.

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–2020–0342; 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 European Union Aviation Safety Agency (EASA) AD, 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: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *george.schwab@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–2020–0342; Product Identifier 2019–SW–078–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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2019–0208, dated August 22, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters. EASA advises that an occurrence was reported of erroneous low RPM indication after establishing an OEI condition. To address this unsafe condition, Airbus Helicopters developed upgraded AMC SW, which prevents further occurrences, and issued service information providing instructions to update the SW of affected parts.

The FAA is issuing this AD to address erroneous low RPM indications, which could cause the pilot to make inappropriate control inputs, resulting in damage to the helicopter or injury to occupants.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0342.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued Alert Service Bulletin MBB–BK117 D–2–42A–005, Revision 3, dated June 6, 2019. This service information describes procedures for a SW modification for the AMC.

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

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the MCAI or Service Information.''

Differences Between This Proposed AD and the MCAI or Service Information

EASA AD 2019–0208 provides a 60-day compliance time for accomplishing the SW modification. This proposed AD would require completion of the SW modification within 50 hours time-in-service.

Costs of Compliance

The FAA estimates that this proposed AD affects 30 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$3,000	$3,085	$92,550

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):

Airbus Helicopters Deutschland GmbH: Docket No. FAA–2020–0342; Product Identifier 2019–SW–078–AD.

(a) Comments Due Date

The FAA must receive comments by June 12, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 42, Integrated Modular Avionics.

(e) Reason

This AD was prompted by a report of an erroneous low rotor revolutions per minute (RPM) indication after establishing a one engine inoperative condition. The FAA is issuing this AD to address erroneous low RPM indications, which could cause the pilot to make inappropriate control inputs, resulting in damage to the helicopter or injury to occupants.

(f) Compliance

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

(g) Definitions

(1) Affected part: An aircraft management computer (AMC) having a software (SW) version installed that is identified as ''pre-modification SW'' in Figure 1 to paragraphs (g)(1), (h), and (i) of this AD, or earlier SW version.

Figure 1 to Paragraphs (g)(1), (h), and (i) – *Helicopter Configuration and Updated SW*

Helicopter Configuration	Pre-modification SW	Post-modification/ Upgraded SW
D-2 and D-2m (basic)	As of the effective date of this AD, no D-2 and D-2m (basic) helicopters are known to be in service.	
D-2 and D-2m (Helionix Step 2)	V5.0.1 P/N D462C01S0501	V5.0.4 P/N D462C01S0504
	V5.0.2 P/N D462C01S0502	V5.0.4 P/N D462C01S0504
	V5.0.2 P/N D462C03S0502	V5.0.4 P/N D462C03S0504
D-2 and D-2m (Helionix Step 2.0.1)	V5.0.3 P/N D462C01S0503	V5.0.4 P/N D462C01S0504
	V5.0.3 P/N D462C03S0503	V5.0.4 P/N D462C03S0504
D-2 and D-2m (Helionix Step 3)	V6.0 P/N D462C01S0600	V6.0.2 P/N D462C01S0602
	V6.0 P/N D462C03S0600	V6.0.2 P/N D462C03S0602

(2) Group 1: Helicopters that have an affected part installed.

(3) Group 2: Helicopters that do not have an affected part installed.

(h) Software Modification

(1) For Group 1: Within 50 hours time-in-service after the effective date of this AD, update the SW of each affected part to the corresponding upgraded SW, as listed in Figure 1 to paragraphs (g)(1), (h), and (i) of this AD, in accordance with the Accomplishment Instructions, Section 3.B.2, of Airbus Helicopters Alert Service Bulletin MBB–BK117 D–2–42A–005, Revision 3, dated June 6, 2019.

(2) Replacement on a helicopter of an affected part with an AMC having the corresponding upgraded SW installed, as listed in Figure 1 to paragraphs (g)(1), (h), and (i) of this AD, or later SW upgrade is an acceptable alternative method of compliance for the requirements of paragraph (h)(1) of this AD for that helicopter.

(i) Parts Installation Prohibition

Do not install on any helicopter an affected part, and do not upload any SW identified as ''pre-modification SW'' in Figure 1 to paragraphs (g)(1), (h), and (i) of this AD, or earlier SW version, on any AMC, as required by paragraph (i)(1) or (2) of this AD, as applicable.

(1) For Group 1: After modification of that helicopter as specified in paragraph (h) of this AD.

(2) For Group 2: As of the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(k) Related Information

(1) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD No. 2019–0208, dated August 22, 2019. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0342.

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* 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.

Issued on April 23, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08976 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3941; Product Identifier 2015–SW–052–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposal for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters. This action revises the notice of proposed rulemaking (NPRM) by expanding the applicability and proposing to add requirements to replace certain seals with newly certified seals and revise the Rotorcraft Flight Manual (RFM) for your helicopter. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the FAA is reopening the comment period to allow the public the chance to comment on these changes.

DATES: The comment period for the NPRM published in the **Federal Register** on May 5, 2016 (81 FR 27057), is reopened.

The FAA must receive comments on this SNPRM by June 12, 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 the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2015–3941; 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 SNPRM, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, 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 service information identified in this SNPRM, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@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–2015–3941; Product Identifier 2015–SW–052–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this SNPRM. The FAA will consider all comments received by the closing date and may amend this SNPRM based on 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 SNPRM.

Discussion

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters with adhesive seal part number (P/N) 117–800201.01 installed

on an exterior or interior sliding door. The NPRM published in the **Federal Register** on May 5, 2016 (81 FR 27057). The NPRM was prompted by reports that the adhesive seal prevented the doors from jettisoning properly. The NPRM proposed to require removing this part-numbered adhesive seal from the exterior and interior of each sliding door. The NPRM also proposed to prohibit the installation of this part-numbered adhesive seal on any helicopter sliding door.

EASA, which is the aviation authority for the Member States of the European Union, had issued EASA AD No. 2015–0163, dated August 6, 2015 (EASA AD 2015–0163), to correct an unsafe condition for Airbus Helicopters Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters. EASA advised that difficulties were reported regarding the jettisoning of doors. The malfunction was caused by the adhesive seal, which hampered the free movement of the inner handle. According to EASA, a subsequent investigation showed that the adhesive seal has mechanical and physical properties that do not meet relevant certification requirements. EASA stated that this condition, if not detected and corrected, could lead to a malfunction of the door's jettisoning mechanism, reducing or preventing the evacuation of the helicopter during an emergency, possibly resulting in injury to occupants. To address this condition, EASA AD 2015–0163 required inspecting the exterior and interior door jettisoning system on the left and right sliding doors for adhesive seal P/N 117–800201.01 and removing those adhesive seals.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, a new adhesive seal P/N has become available and the related service information has been revised to provide installation instructions for this new seal and instruction to use a revised flight manual with preflight check information for the new seal. EASA also revised its AD to EASA AD No. 2015–0163R1, dated April 27, 2016, to include a reference to the installation of the new adhesive seals.

Accordingly, this SNPRM expands the applicability to include all Airbus Helicopters Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters and proposes to require installation of the new adhesive seals and revise the RFM for your helicopter.

Additionally, since the NPRM was issued, the website address for Airbus Helicopters has changed. This website address has been updated in this SNPRM. Lastly, since the NPRM was issued, the FAA's Aircraft Certification Service has changed its organization structure. The new structure replaces product directorates with functional divisions. The FAA has revised some of the office titles and nomenclature throughout this proposed AD to reflect the new organizational changes. Information about the new structure can be found in the Notice published on July 25, 2017 (82 FR 34564).

Comments

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

FAA's Determination

The FAA is proposing this SNPRM after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of these same type designs. Certain changes described above expand the scope of the original NPRM. As a result, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Deutschland GmbH Helicopters Alert Service Bulletin MBB–BK117–20A–114, Revision 2, dated March 30, 2016, for Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters. This service information describes procedures for cleaning and degreasing the seal installation areas and installing adhesive seal P/N 117–800201.02. This service information also specifies flight manual revisions with preflight check information for this new seal.

The FAA reviewed MBB Helicopters Flight Manual MBB–BK117 A–3, Revision 17.1, MBB Helicopters Flight Manual MBB–BK117 A–4, Revision 16.1, MBB Helicopters Flight Manual MBB–BK117 B–1, Revision 20.1, Eurocopter Flight Manual BK117 B–2, Revision 21.2, and Eurocopter Flight Manual BK117 C–1, Revision 30.1, each dated March 25, 2015. This revision of the service information adds preflight check procedures for ''Jettisonable sliding door installed, after ASB–BK117–20A–114'' in the Normal Procedures section, Preflight Exterior Check, under both ''Fuselage—right side'' and ''Fuselage—left side'' of the RFM for your helicopter.

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.

Proposed Requirements of the SNPRM

If adhesive seal P/N 117–800201.01 is installed, this proposed AD would require, within 25 hours time-in-service, removing each adhesive seal from the interior and exterior of each sliding door. For all helicopters, this proposed AD would require cleaning and degreasing the seal installation areas and installing adhesive seal P/N 117–800201.02. This proposed AD would also require revising the Normal Procedures section, Preflight Exterior Check, under both ''Fuselage—right side'' and ''Fuselage—left side'' of the RFM for your helicopter to check the condition of the exterior and interior seals.

This proposed AD would also prohibit the installation of adhesive seal P/N 117–800201.01 on any helicopter sliding door.

Differences Between This SNPRM and the EASA AD

The EASA AD does not mandate the installation of the new adhesive seals, whereas this proposed AD would. Model MBB–BK 117 B–2 serial number 7203 is affected by the EASA AD, but it is not affected by this SNPRM because it is ineligible for U.S. registration.

Costs of Compliance

The FAA estimates that this proposed AD affects 45 helicopters of U.S. registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

If installed, removing adhesive seals P/N 117–800201.01 would take about 0.5 work-hour for an estimated cost of about $43 per helicopter. Installing new seals and revising the RFM for your helicopter would take about 1 work-hour and a set of new seals (4 units) would cost about $5 for an estimated cost of $90 per helicopter and $4,050 for the U.S. fleet.

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):

Airbus Helicopters Deutschland GmbH: Docket No. FAA–2015–3941; Product Identifier 2015–SW–052–AD.

(a) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as the presence of sealant on a sliding door (door). This condition could result in the door failing to jettison, preventing helicopter occupants from exiting the helicopter during an emergency.

(c) Comments Due Date

The FAA must receive comments by June 12, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 25 hours time-in-service after the effective date of this AD:

(i) For helicopters with adhesive seal part number (P/N) 117–800201.01 installed on an exterior or interior door, remove adhesive seal P/N 117–800201.01 from the interior and exterior of each door, remove any adhesive using solvent (CM 202 or equivalent) and remove any grease using methyl ethyl ketone (CM 217 or equivalent), and install adhesive seal P/N 117–800201.02. Refer to Figures 1 through 4 of Airbus Helicopters Alert Service Bulletin MBB–BK117–20A–114, Revision 2, dated March 30, 2016 (ASB MBB–BK117–20A–114) for a depiction of the seal installation areas.

(ii) For helicopters without adhesive seal P/N 117–800201.01 installed, clean the seal installation areas using solvent (CM 202 or equivalent), remove any grease using methyl ethyl ketone (CM 217 or equivalent), and install adhesive seal P/N 117–800201.02. Refer to Figures 1 through 4 of ASB MBB–BK117–20A–114 for a depiction of the seal installation areas.

(iii) Revise the Normal Procedures section, Preflight Exterior Check, under both ''Fuselage—right side'' and ''Fuselage—left side'' of the Rotorcraft Flight Manual for your helicopter by adding the information in Figure 1 to paragraph (e)(1)(iii) of this AD or by adding the information for ''Jettisonable sliding door installed, after ASB–BK117–20A–114'' of the following as applicable for your helicopter: MBB Helicopters Flight Manual MBB–BK117 A–3, Revision 17.1, MBB Helicopters Flight Manual MBB–BK117 A–4, Revision 16.1, MBB Helicopters Flight Manual MBB–BK117 B–1, Revision 20.1, Eurocopter Flight Manual BK117 B–2, Revision 21.2, or Eurocopter Flight Manual BK117 C–1, Revision 30.1, each dated March 25, 2015. Using a different document with information identical to the information for the ''Jettisonable sliding door installed, after ASB–BK117–20A–114'' procedures in the Flight Manual revision specified in this paragraph for your helicopter is acceptable for compliance with the requirements of this paragraph. This action may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9(a)(1) through (4) and § 91.417(a)(2)(v). The record must be maintained as required by § 91.417, § 121.380, or § 135.439.

If jettisonable sliding door is installed per ASB-BK117-20A-114, check the condition of the stretch seal strips on exterior and interior jettisoning handles.

Figure 1 to Paragraph (e)(1)(iii)

(2) After the effective date of this AD, do not install adhesive seal P/N 117–800201.01 on any helicopter door.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) For service information related to this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD No. 2015–0163R1, dated April 27, 2016. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2015–3941.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5220, Emergency Exits.

Issued on April 22, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08902 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0298; Airspace Docket No. 19–ANM–97]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Quinter, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Gove County Airport, Quinter, KS, to accommodate new area navigation (RNAV) procedures at the airport. This action would ensure the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before June 12, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0298; Airspace Docket No. 19–ANM–97, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA, 98198–6547; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Gove County Airport, Quinter, KS in support of IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2020–0298; Airspace Docket No. 19–ANM–97) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0298; Airspace Docket No. 19–ANM–97.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th St., Des Moines, WA 98198–6547.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above ground level at Gove County Airport, Quinter, KS. The Class E airspace extending upward from 700 feet AGL would be established to within 5.5 miles of the Gove County Airport.

This area would provide airspace for new Area Navigation Procedures at Gove County Airport, Quinter, KS.

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 designation listed in this document will be published subsequently in the Order. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this proposed 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. Given this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WA E5 Quinter, KS

Gove County Airport, KS
(Lat. 39°02′19″ N, long. 100°14′02″ W)

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Gove County airport, Quinter, KS.

Issued in Seattle, Washington, on April 21, 2020.

Shawn M. Kozica,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–08956 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[Docket No. 190524472–9472–01]

RIN 0694–AH65

Modification of License Exception Additional Permissive Reexports (APR)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) by modifying License Exception Additional Permissive Reexports (APR). Specifically, BIS is proposing to remove provisions which authorize reexports of certain national security-controlled items on the Commerce Control List (CCL) to gain better visibility into transactions of national security or foreign policy interest to the United States.

DATES: Comments must be received by BIS no later than June 29, 2020.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*www.regulations.gov*). The regulations.gov ID for this rule is: BIS–2020–0010. All relevant comments (including any personally identifying information) will be made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092 or Email: *eileen.albanese@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce's Bureau of Industry and Security (BIS) is proposing to revise part 740 of the Export Administration Regulations (EAR) (15 CFR, Subchapter C, parts 730–774), which provides information on license exceptions. An export license exception is an authorization allowing the export, re-export, or transfer (in-country), under stated conditions, of items subject to the EAR that would otherwise require a license. Because there are a number of circumstances under which a license exception may replace the need for a license, there are several types of license exceptions described in part 740.

With this rule, BIS is proposing to modify License Exception Additional Permissive Reexports (APR) (§ 740.16 of the EAR) which, among other things, authorizes certain reexports between and among certain countries. To advance the objectives discussed in the Administration's December 2017 National Security Strategy as well as address the challenges discussed in the Administration's January 2018 National Defense Strategy available at *https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf,* BIS proposes to remove a provision of License Exception APR due to variations in how the United States and its partners, including partners located in Country Group A:1, perceive the threat caused by the increasing integration of civilian and military technology development in countries of concern. A current listing of country groups can be found at *https://www.bis.doc.gov/index.php/documents/regulation-docs/2255-supplement-no-1-to-part-740-country-groups-1/file.*

Based on discussions with partner governments and U.S. companies, BIS has evidence of differences in licensing review standards for national-security controlled items destined to Country Group D:1, so that countries in Country Group A:1 or Hong Kong may approve a license for the reexport of a U.S.-origin item that would have been denied if exported directly from the United States.

Proposed Revision to License Exception APR (§ 740.16 Additional Permissive Reexports)

Currently, paragraph (a) of License Exception APR authorizes the reexport

of certain items from a country in Country Group A:1 or Hong Kong to certain destinations, provided that the reexport is consistent with an export authorization from the country of reexport, and that the item is not subject to reasons for control described in § 740.16(a)(2), which includes missile technology and nuclear nonproliferation controls. BIS is proposing to remove countries in Country Group D:1 as a category of eligible destination for national security-controlled items under paragraph (a) of License Exception APR by amending § 740.16(a)(3). BIS is considering this change because, as described above, the Department acknowledges there may be variations of national security or foreign policy concerns between other countries and the United States. Even Wassenaar participating states in Country Group A:1 may have export authorization policies that do not align with the national security or foreign policy interests of the U.S. government.

As such, BIS believes that reexports of national security-controlled items currently permitted under § 740.16(a)(3)(ii) should be reviewed by the U.S. government before proceeding. Removing the provision currently found in § 740.16(a)(3)(ii) and requiring a reexport license for national security-controlled items to Country Group D:1 will allow the U.S. government prior review of these reexports to ensure that the reexports are authorized consistent with U.S. policy.

Request for Comment

Overall, license exceptions can be of significant benefit to exporters and reexporters, although they can be complex and may require detailed analysis before use. BIS has historically encouraged exporters and reexporters to use license exceptions since they reflect U.S. policy, reduce the burden for both exporters/reexporters and BIS staff, and reduce obstacles and costs that can inhibit trade.

The main advantage of using a license exception is that it provides relief from the requirement to apply for a license. The resources needed to apply for and administer a BIS license include those necessary to access the BIS electronic systems, complete the application and supporting documentation, and track license use if the license covers multiple transactions. Additionally, a licensing requirement can have a significant impact on the timing and predictability of order fulfilment due to license processing time, which involves interagency review and can vary according to the transaction. Recordkeeping requirements for license exceptions generally parallel those for licenses.

BIS is requesting comment on how the proposed change would impact persons who currently use or plan to use License Exception APR. Currently, BIS does not have a way to readily account for how many items are being authorized for reexport or transfer (in-country) under the provisions of License Exception APR, so BIS is seeking information as to the volume of transactions affected by this proposed change, how the proposed change would affect the amount of time necessary to complete such transactions in the future, and how the proposed change would otherwise affect current business. Please also see the Paperwork Reduction Act section of the rulemaking requirements for additional areas available for comment.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in § 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (previously, 50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)) or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866.

2. This proposed rule is not subject to the requirements of Executive Order 13771 because it is issued with respect to a national security function of the United States. As described in this rule and consistent with the Administration's National Security Strategy and National Defense Strategy, modification of the license exception described herein would enhance the national security of the United States by reducing the risk that exports, reexports, and transfers (in-country) of items subject to the EAR could take place contrary to U.S. national security or foreign policy interests. This proposed rule would allow the United States government to review transactions involving items and destinations of national security concern prior to their completion to mitigate this risk. The cost-benefit analysis required pursuant to Executive Orders 13563 and 12866 indicates that this rule is intended to improve national security as its primary direct benefit. Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing Executive Order 13771, regarding what constitutes a regulation issued ''with respect to a national security function of the United States'' and it is, therefore, exempt from the requirements of Executive Order 13771.

3. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

BIS is not able to estimate the increase in total burden hours associated with the PRA and OMB control number 0694–0088 as a result of this rule because, prior to publication of this proposed rule, BIS did not have a way to readily account for how many items were being authorized for reexport or transfer (in-country) under provisions of License Exception APR. BIS encourages public comments from reexporters to assist the agency in developing estimates for the impact on burden hours if the changes included in this

proposed rule were published in final form.

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

5. Pursuant to section 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232, 132 Stat. 2208), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. Nonetheless, BIS is providing the public with an opportunity to review and comment on this rule, despite its being exempted from that requirement of the APA.

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

List of Subjects in 15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, 15 CFR part 740 of the EAR (15 CFR parts 730–774) is proposed to be amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. Amend § 740.16 by revising paragraph (a)(3) to read as follows:

§ 740.16 Additional permissive reexports (APR).

* * * * *

(a) * * *

(3) The reexport is destined to a country in Country Group B that is not also included in Country Group D:2, D:3, or D:4; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1.

* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–07239 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0156; FRL–10008–17-Region 4]

Air Plan Approval; KY: Jefferson County Performance Tests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), Division of Air Quality (DAQ), through a letter dated September 5, 2019. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County). The SIP revision includes changes to Jefferson County regulations regarding performance tests.

DATES: Comments must be received on or before May 28, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0156 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov* or via telephone at (404) 562–9089.

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing?

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through DAQ via a letter dated September 5, 2019.[1] EPA is proposing to approve the changes to Jefferson County's Regulation 1.04, *Performance Tests.*[2] The September 5, 2019, SIP revision first makes minor changes to Regulation 1.04 that do not alter the meaning of the regulation such as clarifying changes to its notification requirements under the SIP. In addition, other changes strengthen the SIP by adding a specific reporting requirement to communicate results from any required performance testing. The SIP revision updates the current SIP-approved version of Regulation 1.04 (Version 6) to Version 7. The changes to this rule and EPA's rationale for proposing approval are described in more detail in Section II of this notice of proposed rulemaking.

II. EPA's Analysis of the Commonwealth's Submittal

As mentioned in Section I of this proposed action, the September 5, 2019, SIP revision that EPA is proposing to approve makes changes to Jefferson County Air Quality Regulations at Regulation 1.04, *Performance Tests.* The

[1] In 2003, the City of Louisville and Jefferson County governments merged and the ''Jefferson County Air Pollution Control District'' was renamed the ''Louisville Metro Air Pollution Control District.'' *See* The History of Air Pollution Control in Louisville, available at *https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville.* However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading ''Air Pollution Control District of Jefferson County.'' Thus, to be consistent with the terminology used in the SIP, we refer throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the ''Jefferson County'' regulations.

[2] EPA notes that the Agency received several submittals revising the Jefferson County portion of the Kentucky SIP transmitted with the same September 5, 2019, cover letter. EPA will be considering action for these other SIP revisions in separate rulemakings.

changes to Section 2, *Test Requirements,* makes several ministerial language changes throughout to include ''the Administrator of the EPA'' in place of ''EPA'' [3] and similar minor edits which do not alter the meaning of the regulation. As approved into the SIP before this revision, EPA has a role in approving alternative testing procedures, including changes in methodology or equivalent methods for use. In some instances, the Administrator of the EPA is now included where the provision only referred previously to the District. Specifically, the changes clarify that that EPA has the authority to require or conduct performance testing in addition to the District. Section 2 is then modified to move a noticing requirement ahead of starting testing to Section 3, *Testing Notification,* to streamline the regulation. This change also results in renumbering of the remainder of Section 2.

Section 2 is also modified with additional language under 2.10 to describe the limited circumstances under which a person conducting a test may halt the test in progress. This language allows for halting the test only if: (1) There is a forced shutdown; (2) there is failure of an irreplaceable portion of the sampling train; (3) there are extreme meteorological conditions; or (4) there are unforeseen circumstances beyond the owner's or operator's control. Next, halting a test is specifically not allowed for the purpose of adjusting the parameters of the performance test. SIP-approved Section 2.11 already lists items 2.10.1—2.10.3 as potential causes of halting a test run. Therefore, the changes to Section 2.10 are intended to clarify when it is appropriate to halt a test run and when it is not allowed. Importantly, all data, including from halted test runs, is required to be reported in newly added Section 5. EPA proposes that these changes to Section 2 are clarifying and minor in nature.

Section 3, *Testing Notification,* is modified first by reorganizing the section. Section 3.1 is moved from former 3.1.1, and the requirement to submit an intent to test at least 25 working days ahead of the projected start of a performance test is modified to require a test protocol at least 30 calendar days ahead of the projected start. These changes are clarifying and strengthening in nature, requiring a full test protocol—which Jefferson County describes as a site-specific testing plan—rather than an intent to test. Section 3.2 is modified to note that a pre-test conference may be arranged, but is not required. This conference is no longer specifically necessary since Section 3.1 now requires further advance notice of the performance test along with a site-specific testing protocol. Section 3.2 is also changed to remove the requirement that a pre-test ''survey,'' which was undefined, must accompany the conference. This requirement is superseded with the requirement to submit a protocol under 3.1. Next, Section 3.3 is added to include the 10-day notification of the intent to test to the District that was previously included in Section 2. EPA preliminarily finds these changes to Section 3 to be administrative, minor, and clarifying in nature.

Section 4, *Notification Waiver,* is modified to correct a typographical error, restructure and renumber a provision, and eliminate language which is no longer necessary. The pre-test survey previously referenced in Section 4.2 is no longer required by Section 3 and is removed accordingly from the list of items for which notification is waived in the case of an emergency or malfunction.

Finally, the September 5, 2019, SIP revision adds Section 5, *Test Report,* to provide specific instruction on submitting a final test report following the test. Section 5.1 provides that a report shall be submitted within 60 days of the completion of any performance test, and Section 5.2 provides that the report shall include all data, including any data from aborted or rejected test runs and any other specified data in the test protocol. EPA proposes that the submission of a report at the end of a performance test is appropriate for communicating the results of any required testing pursuant to Regulation 1.04, and that the inclusion of Section 5 in the SIP is SIP-strengthening.

These rule changes do not change any applicable emissions limitations or relax requirements for affected sources. EPA proposes that the changes serve to strengthen and clarify the SIP. Therefore, EPA has made the preliminary determination that the aforementioned changes will not have a negative impact on air quality in the area and is therefore proposing to approve Version 7 of Regulation 1.04 into the Jefferson County portion of the Kentucky SIP.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Jefferson County's Regulation 1.04, *Performance Tests,* Version 7, state effective June 19, 2019, which makes minor and ministerial changes for consistent language throughout the regulation and includes a new requirement for submitting reports on the conducted performances tests. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP included in a September 5, 2019, SIP revision. Specifically, EPA is proposing to approve the District's Regulation 1.04 Version 7 into the SIP. The September 5, 2019, SIP revision makes minor and ministerial changes for consistent language throughout the regulation and includes a new requirement for submitting reports on the conducted performances tests. EPA believes these changes are consistent with the Clean Air Act (CAA or Act), and this rule adoption will not impact the national ambient air quality standards or interfere with any other applicable requirement of the Act.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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.*);

[3] EPA is proposing to approve the SIP revision with the understanding that these provisions referencing the ''Administrator of the EPA'' include any EPA official with the delegated authority to take the actions described in Section 2.

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–08666 Filed 4–27–20; 8:45 am]

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Notices

Federal Register
Vol. 85, No. 82
Tuesday, April 28, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Superior National Forest; Cook County; Minnesota; Lutsen Mountains Ski Area Expansion Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; extension of scoping period.

SUMMARY: The Superior National Forest (SNF) published a notice of intent (NOI) to prepare an environmental impact statement (EIS) on April 15, 2020 for the Lutsen Mountains Ski Area Expansion Project. Lutsen Mountain Corporation (LMC) has submitted a proposal to the SNF to implement select projects at Lutsen Mountains Resort (Lutsen Mountains). All projects are identified within the Lutsen Mountains 2016 Master Development Plan (MDP). The original scoping period was identified to conclude May 15, 2020. The scoping period will be extended to conclude May 28, 2020. The original NOI also indicated that one public open house meeting would be held; however, in response to the coronavirus (COVID–19) pandemic in the United States, and the Center for Disease Control's recommendation for social distancing and avoiding large public gatherings, a public meeting will not be scheduled during the scoping period.

DATES: Comments concerning the scope of the analysis must be received by May 28, 2020. The draft EIS is expected in November 2020, and the final EIS is expected June 2021.

ADDRESSES: Comments may be sent by the following methods:

- *Mail:* Constance Cummins, Forest Supervisor, c/o Michael Jimenez, Project Leader, Superior National Forest, 8901 Grand Avenue Place, Duluth, MN 55808.
- *Email: comments-eastern-superior@usda.gov* (please include ''Lutsen Mountains Ski Area Expansion Project'' in the subject line).
- *Online: https://www.fs.usda.gov/project/?project=52440.*

FOR FURTHER INFORMATION CONTACT: Michael Jimenez, Project Leader, Superior National Forest, by phone at (218) 626–4383, or by email at *michael.jimenez@usda.gov.* Additional information can also be found on the project website at *https://www.fs.usda.gov/project/?project=52440.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Lutsen Mountains Corporation (LMC) has applied to the SNF for a special use permit (SUP) under the National Forest Ski Area Permit Act of 1986 that would authorize LMC to construct, operate, and maintain an expansion to a winter sports resort onto approximately 495 acres of National Forest System (NFS) land. Federal regulations at 16 U.S.C. 497b and 36 CFR 251b specifically identify ski areas and associated facilities as permissible uses of NFS land.

The purpose of, and need for, the Forest Service's action is to respond to the proposal from LMC to implement select projects at the Lutsen Mountain Resort on the SNF. The 2004 Land and Resource Management Plan (Forest Plan) identifies Forest-wide Desired Conditions which guide management direction across the SNF. The Proposed Action could help achieve D–REC–3, which states ''the [SNF] provides developed sites, facilities, trails, water access sites, and other recreation opportunities within health and safety, resource protection, cost, and maintenance requirements.'' (2004 Forest Plan, Chapter 2, Page 39) The Forest Supervisor will use the EIS to inform the decision regarding: (1) Whether to issue a SUP under the National Forest Ski Area Permit Act of 1986; (2) the selection of a preferred alternative; (3) any need to amend the Forest Plan; and (4) what specific terms and conditions should apply if a SUP is issued.

LMC's overall purpose of the proposed project and associated SUP application is to improve the guest experience at Lutsen Mountains, which cannot be accommodated on adjacent private land controlled by LMC. Specifically, LMC has identified a need to:

- Construct additional traditionally cleared alpine ski trails and undeveloped, minimally maintained lift-served terrain to address the current deficit in beginner and expert terrain and to enhance the existing terrain variety and skiing experiences at Lutsen Mountains.
- Improve skier circulation and reliable snow conditions, particularly on Eagle Mountain and Moose Mountain.
- Improve base area, parking, guest services, and operational facilities to meet the ever-increasing expectations of the local, regional, and destination skier markets.

Additional detail on the existing conditions driving the project Purpose and Need as well as the Objectives can be found at: *https://www.fs.usda.gov/project/?project=52440.*

Proposed Action

The Proposed Action includes the following seven elements:

- Authorization of an approximately 495-acre SUP;
- Construction of seven new chairlifts and one surface lift;
- Development of 324 acres of additional ski terrain, including approximately 175 acres of developed ski trails and 149 acres of gladed terrain;
- Expansion of guest services including two new base facilities, maintenance facilities, and a mountain-top chalet;
- Expansion of ski patrol operations, including construction of an interim ski patrol duty station located in a similar location with the mountain-top chalet;
- Development of approximately 1,260 additional parking spaces, construction of approximately 5 miles of permanent access roads, and construction of approximately 0.9 miles of temporary access roads; and
- Installation of snowmaking coverage on all 175 acres of developed ski trails and construction of two snowmaking reservoirs with a combined capacity of 13 million gallons.

A full description of each element can be found at: *https://www.fs.usda.gov/project/?project=52440.*

Responsible Official

The Responsible Official is Constance Cummins, Forest Supervisor for the SNF.

Nature of Decision to Be Made

Given the purpose and need, the Responsible Official will review the proposed action, the other alternatives, and the environmental consequences in order to decide the following:

- Whether to approve, approve with modifications, or deny the application for the creation of a SUP and associated expansions.
- Whether to prescribe conditions needed for the protection of the environment on NFS lands.

Permits or Licenses Required

- Forest Service SUP.
- Minnesota Department of Natural Resources Water Appropriations Permit.
- Minnesota Pollution Control Agency Wastewater Permit.
- Other permits or licenses that may be identified through scoping and the EIS analysis process.

Scoping Process

This NOI initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by implementation of the proposed projects. Tribal consultation is ongoing, and will continue.

To be most helpful, comments should be specific to the project area and should identify resources or effects that should be considered by the Forest Service. Submitting timely, specifically written comments during this scoping period or any other official comment period establishes standing for filing objections under 36 CFR parts 218 A and B. Additional information and maps of this proposal can be found at: *https://www.fs.usda.gov/project/?project=52440.* Details of the project proposal can also be viewed through an online interactive viewer here: *https://arcg.is/18mzzu.*

It is important that reviewers provide their comments in a timely manner to ensure they are considered in the Agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action.

Lisa A Northrop,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2020–08969 Filed 4–27–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 a planning meeting of the Rhode Island State Advisory Committee to the Commission will convene by conference call, on Wednesday, May 20, 2020 at 11:00 a.m. (EDT). The purpose of the meeting is to discuss the Committee's next steps for its civil rights project on licensing.

DATES: Wednesday, May 20, 2020 at 11:00 a.m. (EDT).

Call-In Information: 1 (206) 800–4892 and conference call ID: 193495200#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or by phone at (312) 353–8311.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the telephone number and conference ID listed above. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. 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-in numbers: 1 (206) 800–4892 and conference call ID: 193495200#.

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 respective meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311. Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t0000001gzm4AAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above phone number, email or street address.

Agenda

Wednesday, May 20, 2020 at 11:00 a.m. (EDT)

I. Rollcall
II. Project Planning on Licensing
III. Other Business
IV. Open Comment
V. Adjournment

Dated: April 23, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–09014 Filed 4–27–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

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 that the Georgia Advisory Committee (Committee) will hold a meeting via teleconference on Tuesday May 26, 2020, at 3:00 p.m. ET for the purpose of discussing civil rights concerns in the state.

DATES: The meeting will be held on Tuesday May 26, 2020 at 3:00 p.m. ET.

Public Call Information: Dial: 888–204–4368, Conference ID: 4079303.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of

the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call

Discussion: Civil Rights in Georgia

Public Comment

Adjournment

Dated: April 22, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–08944 Filed 4–27–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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 that the Ohio Advisory Committee (Committee) will hold a meeting via teleconference on Friday May 8, 2020, at 12:30 p.m. Eastern Time for the purpose of discussing civil rights in the state.

DATES: The meeting will be held on Friday May 8, 2020, at 12:30 p.m. Eastern Time.

Public Call Information: Dial: 800–367–2403, Confirmation Code: 6231077.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 confirmation code.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call

Discussion: Civil Rights in Ohio

Public Comment

Adjournment

Dated: April 22, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–08935 Filed 4–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Supplemental Questions Related to the Effects of the COVID–19 Pandemic on Businesses

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden and as required by the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension of the collection of information on the effects of the COVID–19 pandemic on the functioning of businesses through five Census Bureau surveys designated as Principal Federal Economic Indicators. The original collection was approved by the Office of Management and Budget on April 8, 2020 under the emergency approval provisions of the Paperwork Reduction Act.

DATES: To ensure consideration, written comments must be submitted on or before June 29, 2020.

ADDRESSES: Direct all written comments to Thomas Smith, PRA Liaison, U.S. Census Bureau, 4600 Silver Hill Road, Room 7K250A, Washington, DC 20233

(or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2020–0009, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephanie Studds, Chief, Economic Indicators Division, EID—7K154, Washington, DC 20278 (or via the internet at *stephanie.lee.studds@census.gov*; via telephone at 301–763–2633).

I. Abstract

On April 8, 2020, The Office of Management and Budget (OMB) granted approval under the emergency approval provisions of the Paperwork Reduction Act (PRA) for the U.S. Census Bureau to immediately begin collecting information on the effects of the COVID–19 pandemic on the functioning of businesses. The questions were added to the following surveys designated as Principal Federal Economic Indicators:

Manufacturers' Shipments, Inventories & Orders (M3) Survey (OMB control number 0607–0008)

Building Permits Survey (OMB control number 0607–0094)

Monthly Wholesale Trade Survey (OMB control number 0607–0190)

Monthly Retail Surveys (OMB control number 0607–0717)

Quarterly Services Survey (OMB control number 0607–0907)

The added questions are designed to allow the Census Bureau to measure the impact of the COVID–19 Pandemic upon businesses. As Principal Federal Economic Indicators, each of these surveys produces timely and closely watched statistics about the health of the U.S economy. Given the importance of these indicator surveys and of the statistics they produce, it is imperative we measure to what extent businesses have been impacted in terms of their ability to maintain operations during this turbulent period.

For the Building Permits Survey, the following questions have been added:

In the last month, was this office unable to issue permits as a result of a closure, lack of staffing, or any other reason?

- Yes
- No

If yes:

In the last month, were permit backlogs caused as a result of a closure, lack of staffing, or any other reason?

- Yes
- No

If yes:

In the last month, were permit backlogs cleared by the end of the reporting month or delayed into a future month?

- Backlogs were cleared by the end of the reporting month
- Backlogs were delayed into a future month

For the remaining four surveys, one fixed question was added as follows:

During (month\quarter), did this business temporarily close any of its locations for at least one day?

Additionally, the following questions will be added to the four surveys on a rotating basis:

In general, how has this business been affected by COVID–19?

In the last month, has this business discontinued operations due to factors related to COVID–19?

In the last month, did this business pay wages or salaries to employees that did not work due to the impact of COVID–19 on this business?

In the last month, did one or more of this business's paid employees work remotely (telework)?

In your opinion, how much time do you anticipate will pass before this business returns to the level of operations before March 2020?

Did delays in this business's product shipments impact (insert month) inventories reported in Item XX?

Did this business experience any delays in its supply chain that impacted the value of (insert month) shipments reported in Item xx?

In the last month, did any of this business's locations adopt pickup/carry-out/delivery as their only means of providing goods and services to their customers?

Due to the need to begin collecting this information right away, we were unable to allow for the time periods normally required for clearance under the PRA. The approval granted by OMB is through October 31, 2020. This approval allows the Census Bureau to ask these questions on the regular collections of the above-mentioned surveys for 6 months. The Census Bureau now seeks to extend clearance for the COVID–19 supplemental questions for an additional three years. Currently, there is no way to anticipate an end to the impact of the COVID–19 pandemic on the economy. Therefore, the Census Bureau needs to be prepared for the possibility of collecting these data for an extended period of time.

II. Method of Collection

The COVID–19 questions will be collected in the same manner as the surveys on which they will appear. The primary method of collecting information in these surveys is electronically through our Centurion online reporting system. We deem this the most efficient and least burdensome way to collect the information.

III. Data

OMB Control Number: The emergency approval was assigned OMB control number 0607–1012. The Census Bureau may seek to extend this control number or to revise each of the surveys on which the COVID–19 questions appear. Those surveys are cleared under control numbers 0607–0008, 0607–0094, 0607–0190, 0607–0717, and 0607–0907.

Form Number(s): The COVID–19 questions appear on the collection forms utilized in each of the surveys in which they appear. There is no separate form number.

Type of Review: Regular submission.

Affected Public: Businesses.

Estimated Number of Respondents: 63,675.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 24,455.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Sections 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–08951 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Bureau of Economic Analysis Advisory Committee Meeting

AGENCY: Bureau of Economic Analysis, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Bureau of Economic Analysis (BEA) announces a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address proposed improvements, extensions, and research related to BEA's economic accounts. In addition, the meeting will include an update on recent statistical developments.

DATES: Friday, May 15, 2020. The meeting begins at 10:00 a.m. and adjourns at 1:00 p.m.

ADDRESSES: The safety and well-being of the public, committee members and staff is the bureau's top priority. In light of the travel restrictions and social-distancing requirements resulting from the COVID–19 outbreak, this meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, Suitland, MD 20746; phone (301) 278–9282.

Public Participation: This meeting is open to the public. Anyone planning to attend the meeting must contact Gianna Marrone at BEA (301) 278–9282 or *gianna.marrone@bea.gov.* The call in number, access code, and presentation link will be posted 24 hours prior to the meeting on *https://www.bea.gov/about/bea-advisory-committee.* The meeting is accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at (301) 278–9282 by May 8, 2020.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, with a focus on new and rapidly growing areas of the U.S. economy. The committee provides recommendations from the perspectives of the economics profession, business, and government.

Dated: April 15, 2020.

Shaunda Villones,

Designated Federal Officer, Bureau of Economic Analysis.

[FR Doc. 2020–08972 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Federal Economic Statistics Advisory Committee Meeting

AGENCY: Bureau of Economic Analysis, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Economic Analysis (BEA) is giving notice of a meeting of the Federal Economic Statistics Advisory Committee (FESAC). The Committee advises the Under Secretary for Economic Affairs, the Directors of the Bureau of Economic Analysis and the Census Bureau, and the Commissioner of the U.S. Department of Labor's Bureau of Labor Statistics (BLS) on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. An agenda will be accessible prior to the meeting at *https://apps.bea.gov/fesac/.*

DATES: June 12, 2020. The meeting begins at approximately 9:00 a.m. and adjourns at approximately 3 p.m.

ADDRESSES: The safety and well-being of the public, committee members, and our staff is our top priority. In light of the travel restrictions and social-distancing requirements resulting from the COVID–19 outbreak, this meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, 4600 Silver Hill Road (BE–64), Suitland, MD 20746; phone (301) 278–9282; email *gianna.marrone@bea.gov.*

SUPPLEMENTARY INFORMATION: FESAC members are appointed by the Secretary of Commerce. The Committee advises the Under Secretary for Economic Affairs, BEA and Census Bureau Directors, and the Commissioner of the Department of Labor's BLS on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. The Committee is established in accordance with the Federal Advisory Committee Act (5 U.S.C. App. § 2).

This meeting is open to the public. Anyone planning to attend the meeting must contact Gianna Marrone at (301) 278–9282 or *gianna.marrone@bea.gov.* The call in number, access code, and presentation link will be posted 24 hours prior to the meeting on *https://apps.bea.gov/fesac/.* The meeting is accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone by June 5, 2020.

Persons with extensive questions or statements must submit them in writing by June 5, 2020, to Gianna Marrone.

Dated: April 22, 2020.

Kyle Hood,

Designated Federal Officer, Bureau of Economic Analysis.

[FR Doc. 2020–08971 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–23–2020]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico, Notification of Proposed Production Activity, Lilly del Caribe, Inc. (Pharmaceutical Products), Carolina, Puerto Rico

Lilly del Caribe, Inc. (Lilly del Caribe) submitted a notification of proposed production activity to the FTZ Board for its facility in Carolina, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 14, 2020.

Lilly del Caribe already has authority to produce several active ingredients within Subzone 7K. The current request would add a finished product and a foreign-status material/component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material/component and specific

finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Lilly del Caribe from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Lilly del Caribe would be able to choose the duty rates during customs entry procedures that apply to finished selpercatinib in dosage form (duty-free). Lilly del Caribe would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is: Selpercatinib active ingredient (duty rate 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 8, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: April 22, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–08999 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–22–2020]

Foreign-Trade Zone 139—Sierra Vista, Nevada, Application for Reorganization (Expansion of Service Area), Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Arizona Regional Economic Development Foundation, grantee of Foreign-Trade Zone 139, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 21, 2020.

FTZ 139 was approved by the FTZ Board on March 13, 1987 (Board Order 352, 52 FR 9320, March 24, 1987) and reorganized under the ASF on May 23, 2013 (Board Order 1901, 78 FR 33340–33341, June 4, 2013). The zone currently has a service area that includes a portion of Cochise County, Arizona.

The applicant is now requesting authority to expand the service area of the zone to include all of Cochise County except for the cities of Bowie and San Simon, Arizona, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The application indicates that the proposed expanded service area is adjacent to the Douglas, Arizona; Naco, Arizona; and Nogales, Arizona Customs and Border Protection Ports of Entry.

In accordance with the FTZ Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 29, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 13, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Qahira El-Amin at *Qahira.El-Amin@trade.gov* or (202) 482–5928.

Dated: April 22, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–08998 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA147]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Atlantic Mackerel, Squid, and Butterfish (MSB) Advisory Panel will hold a meeting.

DATES: The meeting will be held on Monday May 11, 2020 at 9 a.m. and conclude by 6 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only audio connection: *http://mafmc.adobeconnect.com/msbap2020illex/.* Telephone instructions are provided upon connecting, or the public can call direct: (800) 832–0736, Rm: *7833942#.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to gather Advisory Panel input on the *Illex* squid quota.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to any meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: April 23, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–08982 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA141]

New England Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings via webinar.

SUMMARY: The New England Fishery Management Council is convening public hearings of Draft Amendment 23 to Northeast Multispecies Fishery via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: These webinars will be held on Tuesday, May 12, 2020, from 4 p.m. to 6 p.m. and Thursday, May 21, 2020, from 4 p.m. to 6 p.m.

ADDRESSES: All meeting participants and interested parties can register to join the webinar for the May 12 webinar: *https://attendee.gotowebinar.com/register/8772759592748925200*; May 21 webinar: *https://attendee.gotowebinar.com/register/7652592539533592848.*

Meeting addresses: The meeting will be held via webinar.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Public comments: Mail to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill #2, Newburyport, MA 01950. Mark the outside of the envelope ''DEIS for Amendment 23 to the Northeast Multispecies FMP''. Comments may also be sent via fax to (978) 465–3116 or submitted via email to *comments@nefmc.org* with ''DEIS for Amendment 23 to the Northeast Multispecies FMP'' in the subject line.

Agenda

Scheduling of hearings is ongoing due to the COVID–19 pandemic. Additional hearings will be announced in a separate notice. Council staff will brief the public on Draft Amendment 23 before receiving comments on the amendment. The hearing will begin promptly at the time indicated above. If all attendees who wish to do so have provided their comments prior to the end time indicated, the hearing may conclude early. To the extent possible, the Council may extend hearings beyond the end time indicated above to accommodate all attendees who wish to speak.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: April 23, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–08978 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA142]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public online meeting.

SUMMARY: The Groundfish Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) and invited scientific experts will hold a meeting to review proposed length-based assessment methods followed by a workshop to explore data-limited assessment methods. The meeting is open to the public.

DATES: The Assessment Methodology Review webinar will be held from Tuesday, May 12, 2020 through Thursday, May 14, 2020 beginning at 8:30 a.m. and continuing until 5:30 p.m. Pacific Daylight Time each day or until business for the day has been completed.

ADDRESSES: The Assessment Methodology Review meeting will be an online meeting.

Instructions to attend the online meeting:

Join from PC, Mac, Linux, iOS or Android: *https://meetings.ringcentral.com/j/1484952193*

Or iPhone one-tap: US: +1(623)4049000, 1484952193# (US West), +1(720)9027700, 1484952193# (US Central), +1(773)2319226, 1484952193# (US North), +1(469)4450100, 1484952193# (US South), +1(470)8692200, 1484952193# (US East).

Or Telephone: Dial (for higher quality, dial a number based on your current location): US: +1(623)4049000 (US West), +1(720)9027700 (US Central), +1(773)2319226 (US North), +1(469)4450100 (US South), +1(470)8692200 (US East).

Meeting ID: 148 495 2193.

International numbers available: https://meetings.ringcentral.com/teleconference.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: The purpose of the Assessment Methodology Review meeting is to review two proposed length-based assessment methodologies, a length-based Extended Simple Stock Synthesis (XSSS) modeling approach and the Length-based Integrated Mixed Effects (LIME) assessment platform. A review of data-limited assessment methods through the management strategy evaluation tool in the Data-Limited Methods ToolKit (DLMtool) will be conducted following the length-based assessment methods review (the draft proposed agenda will be posted on the Pacific Council's website).

No management actions will be decided by the Assessment Methodology Review panel members.

The review panel members' role will be development of recommendations and reports for consideration by the SSC and Pacific Council at a future Council meeting.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the Assessment Methodology Review panel members to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2412, at least 10 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: April 23, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–08980 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA145]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold webinar meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will convene Tuesday, May 12, 2020; 10 a.m. until 12 p.m., EDT.

ADDRESSES: The meeting will take place via webinar. You may register for the meeting by visiting *www.gulfcouncil.org/meetings.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

The meeting will begin with a Call to Order, Announcements, Introductions and Adoption of Agenda. The Council will review the Scope of Work and discuss proposed changes to the Statement of Organization Practices and Procedures (SOPPS)—Section 3.0 Council Meetings; and, hold a discussion about the June Council meeting. The Council will hold public comment testimony from 11 a.m. until 12 p.m. (EDT) for SOPPS: Section 3.0—Council Meetings, and open testimony on other fishery issues or concerns.

Lastly, the Council will discuss any other business items.

—Meeting Adjourns

The meeting will be broadcast via webinar only. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Council meeting on the calendar.

The established times for addressing items on the Council agendas may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. Public comment may begin earlier than 11 a.m. EDT, but will not conclude before that time.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348–1630, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 23, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–08981 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648–XA058

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The SEDAR Steering Committee will meet via webinar to discuss the SEDAR stock assessment process and assessment schedule. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Steering Committee will meet Wednesday, May 20 and Thursday, May 21, 2020 via webinar.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie Neer (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Program Manager, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION:

The SEDAR Steering Committee provides guidance and oversight of the SEDAR stock assessment program and manages assessment scheduling. The items of discussion for this meeting are as follows:

1. SEDAR Projects Update
2. SEDAR Projects Schedule
3. SEDAR Process Review and Discussions

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 23, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–09008 Filed 4–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2020–OS–0042]

Proposed Collection; Comment Request

AGENCY: Defense Counterintelligence and Security Agency (DCSA), DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Counterintelligence and Security Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 29, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Michele DeMarion, Defense Counterintelligence and Security Agency (DCSA), 1137 Branchton Road, Boyers, PA 16018, (724) 794–5612 x5274.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Freedom of Information/Privacy Act Records Request for Background Investigations; INV Form 100; OMB Control Number 0705–0001.

Needs and Uses: The purpose of the collection is to enable the Defense Counterintelligence and Security Agency, Freedom of Information and Privacy (FOI/P) Office for Investigations, to locate applicable records and provide the requester responsive records pursuant to the Freedom of Information Act (5 U.S.C. 552), and/or the Privacy Act of 1974 (5 U.S.C. 552a). Authority to collect this information is contained in 5 U.S.C. 552, 5 U.S.C. 552a, 32 CFR part 310, and 32 CFR part 286.

Affected Public: Individuals and households.

Annual Burden Hours: 841

Number of Respondents: 10,097

Responses per Respondent: 1

Annual Responses: 10,097

Average Burden per Response: 5 minutes

Frequency: On occasion.

Dated: April 23, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–09011 Filed 4–27–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2020–HA–0043]

Proposed Collection; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 29, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency, J–5 Strategy, Plans, and Functional Integration Analytics and

Evaluation Division Defense Health Headquarters, ATTN: Wanda Oka, 7700 Arlington Boulevard, Office 1M225, Falls Church, VA 22041 or call (703) 681–1697.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Personnel Accountability and Assessment for a Public Health Emergency; DD Form 3112 OMB Control Number 0720–XXXX (formerly 0704–0590).

Needs and Uses: The principal purpose of the DD form 3112, ''Personnel Accountability and Accountability for a Public Health Emergency,'' form is to collect information used to protect the health and safety of individuals working in, residing on, or assigned to DoD installations, facilities, field operations, and commands, and to protect the DoD mission. When authorized by DoD, this form may be used to provide information about individuals who are infected or otherwise impacted by a public health emergency or similar occurrence or when there is an isolated incident in which an individual learns they have been exposed to a contagious disease or hazardous substance/agent. The form will also be used to document personnel accountability for and status of DoD-affiliated personnel in a natural or man-made disaster, or when directed by the Secretary of Defense. Such events could include severe weather events, acts of terrorism or severe destruction. The collection of this information is necessary to support the DoD in protecting the health and safety of DoD-affiliated individuals and maintain the DoD mission.

Affected Public: Individuals or households.

Annual Burden Hours: 25,000.

Number of Respondents: 100,000.

Responses per Respondent: 1.

Annual Responses: 100,000.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

The information collected via the DD–3112 will be used to make informed decisions about the status of the DoD facility and office space that subject individuals exposed to communicable diseases or hazardous substances/agents have entered. This information may be used to make Health Protection Condition (HPCON) level decisions. It may also be used to notify other individuals who may have been in contact with the subject individual(s).

Dated: April 23, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–09016 Filed 4–27–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open conference call.

SUMMARY: This notice announces a conference call of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this conference call be announced in the **Federal Register**.

DATES: Wednesday, May 20, 2020; 1:00 p.m.—3:00 p.m.

Conference Call: Call in number: (888) 330–1716, Access code: 2485219#.

FOR FURTHER INFORMATION: *TO SIGN UP FOR PUBLIC COMMENT:* Please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov*, or phone (505) 699–0631, no later than 5:00 p.m. MDT on Tuesday, May, 19, 2020.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order
- Welcome and Introductions
- Approval of Agenda
- Approval of February 26, 2020 Meeting Minutes
- Old Business
  - Report from NNMCAB Chair and Vice Chair
  - Report from Committee Chairs
  - Other Items
- New Business
- Consideration and Action on Draft Recommendation 2020–02: Soil Vapor Extraction System at Material Disposal Area C
- Update from EM Los Alamos Field Office
- Public Comment Period
- Wrap-Up Comments from NNMCAB Members
- Adjourn

Public Participation: Written statements may be filed with the Board either before or after the conference call. The Deputy Designated Federal Officer is empowered to conduct the conference call in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or telephone number listed above. Minutes and other Board documents are on the internet at: *https://www.energy.gov/em/nnmcab/meeting-materials.*

Signed in Washington, DC, on April 23, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–08966 Filed 4–27–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, May 28, 2020; 11:45 a.m.–5:00 p.m. EDT

Friday, May 29, 2020; 11:45 a.m.–5:00 p.m. EDT

ADDRESSES: Due to ongoing precautionary measures surrounding the spread of COVID–19, the May meeting of the EAC will be held via WebEx video and teleconference. In order to track all participants, the Department is requiring that those wishing to attend register for the meeting here: *https://www.energy.gov/oe/may-28-29-2020-meeting-electricity-advisory-committee.* Please note, you must register for each day you would like to attend.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Lawrence, Designated Federal Officer, Office of Electricity, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 586–5260 or Email: *Christopher.lawrence@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Electricity Advisory Committee (EAC) was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), to provide advice to the U.S. Department of Energy

(DOE) in implementing the Energy Policy Act of 2005, executing certain sections of the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to the electric sector.

Tentative Agenda

May 28, 2020

11:45 a.m.–12:00 p.m. WebEx Attendee Sign-On
12:00 p.m.–12:20 p.m. Welcome, Introductions, Developments since the June 2019 Meeting
1:20 p.m.–1:40 p.m. Update on Office of Electricity Programs and Initiatives
1:40 p.m.–2:20 p.m. Electric Industry Experience with Long Term Energy Storage and Power-to-Gas Storage
2:10 p.m.–2:50 p.m. Department of Energy R&D Strategy Related to Power-to-Gas Research and Development
2:50 p.m.–3:00 p.m. Break
3:00 p.m.–4:30 p.m. Moderated Roundtable Discussion Between DOE and EAC Regarding Power-to-Gas Research and Development
4:30 p.m.–4:50 p.m. Energy Storage Subcommittee Report and Vote on 2020 Biennial Storage Assessment Work Product
4:50 p.m.–5:00 p.m. Wrap-up and Adjourn Day 1

May 29, 2020

11:45 a.m.–12:00 p.m. WebEx Attendee Sign-On
12:00 p.m.—12:10 p.m. Welcome
12:10 p.m.–12:40 p.m. Update on the North American Energy Resilience Model (NAERM)
12:40 p.m.–2:00 p.m. DOE Activities Related to Grid Modernization and Planning
2:00 p.m.–2:15 p.m. Break
2:15 p.m.–4:00 p.m. Moderated Roundtable Discussion Between DOE and EAC Regarding Grid Modernization and Planning Activities
4:00 p.m.–4:20 p.m. Smart Grid Subcommittee Report
4:20 p.m.–4:35 p.m. Public Comments
4:35 p.m.–5:00 p.m. Wrap-up and Adjourn

The meeting agenda may change to accommodate EAC business. For EAC agenda updates, see the EAC website at: *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

Public Participation: The EAC welcomes the attendance of the public at its meetings, no advanced registration is required. Individuals who wish to offer public comments at the EAC meeting may do so on Friday, May 29, but must register in advance by contacting Mr. Christopher Lawrence using the contact information above. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement via email identified by ''Electricity Advisory Committee May 2020 Meeting,'' to Mr. Christopher Lawrence.

Minutes: The minutes of the EAC meeting will be posted on the EAC web page at *http://energy.gov/oe/services/electricity-advisory-committee-eac.* They can also be obtained by contacting Mr. Christopher Lawrence at the address above.

Signed in Washington, DC on April 22, 2020.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–08965 Filed 4–27–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Proposed Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA invites public comment on the proposed three year extension, with changes, of the *Natural Gas Data Collection Program,* as required under the Paperwork Reduction Act of 1995. The surveys covered by this request include:

Form EIA–176—*Annual Report of Natural and Supplemental Gas Supply and Disposition;*

Form EIA–191—*Monthly Underground Natural Gas Storage Report;*

Form EIA–191L—*Monthly Liquefied Natural Gas Storage Report;*

Form EIA–757—*Natural Gas Processing Plant Survey;*

Form EIA–857—*Monthly Report of Natural Gas Purchases and Deliveries to Consumers;*

Form EIA–910—*Monthly Natural Gas Marketer Survey;* and

Form EIA–912—*Weekly Natural Gas Storage Report.*

The *Natural Gas Data Collection Program* provides information on natural gas production, underground storage, supply, processing, transmission, distribution, and consumption by sector within the United States.

DATES: EIA must receive all comments on this proposed information collection no later than June 29, 2020. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Submit comments electronically to *michael.kopalek@eia.gov* or mail comments to Michael Kopalek, U.S. Energy Information Administration, 1000 Independence Avenue SW, EI–25, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: If you need additional information, contact Michael Kopalek, U.S. Energy Information Administration, telephone (202) 586–4001, or by email at *michael.kopalek@eia.gov.* The forms and instructions are available on EIA's website at *www.eia.gov/survey/.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1902–0175;

(2) *Information Collection Request Title:* Natural Gas Data Collection Program;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The surveys included in the *Natural Gas Data Collection Program* collect information on natural gas underground storage, supply, processing, transmission, distribution, consumption by sector, and consumer prices. The data collected supports public policy analyses and produce estimates of the natural gas industry. The statistics generated from these surveys are published on EIA's website (*http://www.eia.gov*) and are used in various EIA information products, including the *Weekly Natural Gas Storage Report* (WNGSR), *Natural Gas Monthly* (NGM), *Natural Gas Annual* (NGA), *Monthly Energy Review* (MER), *Short-Term Energy Outlook* (STEO), *Annual Energy Outlook* (AEO), and *Annual Energy Review* (AER).

(4a) *Proposed Changes to Information Collection:*

Form EIA–176—Annual Report of Natural and Supplemental Gas Supply and Disposition

Form EIA–176 collects data on natural, synthetic, and other supplemental gas supplies, their disposition, and certain revenues by state. EIA proposes to modify the survey instructions to explicitly include ''producers of renewable natural gas or biogas, including landfill collection facilities, agricultural digesters, and wastewater treatment facilities.'' EIA seeks to add producers of renewable natural gas and biogas as respondents to Form EIA–176 because these facilities produce and consume gas in electric power generation, vehicle fuel, and other applications and are in scope for the reporting frame.

Form EIA–191—Monthly Underground Natural Gas Storage Report

Form EIA–191 collects data on the operations of all active underground storage facilities. The name of the survey will change from *Monthly Underground Gas Storage Report* to *Monthly Underground Natural Gas Storage Report.*

Form EIA–191L—Monthly Liquefied Natural Gas Storage Report

EIA proposes to add a new survey, Form EIA–191L, *Monthly Liquefied Natural Gas Storage Repor*t to collect natural gas inventory storage data from approximately 90 operators of liquefied natural gas (LNG) facilities. Form EIA–191L is a shorter version of Form EIA–191 and will collect the same natural gas data as Form EIA–191 except it will not collect information on base gas, working gas, field type, and facility type.

Form EIA–757—Natural Gas Processing Plant Survey

Form EIA–757 collects information on the capacity, status, and operations of natural gas processing plants, and monitors their constraints to natural gas supplies during catastrophic events, such as hurricanes. *Schedule A* of Form EIA–757 collects baseline operating and capacity information from all respondents on a triennial basis. *Schedule B* is used on an emergency standby basis and is activated during natural disasters or other energy disruptive events. Schedule B collects data from a sample of respondents in the affected areas. There are no proposed changes to Form EIA–757.

Form EIA–857—Monthly Report of Natural Gas Purchases and Deliveries to Consumers

Form EIA–857 collects data on the quantity and cost of natural gas delivered to distribution systems and the quantity and revenue of natural gas delivered to consumers by end-use sector, on a monthly basis by state. There are no proposed changes to this survey.

Form EIA–910—Monthly Natural Gas Marketer

Form EIA–910 collects information on natural gas sales from marketers in selected states that have active consumer choice programs. EIA proposes to increase the number of respondents to this survey due to the increased number of natural gas market participants.

Form EIA–912—Weekly Natural Gas Storage Report

Form EIA–912 collects information on weekly inventories of natural gas in underground storage facilities. LNG storage capacity increased 28% from 2008 to 2018, driven by growth of LNG activity at marine terminals. EIA proposes to collect aboveground storage stocks from approximately five marine terminals that import or export LNG. The name of the survey will change from *Weekly Underground Natural Gas Storage Report* to *Weekly Natural Gas Storage Report.*

(5) *Annual Estimated Number of Survey Respondents:* 3,645;

Form EIA–176 consists of 2,200 respondents;

Form EIA–191 consists of 145 respondents;

Form EIA–191L consists of 90 respondents;

Form EIA–757 Schedule A consists of 600 respondents

Form EIA–757 Schedule B consists of 20 respondents;

Form EIA–857 consists of 330 respondents;

Form EIA–910 consists of 160 respondents;

Form EIA–912 consists of 100 respondents.

(6) *Annual Estimated Number of Total Responses:* 16,487.

(7) *Annual Estimated Number of Burden Hours:* 57,012.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $4,568,942 (57,012 burden hours times $80.14 per hour). EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information during the normal course of business.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on April 20th, 2020.

Thomas Leckey,

Assistant Administrator for Energy Statistics, U.S. Energy Information Administration.

[FR Doc. 2020–08895 Filed 4–27–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–14–000]

Carbon Pricing in FERC-Jurisdictional Organized Regional Wholesale Electric Energy Markets; Notice of Request for Technical Conference or Workshop

Take notice that on April 13, 2020, Advanced Energy Economy, the American Council on Renewable Energy, the American Wind Energy Association, Brookfield Renewable, Calpine Corporation, Competitive Power Ventures, Inc., the Electric Power Supply Association, the Independent Power Producers of New York, Inc., LS Power Associates, L.P., the Natural Gas Supply Association, NextEra Energy, Inc., PJM Power Providers Group, R Street Institute, and Vistra Energy Corp. (together, the Interested Parties), pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2019), filed a petition requesting that the Commission hold a technical conference or workshop to discuss integrating state, regional, and national carbon pricing in FERC-jurisdictional organized regional wholesale electric energy markets.

Any person that wishes to comment in this proceeding must file comments in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 (2019).

Comments will be considered by the Commission in determining the appropriate action to be taken. Comments must be filed on or before the comment date.

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://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 21, 2020.

Dated: April 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08913 Filed 4–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–39–000]

Questar Southern Trails Pipeline Company; Notice of Extension of Time Request

Take notice that on April 17, 2020, Questar Southern Trails Pipeline Company (Questar) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until May 9, 2022, to complete its Southern Trail Pipeline Abandonment Project (Project) authorized in the May 9, 2018 Order Approving Abandonment (May 2018 Order).[1] The May 2018 Order required Questar to abandon, within two years of the order date, all of its certificated facilities dedicated to providing jurisdictional transportation services (Questar Southern Trails Facilities) located in California, Arizona, Utah, and New Mexico, in part by sale to the Navajo Tribal Utility Authority (NTUA) and in part by abandonment-in-place.

Questar states that Phase 1 of the two-phased implementation plan, filed on May 23, 2019, was completed on June 29, 2019. Questar asserts that in Phase 2 of the Project, Questar will conclude the Asset Purchase Agreement with the NTUA. Upon closing the transaction, Questar will simultaneously abandon by sale the remaining facilities detailed in the application and abandon its NGA Section 7(c) certificate, the Questar FERC Gas Tariff, and all transportation services. Questar affirms that it and the NTUA continue to diligently seek the consents necessary to finalize the transaction; however, all the necessary consents have not yet been obtained, and as a result, Questar is unable to complete abandonment within the 2-year time frame designated in the Order.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on the extension motion may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). However, only motions to intervene from entities that were party to the underlying proceeding will be accepted.

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,[2] the Commission acting as a whole will aim to issue an order acting on the request within 45 days.[3] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension. The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[4] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance. The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on May 7, 2020.

Dated: April 22, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08973 Filed 4–27–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Questar Southern Trails Pipeline Company,* 163 FERC 62,086 (2018).

[2] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[3] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

[4] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI20–3–000]

Badger Mountain Hydro, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI20–3–000.

c. *Date Filed:* February 18, 2020.

d. *Applicant:* Badger Mountain Hydro, LLC.

e. *Name of Project:* Badger Mountain Pumped Storage Project.

f. *Location:* The proposed Badger Mountain Pumped Storage Project would be located near the town of East Wenatchee, in Douglas County, Washington.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b) (2018).

h. *Applicant Contact:* Badger Mountain Hydro, LLC; 800 W. Main Street, Ste. 1220, Boise, ID 83702; telephone: (208) 246–9925; email: *vr324@cornell.edu*; Agent Contact: Matthew Shapiro, CEO, Gridflex Energy; 424 W. Pueblo St., #A, Boise, ID 83702; telephone (208) 246–9925; email: *mshapiro@gridflexenergy.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502–6437, or email: *Jennifer.Polardino@ferc.gov.*

j. Deadline for filing comments, protests, and motions to intervene is: 30 Days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number DI20–3–000.

k. *Description of Project:* The proposed closed-loop Badger Mountain Pumped Storage Project would consist of: [1] (1) A 15 to 75-foot-high, 8,000-foot-long earthen dam forming a 78 acre-upper reservoir with a storage capacity of 3,090 acre-feet; (2) a 40-foot-high, 650-foot-long earthen dam, and if needed, a 15-foot-high, 900-foot-long, secondary earthen embankment forming an 80-acre lower reservoir with a storage capacity of 3,380 acre-feet; (3) a 17-foot diameter, 200-foot-high underground vertical shaft connecting the upper reservoir to a 17-foot-diameter, 5,600-long-concrete/steel-lined headrace tunnel; (4) a powerhouse located in a vertical, 220-foot-high, 100-foot-diameter steel and concrete lined shaft containing two 250 megawatt (MW) reversible pump/turbine-motor/generator units for a total installed capacity of 500 MW; (5) a 17-foot-diameter, 200-foot-long tailrace tunnel; (6) a 700-foot-long transmission line connecting to Bonneville Power Administration's system; and (7) appurtenant facilities. The proposed project would obtain fill and make-up water from a ground water well system operated by the Wenatchee Regional Water Supply system and would have an estimated average annual generation of 823,000 megawatt-hours.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. Locations of the Application: This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above and in the Commission's Public Reference Room located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: All filings must bear in all capital letters the title COMMENTS, PROTESTS, and MOTIONS TO INTERVENE, as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08914 Filed 4–27–20; 8:45 am]

BILLING CODE 6717–01–P

[1] On April 23, 2019, Badger Mountain Hydro, LLC was issued a preliminary permit for the Badger Mountain Pumped Storage Project No. 14892. However, the project description in the applicant's request differs from the one included in its preliminary permit application.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6731–015]

Coneross Power Corporation; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 6731–015.

c. *Date filed:* February 28, 2019.

d. *Applicant:* Coneross Power Corporation.

e. *Name of Project:* Coneross Hydroelectric Project.

f. *Location:* The Coneross Hydroelectric Project is located on Coneross Creek, in Oconee County, South Carolina. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., 100 Brickstone Square, Suite 300, Andover, MA 01810; (978) 935–6039; *Kevin.Webb@enel.com.*

i. *FERC Contact:* Jeanne Edwards, (202) 502–6181, or *jeanne.edwards@ferc.gov.*

j. Deadline for filing motions to intervene and protest, comments, terms and conditions, recommendations, and prescriptions: 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing Coneross Project consists of: (1) An existing 288-foot-long, 25-foot-high concrete dam with a 123-foot-long, 20-foot-wide concrete spillway with 1.5-foot-high flashboards; (2) an existing nine-acre reservoir having a gross storage capacity of 13.5 acre-feet at elevation 746.5 feet mean sea level; (3) a 780-foot-long, 8-foot-diameter concrete penstock with an 8-foot-wide and 8-foot-high intake gate and a 25-foot-long, 19-foot-deep trash rack structure with 2.0-inch clear bar spacing; (4) a powerhouse containing three generating units (two Kaplan hydro turbines and one Francis hydro turbine) for a total installed capacity of 889 kilowatts; (5) a 95-foot-long tailrace; (6) a 1,300-foot-long bypassed reach between the dam and the tailrace; (7); an existing 93-foot-long, 12.47-kilovolt transmission line; and (8) appurtenant facilities. The average annual generation was 2,215,800 kilowatt-hours for the period 2008 to 2017.

The Coneross Project is operated in a modified run-of-river mode using automatic pond level control of the turbine-generator units to: (1) Minimize fluctuations of the impoundment surface elevation; and (2) maintain the impoundment elevation within 6 inches of the spillway flashboard crest from March 1 through June 30, and within 18 inches of the flashboard crest from July 1 through the end of February. The project bypasses approximately 1,300 feet of Coneross Creek. A 36-cubic feet per second (cfs) minimum flow is continuously released into Coneross Creek downstream of the project tailrace. In addition, a continuous minimum flow release of 35 cfs, or inflow, whichever is less, is released into the Coneross bypassed reach from February 1 to May 31, and 25 cfs, or inflow, whichever is less, is released to the bypassed reach from June 1 to January 31. The bypassed reach minimum flow is provided through a sluice gate in the west non-overflow section of the dam.

m. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number (P–6731) to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3673 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title PROTEST, MOTION TO INTERVENE, NOTICE OF INTENT TO FILE COMPETING APPLICATION, COMPETING APPLICATION, COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be

accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. Procedural schedule: The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Commission issued EA—November 2020

Comments on EA—December 2020

Dated: April 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08911 Filed 4–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–54–000.

Applicants: Mankato Energy Center, LLC, SWG Minnesota Holdings, LLC, Mankato Energy Center II, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Mankato Energy Center, LLC, et al.

Filed Date: 4/21/20.

Accession Number: 20200421–5246.

Comments Due: 5 p.m. ET 5/12/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–129–000.

Applicants: Bighorn Solar 1, LLC.

Description: Bighorn Solar 1, LLC, Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/22/20.

Accession Number: 20200422–5092.

Comments Due: 5 p.m. ET 5/13/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–2224–002.

Applicants: Turtle Creek Wind Farm LLC.

Description: Compliance filing: Turtle Creek Wind Farm LLC, Docket No. ER19–2224–002 to be effective 9/1/2019.

Filed Date: 4/21/20.

Accession Number: 20200421–5243.

Comments Due: 5 p.m. ET 5/12/20.

Docket Numbers: ER20–1626–000.

Applicants: New England Power Company.

Description: § 205(d) Rate Filing: Sch. 20A Service Agmt with Brookfield Renewable Trading and Marketing LP to be effective 9/1/2020.

Filed Date: 4/21/20.

Accession Number: 20200421–5168.

Comments Due: 5 p.m. ET 5/12/20.

Docket Numbers: ER20–1627–000.

Applicants: Basin Electric Power Cooperative, Inc.

Description: Notice of cancellation of Open Access Transmission Tariff, et al of Basin Electric Power Cooperative.

Filed Date: 4/21/20.

Accession Number: 20200421–5250.

Comments Due: 5 p.m. ET 5/12/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08986 Filed 4–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15028–000]

Whitewater Green Energy, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 12, 2020, the Whitewater Green Energy, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the proposed Whitewater Creek Hydroelectric Project No. 15028–000, to be located on Russel and Whitewater Creeks, near the town of Idanha, in Marion and Linn Counties, Oregon. The project would be located entirely on U.S. Forest Service lands. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 9.5-foot-high, 40-foot-wide weir on Russell Creek; (2) a 19,500-foot-long, 60-inch-diameter steel penstock; (3) a 50-foot-long by 40-foot-wide concrete powerhouse containing one Pelton turbine rated at 7 megawatts; (4) a 160-foot-long, 72-inch-diameter tailrace discharging into Whitewater Creek; (5) a 2.25-mile-long, 12,000 kilovolt-amperes transmission line extending underground from the project to a point of interconnection to an existing outside transmission line (the point of interconnection); (6) an access road along side of the penstock; and (7) appurtenant facilities. The estimated annual generation of the Whitewater Creek Project would be 50 gigawatt-hours.

Applicant Contact: David Harmon, 2532 Santiam Highway, Albany, Oregon 97322; phone: (541) 405–5236; email: *dave@wwgreenenergy.com.*

FERC Contact: John Matkowski; phone: (202) 502–8576; email: *john.matkowski@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866)

208–3676 (toll free), or (202) 502–8659 (TTY).

More information about this project, including a copy of the application, can be viewed or printed on the eLibrary link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15028) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08912 Filed 4–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–171–000]

Golden Pass LNG Terminal LLC and Golden Pass Pipeline LLC; Notice of Application To Amend Section 3 and Section 7 Authorizations

Take notice that on April 16, 2020, Golden Pass LNG Terminal LLC (Golden Pass LNG) and Golden Pass Pipeline LLC (Golden Pass Pipeline), 811 Louisiana Street, Houston, Texas 77002, filed an application pursuant to sections 3 and 7 of the Natural Gas Act and Parts 153 and 157 of the Commission's regulations, for authority to amend the authorization by the Commission in an order issued on December 21, 2016, granting Golden Pass LNG's application to site, construct and operate facilities for the exportation of liquefied natural gas and Golden Pass Pipeline's application to expand its existing pipeline system (Project), to transfer the authorization to construct and operate certain facilities authorized under the Natural Gas Act to be constructed and operated by Golden Pass Pipeline under Section 7 to Golden Pass LNG, which proposes to operate those facilities pursuant to Section 3 of the Natural Gas Act as part of the authorized LNG export terminal.

Any questions regarding this application should be addressed to Blaine Yamagata, Vice President and General Counsel, Golden Pass LNG, 811 Louisiana Street, Suite 1500, Houston, Texas 77002; or to Kevin M. Sweeney, Law Office of Kevin M. Sweeney, 1625 K Street NW, Washington, DC 20006, by telephone at (202) 609–7709.

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://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Standard Time on May 13, 2020.

Dated: April 22, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08987 Filed 4–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP19–343–007.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing RP19–343 TETLP Settlement Compliance Filing to be effective 6/1/2019.

Filed Date: 4/21/20.

Accession Number: 20200421–5082.

Comments Due: 5 p.m. ET 5/4/20.

Docket Numbers: RP20–796–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: SS–2 Inventory Adjustment (2020) to be effective 5/1/2020.

Filed Date: 4/21/20.

Accession Number: 20200421–5005.

Comments Due: 5 p.m. ET 5/4/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08988 Filed 4–27–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0075; FRL–10008–83–OAR]

Clean Air Act Advisory Committee (CAAAC): Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) announces an upcoming meeting for the Clean Air Act Advisory Committee (CAAAC). The EPA established the CAAAC on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises EPA on economic, environmental, technical, scientific and enforcement policy issues.

DATES: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the CAAAC will hold its next face-to-face meeting on Wednesday, May 20, 2020 from 12:45 p.m. to 5:15 p.m. (EDT).

ADDRESSES: The meeting will take place virtually. If you want to listen to the meeting or provide comments, please email *caaac@epa.gov* for further details.

FOR FURTHER INFORMATION CONTACT: Larry Weinstock, Designated Federal Official, Clean Air Act Advisory Committee (6103A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–9226; email address: *weinstock.larry@epa.gov.* Additional information about this meeting, the CAAAC, and its subcommittees and workgroups can be found on the CAAAC website: *http://www.epa.gov/oar/caaac/.*

SUPPLEMENTARY INFORMATION: The committee agenda and any documents prepared for the meeting will be publicly available on the CAAAC website at *http://www.epa.gov/caaac/* prior to the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available on the CAAAC website or by contacting the Office of Air and Radiation Docket and requesting information under docket EPA–HQ–OAR–2020–0075. The docket office can be reached by email at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

For information on access or services for individuals with disabilities, please contact Lorraine Reddick at *reddick.lorraine@epa.gov,* preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: April 22, 2020.

John Shoaff,

Director, Office of Air Policy and Program Support.

[FR Doc. 2020–08968 Filed 4–27–20; 8:45 am]

BILLING CODE 6560–50–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 May 28, 2020.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *A.N.B. Holding Company, Ltd., Terrell, Texas;* to acquire additional shares up to 38.5 percent of The ANB Corporation and thereby indirectly acquire shares of The American National Bank of Texas, both of Terrell, Texas.

Board of Governors of the Federal Reserve System, April 23, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–09012 Filed 4–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2019–0094]

CDC Recommendations for Hepatitis C Screening Among Adults—United States, 2020

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the availability of the final *CDC Recommendations for Hepatitis C Screening Among Adults—United States, 2020.*

DATES: The final document was published as an *MMWR Reports & Recommendations* on April 10, 2020.

ADDRESSES: The document may be found in the docket at *www.regulations.gov,* Docket No. CDC–2019–0084 and at *https://www.cdc.gov/mmwr/volumes/69/rr/rr6902a1.htm?s_cid=rr6902a1_w.*

FOR FURTHER INFORMATION CONTACT: CDR Sarah Schillie, MD, MPH, MBA, Centers for Disease Control and Prevention, 1600 Clifton Rd., NE U12–3, Atlanta, GA 30329. Telephone: (404) 639–8000; email: *DVHpolicy@cdc.gov.*

SUPPLEMENTARY INFORMATION: In 2019, CDC determined that *CDC Recommendations for Hepatitis C Screening Among Adults—United States, 2020* constituted influential scientific information (ISI) that will have a clear and substantial impact on important public policies and private sector decisions. Under the Information Quality Act, Public Law 106–554, agencies are required to conduct peer review of the information by specialists in the field who were not involved in the development of these recommendations. CDC solicited nominations for reviewers from the American Association for the Study of Liver Diseases (AASLD), Infectious Diseases Society of America (IDSA) and the American College of Obstetricians and Gynecologists (ACOG). Six clinicians with expertise in hepatology, gastroenterology, internal medicine, infectious diseases and/or obstetrics and gynecology provided structured peer reviews. Peer reviewers were supportive of the recommendations and raised comments about the benefit of screening pregnant women and inclusion of a prevalence threshold. Feedback obtained during the peer review process was carefully reviewed and considered by CDC. Ultimately no changes to the recommendation statement were made; however, additional references and justification for the recommendation to screen during every pregnancy and maintaining the prevalence threshold were added to the document. A summary of the peer review comments, CDC's response, and changes made to the document in response to the comments can be found in the Supporting Materials tab of the docket and at *https://www.cdc.gov/hepatitis/policy/isireview/PeerReviewCR.htm.*

In addition, on October 28, 2019, CDC published a notice in the **Federal Register** (84 FR 57733) announcing the opening of a docket to obtain public comment on the draft recommendations for hepatitis C screening among adults. The comment period closed December 27, 2019. CDC received response from 69 commenters on the draft recommendations document. Public commenters included those from academia, professional organizations, industry, and the public.

Many of the comments from the public were in support of the recommendations. For those comments that proposed changes, the majority related to removing the recommendation to screen for hepatitis C in every pregnancy or removing the prevalence threshold for universal screening. Feedback obtained during both the peer review process and the public comment period was carefully reviewed and considered by CDC. Ultimately no changes to the recommendation statement were made; however, additional references and justification for the recommendation to screen during every pregnancy and maintaining the prevalence threshold were added to the document. A summary of public comments and CDC's response is found in the Supporting Materials tab of the docket.

Dated: April 23, 2020.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2020–08960 Filed 4–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3396–PN]

Medicare Program; Application From National Association of Boards of Pharmacy for Initial CMS-Approval of Its Home Infusion Therapy Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Notice with comment period.

SUMMARY: This proposed notice acknowledges the receipt of an application from National Association of Boards of Pharmacy for initial recognition as a national accrediting organization for suppliers of home infusion therapy services that wish to participate in the Medicare program. The statute requires that within 60 days of receipt of an organization's complete application, the Centers for Medicare & Medicaid Services (CMS) publishes a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 26, 2020.

ADDRESSES: In commenting, please refer to file code CMS–3396–PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3396–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3396–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Christina Mister-Ward, (410) 786–2441. Shannon Freeland, (410) 786–4348.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that website to view public comments.

I. Background

Home infusion therapy (HIT) is a treatment option for Medicare beneficiaries with a wide range of acute and chronic conditions. Section 5012 of the 21st Century Cures Act (Pub. L. 114–255, enacted December 13, 2016) added section 1861(iii) to the Social Security Act (the Act), establishing a new Medicare benefit for HIT services. Section 1861(iii)(1) of the Act defines ''home infusion therapy'' as professional services, including nursing services; training and education not otherwise covered under the Durable Medical Equipment (DME) benefit; remote monitoring; and other monitoring services. Home infusion therapy must be furnished by a qualified HIT supplier and furnished in the individual's home. The individual must:

- Be under the care of an applicable provider (that is, physician, nurse practitioner, or physician assistant); and
- Have a plan of care established and periodically reviewed by a physician in coordination with the furnishing of home infusion drugs under Part B, that prescribes the type, amount, and duration of infusion therapy services that are to be furnished.

Section 1861(iii)(3)(D)(i)(III) of the Act requires that a qualified HIT supplier be accredited by an accrediting organization (AO) designated by the Secretary in accordance with section 1834(u)(5) of the Act. Section 1834(u)(5)(A) of the Act identifies factors for designating AOs and in reviewing and modifying the list of designated AOs. These statutory factors are as follows:

- The ability of the organization to conduct timely reviews of accreditation applications.
- The ability of the organization to take into account the capacities of suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).
- Whether the organization has established reasonable fees to be charged to suppliers applying for accreditation.
- Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit HIT suppliers furnishing HIT not later than January 1, 2021. Section 1861(iii)(3)(D)(i)(III) of the Act requires a ''qualified home infusion therapy supplier'' to be accredited by a CMS-approved AO, pursuant to section 1834(u)(5) of the Act.

On March 1, 2019, we published a solicitation notice entitled, ''Medicare Program; Solicitation of Independent Accrediting Organizations To Participate in the Home Infusion Therapy Supplier Accreditation Program'' (84 FR 7057). This notice informed national AOs that accredit HIT suppliers of an opportunity to submit applications to participate in the HIT supplier accreditation program. We stated that complete applications would be considered for the January 1, 2021 designation deadline if received by February 1, 2020.

Regulations for the approval and oversight of AOs for HIT organizations are located at 42 CFR part 488, subpart L. The requirements for HIT suppliers are located at 42 CFR part 486, subpart I.

II. Approval of Accreditation Organizations

Section 1834(u)(5) of the Act and the regulations at § 488.1010 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data.

Our regulations at 42 CFR 488.1020(a) requires that we publish, after receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. In accordance with § 488.1010(d), we have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public National Association of Boards of Pharmacy's (NABP's) initial request for CMS's approval of its HIT accreditation program. This notice also solicits public comment on whether NABP's requirements meet or exceed the Medicare conditions of participation for HIT services.

III. Evaluation of Deeming Authority Request

NABP submitted all the necessary materials to enable us to make a determination concerning its request for initial approval of its HIT accreditation program. This application was determined to be complete on February 28, 2020. Under section 1834(u)(5) of the Act and § 488.1010 (Application and re-application procedures for national HIT AOs), our review and evaluation of NABP will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of NABP's standards for HIT as compared with CMS' HIT conditions for certification.
- NABP's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of NABP's to CMS standards and processes, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ NABP's processes and procedures for monitoring a HIT supplier found out of compliance with NABP's program requirements.

++ NABP's capacity to report deficiencies to the surveyed supplier and respond to the suppliers' plan of correction in a timely manner.

++ NABP's capacity to provide CMS with electronic data and reports necessary for effective assessment and interpretation of the organization's survey process.

++ The adequacy of NABP's staff and other resources, and its financial viability.

++ NABP's capacity to adequately fund required surveys.

++ NABP's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ NABP's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

- NABP's agreement or policies for voluntary and involuntary termination of suppliers.

• NABP agreement or policies for voluntary and involuntary termination of the HIT AO program.

• NABP's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

IV. Collection of Information Requirements

This document does not impose information collection and requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 14, 2020.

Evell J. Barco Holland,

Federal Register Liaison, Department of Health and Human Services.

[FR Doc. 2020–08990 Filed 4–27–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3657]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Accreditation Scheme for Conformity Assessment Pilot Program

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 May 28, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program.'' 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.

Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program

OMB Control Number 0910–NEW

The FDA Reauthorization Act of 2017 (FDARA) (Pub. L. 115–52) amended section 514 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d(d)) by adding a new subsection (d) entitled ''Pilot Accreditation Scheme for Conformity Assessment.[1] Section 514(d) of the FD&C Act requires FDA to establish a pilot program under which testing laboratories may be accredited, by accreditation bodies meeting criteria specified by FDA, to assess the conformance of a device within certain FDA-recognized standards. Determinations by testing laboratories so accredited that a device conforms with an eligible standard included as part of the ASCA Pilot Program shall be accepted by FDA for the purposes of demonstrating such conformity, unless FDA finds that a particular such determination shall not be so accepted.[2]

The statute provides that FDA may review determinations by accredited testing laboratories, including by conducting periodic audits of such determinations or processes of accreditation bodies or testing laboratories.[3] Following such a review, or if FDA becomes aware of information materially bearing on safety or effectiveness of a device assessed by an accredited testing laboratory, FDA may take additional measures as determined appropriate, including suspension or withdrawal of ASCA Accreditation of a testing laboratory or a request for additional information regarding a specific device.[4]

FDA intends to issue guidance regarding the goals and implementation of the voluntary Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program (hereafter referred to as the ASCA Pilot) in accordance with amendments made to section 514 of the FD&C Act[5] by FDARA, and as part of the enactment of the Medical Device User Fee Amendments of 2017 (MDUFA IV).[6]

The establishment of the goals, scope, procedures, and a suitable framework for the voluntary ASCA Pilot supports the Agency's continued efforts to use its scientific resources effectively and efficiently to protect and promote public health. FDA believes the voluntary ASCA Pilot may further encourage international harmonization of medical device regulation because it incorporates elements, where appropriate, from a well-established set of international conformity assessment practices and standards (*e.g.,* ISO/IEC 17000 series). The voluntary ASCA Pilot does not supplant or alter any other existing statutory or regulatory requirements governing the decision-

[1] See Pub. L. 115–52, section 205.

[2] See section 514(d)(1)(B) of the FD&C Act.

[3] See section 514(d)(2)(A) of the FD&C Act.

[4] See section 514(d)(2)(A) and (B) of the FD&C Act.

[5] See section 514(d)(3)(B) of the FD&C Act.

[6] See also MDUFA IV Commitment Letter: *https://www.fda.gov/downloads/ForIndustry/UserFees/MedicalDeviceUserFee/UCM526395.pdf.*

making process for premarket submissions.

Under the ASCA Pilot's conformity assessment scheme, recognized accreditation bodies accredit testing laboratories using ASCA program specifications associated with each eligible standard and ISO/IEC 17025:2017: *General requirements for the competence of testing and calibration laboratories.* ASCA-accredited testing laboratories may conduct testing to determine conformance of a device with at least one of the standards eligible for inclusion in the ASCA Pilot. When an ASCA-accredited testing laboratory conducts testing under the ASCA Pilot, it provides both a complete and summary test report to the device manufacturer. Device manufacturers may choose to use a testing laboratory participating in the ASCA Pilot to conduct testing for premarket submissions to FDA. A device manufacturer who uses an ASCA-accredited testing laboratory to perform testing in accordance with the provisions of the ASCA Pilot then includes a declaration of conformity with supplemental documentation (*e.g.,* summary test report) as part of a premarket submission to FDA. Testing performed by an ASCA-accredited testing laboratory can be used to support a premarket submission for any device if the testing was conducted using a standard eligible for inclusion in the ASCA Pilot and in accordance with the ASCA program specifications for that standard.

To participate in the ASCA Pilot, accreditation bodies apply to FDA for recognition. An application includes demonstration that they have the qualifications for recognition and agreement to terms of participation. For example, a recognized accreditation body agrees to attend training, regularly communicate with FDA, and support periodic FDA audits. When FDA grants recognition, we will identify the scope of recognition of specific standards and test methods to which the accreditation body may accredit testing laboratories as part of the ASCA Pilot.

To participate in the ASCA Pilot, testing laboratories apply to FDA for ASCA Accreditation. An application includes demonstration that they have the qualifications for ASCA Accreditation and agreement to terms of participation. For example, an ASCA-accredited testing laboratory agrees to attend training, regularly communicate with FDA, and support periodic FDA audits. When FDA grants ASCA Accreditation, we will identify the scope of ASCA Accreditation of specific standard and test methods to which the testing laboratory may conduct testing as part of the ASCA Pilot.

During the ASCA Pilot, FDA generally will accept determinations from ASCA-accredited testing laboratories that a medical device is in conformity with the specified testing to a particular standard and does not intend to review complete test reports from ASCA-accredited testing laboratories in support of a declaration of conformity submitted with a premarket submission except in certain circumstances.

Note that ASCA Accreditation is separate from any accreditation that an accreditation body may provide to a testing laboratory for purposes other than the ASCA Pilot. FDA's decision to recognize the accreditation for purposes of the ASCA Pilot is separate and distinct from any independent decision by the accreditation body with respect to a testing laboratory for purposes outside of the ASCA Pilot.

The ASCA Pilot does not address specific content for a particular premarket submission. Collections of information found in FDA regulations and guidance, associated with premarket submissions, have been previously approved as follows. The collections of information in 21 CFR part 807, subpart E (premarket notification) have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 (investigational device exemption) have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814, subparts A through E (premarket approval) have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H (humanitarian device exemption) have been approved under OMB control number 0910–0332; 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 312 (investigational new drug application) have been approved under OMB control number 0910–0014; and the collections of information in 21 CFR part 601 (biologics license application) have been approved under OMB control number 0910–0338.

Respondents are accreditation bodies (ABs) and testing laboratories (TLs). In tables 1 through 3, these abbreviations are used.

In the **Federal Register** of September 5, 2019 (84 FR 46737), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment on the 60-day notice, but it was not related to the information collection or the ASCA Pilot Program. We also considered comments received on the draft guidance entitled ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program'' (see 84 FR 49741, September 23, 2019). We have made no changes to the burden estimate as a result of the comments. However, as a result of comments on the draft guidance and for clarity, we have updated certain terminology used to describe the ASCA Pilot.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours [2]
Application by AB for ASCA recognition	8	1	8	6	48
Request by AB to continue recognition	1	1	1	6	6
Request by AB for recognition (subsequent to withdrawal)	1	1	1	6	6
Request by AB to expand scope of recognition	1	1	1	6	6
AB annual status report	8	1	8	3	24
AB notification of change	8	1	8	1	8
Application by TL for ASCA Accreditation	150	1	150	4	600
Request by TL to continue ASCA Accreditation	15	1	15	4	60
Request by TL for ASCA Accreditation (subsequent to withdrawal or suspension)	5	1	5	4	20

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours [2]
Request by TL to expand scope of ASCA accreditation	75	1	75	4	300
TL annual status report	150	1	150	1.5	225
TL notification of change	5	1	5	1	5
Request for withdrawal or suspension of ASCA Accreditation (TLs) or request for withdrawal of recognition (ABs)	6	1	6	0.08 (5 minutes)	1
Pilot feedback questionnaire (ABs and TLs)	158	1	158	0.5 (30 minutes)	79
Total					1,388

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Totals have been rounded to the nearest hour.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (hours)	Total hours
AB setup documentation (standard operating procedures (SOPs)) and training (one-time burden)	8	1	8	25	200
TL setup documentation (SOPs) and training (one-time burden)	150	1	150	25	3,750
AB record maintenance	8	1	8	1	8
TL record maintenance	150	1	150	1	150
Total					4,108

[1] There are no capital costs or operating and maintenance costs associated with the collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure (hours)	Total hours
Request for Accreditation (TLs requesting accreditation from ABs)	150	1	150	0.5 (30 minutes)	75
Review/Acknowledgement of accreditation request (ABs)	8	22	176	40	7,040
Test Report (TLs)	880	1	880	1	880
Total					7,995

[1] There are no capital costs or operating and maintenance costs associated with the collection of information.

Our estimate of eight ABs is based on the number of International Laboratory Accreditation Cooperation signatories in the U.S. economy. We estimate that approximately 150 testing laboratories will seek accreditation. Our estimate of test reports is based on the number of premarket submissions we expect per year with testing from an ASCA accredited testing laboratory as part of the ASCA Pilot Program.

Our estimates for the average burden per response, recordkeeping, and disclosure are based on the burden for similar programs.

Dated: April 22, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–08989 Filed 4–27–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: The National Health Service Corps and Nurse Corps Interest Capture Form, OMB No. 0915–0337—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than May 28, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The National Health Service Corps and Nurse Corps Interest Capture Form, OMB No. 0915–0337—Extension.

Abstract: The National Health Service Corps (NHSC) and the Nurse Corps of the Bureau of Health Workforce, HRSA, are both committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care. The NHSC and Nurse Corps Interest Capture Form, which will be used when HRSA staff presents information regarding HRSA funding opportunities for health profession students and providers at national and regional conferences and at campus recruiting events, is an optional form that a health profession student, licensed clinician, faculty member, or clinical site administrator can fill out and submit to HRSA representatives at the event. The purpose of the form is to enable individuals and clinical sites to ask HRSA for periodic program updates and other general information regarding opportunities with the NHSC and/or the Nurse Corps via email. Completed forms will contain information such as the names of the individuals, their email address(es), their city and state, the organization where they are employed (or the school which they attend), the year they intend to graduate (if applicable), how they heard about the NHSC/Nurse Corps, and the programs in which they are interested. Assistance in completing the form will be given by the HRSA staff person (or HRSA representative) who is present at the event.

A 60-day notice was published in the **Federal Register** on January 3, 2020, Vol. 85, No. 2; pp. 325–326. There were no public comments.

Need and Proposed Use of the Information: The need and purpose of this information collection is to share resources and information regarding the NHSC and Nurse Corps programs with interested conference/event participants.

Likely Respondents: Individual and potential service site conference/event participants interested in the NHSC or Nurse Corps programs.

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
NHSC and Nurse Corps Interest Capture Form	2,400	1	2,400	.025	60
Total	2,400		2,400		60

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–08950 Filed 4–27–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Rural Health Network Development Planning Performance Improvement and Measurement System Database, OMB No. 0915–0384—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than May 28, 2020.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Rural Health Network Development Planning Performance Improvement and Measurement System Database, OMB No. 0915–0384—Revision

Abstract: The purpose of the Rural Health Network Development Planning (Network Planning) program is to assist in the development of an integrated health care network, specifically for entities that do not have a history of formal collaborative efforts. Health care networks can be an effective strategy to help smaller rural health care providers and health care service organizations align resources, achieve economies of scale and efficiency, and address challenges more effectively as a group than as single providers. The Network Planning program promotes the planning and development of healthcare networks in order to: (1) Achieve efficiencies; (2) expand access to, coordinate, and improve the quality of essential health care services; and (3) strengthen the rural health care system as a whole.

The proposed change to this package includes the addition of the ''Ending the HIV Epidemic (EHE): A Plan for America'' initiative, a multi-year HHS initiative to end the HIV epidemic in the United States within 10 years. The purpose of the EHE Network Planning program is targeted to the seven states (Alabama, Arkansas, Kentucky, Mississippi, Missouri, Oklahoma and South Carolina) with a disproportionate number of HIV diagnoses in rural areas, to assist in the development of an integrated health network for HIV care and treatment, specifically with network participants who do not have a history of formal collaborative efforts. EHE Network Planning aims are: (i) To achieve efficiencies; (ii) to expand access to, coordinate, and improve the quality of essential health care services; and (iii) to strengthen the rural health care system as a whole.

To address the aims of the EHE Network Planning program, applicants must describe planning activities that support at least one of the four key strategies specified in the 'Ending the HIV Epidemic: A Plan for America' initiative: (i) Diagnose; (ii) Treat; (iii) Prevent; and (iv) Respond. Performance measures for the EHE Network Planning Program serve the purpose of quantifying awardee-level data that conveys the successes and challenges associated with the grant award. These measures and aggregate data substantiate and inform the focus and objectives of the grant program.

A 60-day notice was published in the **Federal Register** on August 26, 2019, vol. 84, No. 165; pp. 44626–27. There were no public comments. The scope of this request was subsequently expanded to include the EHE Network Planning Program which, similar to the Network Planning Program, focuses on building rural health care network capacity. The EHE Network Planning Program specifically addresses HIV related health service delivery in response to the Administration's 'Ending the HIV Epidemic' Initiative.

Need and Proposed Use of the Information: This data collection provides HRSA with information on how well each grantee is meeting the needs of implementing the Network Planning and EHE Network Planning and development activities in a rural setting. Grantees of the EHE Network Planning program will be reporting on the performance measures from the current Network Planning PIMS measures.

The type of information requested in the Network Planning and EHE Network Planning PIMS enables HRSA to assess the following characteristics about its programs:

- The types and number of organizations in the consortium or network.
- The types of collaboration and/or integration among the network members.
- The contribution by network members and the network's sustainability efforts.
- The network's assessment of effectiveness and during the project period.

The respondents for these measures are Network Planning and EHE Network Planning award recipients.

If this information is not collected, HRSA would be unable to measure effective use of grant dollars to report on progress toward strategic goals and objectives of the Network Planning and EHE Network Planning Programs.

Likely Respondents: The respondents for these measures are Network Planning and EHE Network Planning award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—NETWORK PLANNING PROGRAM

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Network Development Planning Program Performance Improvement Measurement System	21	1	21	1	21
Total	21		21		21

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—EHE NETWORK PLANNING PROGRAM

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
EHE Network Planning Grantee key personnel (Project Director)	10	1	10	1	10
Total	10		10		10

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–08967 Filed 4–27–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIV/AIDS Clinical Trials Units (UM1 Clinical Trial Required).

Date: May 21–22, 2020.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Kumud K. Singh, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20892, 301–761–7830, *kumud.singh@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 22, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08923 Filed 4–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public via NIH videocast. The URL link to this meeting is: *https://videocast.nih.gov/watch=36304.*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: May 19, 2020.

Open: 10:00 a.m. to 11:05 a.m.

Agenda: Report to the Director, NIDCR.

Place: National Institute Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 662, Bethesda, MD 20892. (Virtual Meeting)

Closed: 11:20 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 662, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, 301–594–4805, *adombroski@nidcr.nih.gov.*

Any interested person may submit written comments no later than 15 days after the meeting by forwarding the statement to *NIDCRCouncilMail@nidcr.nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 21, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08924 Filed 4–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel; HIV/AIDS Clinical Trials Units (UM1 Clinical Trial Required).

Date: May 18–19, 2020.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Kumud K. Singh, Ph.D. Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, MSC–9823, Rockville, MD 20892, 301–761–7830, *kumud.singh@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 22, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08922 Filed 4–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group Pathophysiological Basis of Mental Disorders and Addictions Study Section.

Date: May 27–28, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Boris P. Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group Biobehavioral Regulation, Learning and Ethology Study Section.

Date: May 28, 2020.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda 20892, 301–827–6830, *unja.hayes@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA–RM–20–002: Tissue Mapping Centers for the Human BioMolecular Atlas Program (U54).

Date: June 1–2, 2020.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kee Forbes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, 301–272–4865, *kee.forbes@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 22, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08921 Filed 4–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc. as a Commercial Gauger; Wilmington, NC

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

ACTION: Notice of approval of Intertek USA, Inc. (Wilmington, NC), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Wilmington, NC), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of August 21, 2019.

DATES: Intertek USA, Inc. (Wilmington, NC) was approved as a commercial gauger as of August 21, 2019. The next triennial inspection date will be scheduled for August 2022.

FOR FURTHER INFORMATION CONTACT: Allison Blair, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281–560–2924.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 116 Bryan Road, Wilmington, NC 28412, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13.

Intertek USA, Inc. (Wilmington, NC) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 9, 2020.

James D. Sweet,

Laboratory Director, Southwest Regional Science Center, Laboratories and Scientific Services Directorate.

[FR Doc. 2020–08959 Filed 4–27–20; 8:45 am]

BILLING CODE 9111–14–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1142]

Certain Pocket Lighters; Commission Determination To Review in Part an Initial Determination Granting Complainant's Motion for Summary Determination of a Violation of Section 337; Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') granting complainant's motion for summary determination of section 337 violation by certain defaulting respondents. The Commission also requests written submissions from the parties, interested government agencies and other interested persons, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 12, 2019, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by BIC Corporation of Shelton, Connecticut (''Complainant''). *See* 84 FR 3486–87 (Feb. 12, 2019). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pocket lighters by reason of infringement of U.S. Trademark Registration Nos. 1,761,622 and 2,278,917. *See id.* The notice of investigation names numerous respondents, including Milan Import Export Company, LLC of San Diego, California; Wellpine Company Limited of Hong Kong; and Zhuoye Lighter Manufacturing Co., Ltd. of Foshan City, China (collectively, ''Defaulting Respondents''). *See id.* The Office of Unfair Import Investigations is also a party to the investigation. *See id.*

The Commission previously terminated other respondents based on settlement and entry of a consent order. *See* Order No. 21 (Oct. 30, 2019), *unreviewed,* Comm'n Notice (Nov. 25, 2019). The Commission also terminated an unserved respondent based on the withdrawal of the complaint allegations as to that respondent. *See* Order No. 23 (Dec. 18, 2019), *unreviewed,* Comm'n Notice (Jan. 16, 2020).

The Commission further found each of the Defaulting Respondents in default. *See* Order No. 13 (June 6, 2019), *unreviewed,* Comm'n Notice (July 8, 2019); Order No. 14 (June 6, 2019), *unreviewed,* Comm'n Notice (July 8, 2019); Order No. 15 (June 18, 2019), *aff'd with modification,* Comm'n Notice (July 10, 2019).

On November 14, 2019, Complainant filed a motion for summary determination of a violation of section 337 by the Defaulting Respondents. On December 16, 2019, the Commission Investigative Attorney filed a response in support of Complainant's motion.

On February 12, 2020, the ALJ issued the subject ID granting Complainant's motion for summary determination of violation of section 337 by the Defaulted Respondents. No petition for review of the subject ID was filed.

The Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID's findings with respect to the economic prong of the domestic industry requirement. At this time, the Commission does not request briefing on the issue under review.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such initial submissions should include views on the recommended determination by the ALJ on remedy and bonding. In its initial written submission, Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation.

Initial written submissions, including proposed remedial orders must be filed no later than close of business on May 8, 2020. Reply submissions must be filed no later than the close of business

on May 15, 2020. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1142'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 22, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–08945 Filed 4–27–20; 8:45 am]

BILLING CODE 7020–02–P

[1] All contract personnel will sign appropriate nondisclosure agreements.

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Liquid Crystal Display Devices, Components Thereof, and Products Containing the Same, DN 3451*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Sharp Corporation and Sharp Electronics Corporation on April 21, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display devices, components thereof, and products containing the same. The complaint names as respondents: VIZIO Inc. of Irvine, CA; Xianyang CaiHong Optoelectronics Technology Co., Ltd. of China; TPV Technology, Ltd. of Hong Kong; TPV Display Technology (Xiamen) Co., Ltd. of China; TPV International (USA), Inc. of Austin, TX; Trend Smart America, Ltd. of Lake Forest, CA; and Trend Smart CE Mexico S.R.L. De D.V., of Mexico. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any

written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3451'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 22, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–08915 Filed 4–27–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1117–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Contractor Drug Use Statement

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-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 30 days until May 28, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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:* New 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 x 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: April 22, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–08910 Filed 4–27–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employment and Training Administration Quick Turnaround Surveys

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored 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 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 28, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under this clearance, ETA collects data from state workforce agencies and local workforce investment areas on a quick turnaround basis. ETA proposes to conduct 8 to 20 short surveys of up to 30 questions that would provide timely information identifying the scope and magnitude of various practices or problems nationally. The surveys are needed to understand key operational issues in light of the Administration's policy priorities and of other partner programs. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 22, 2020 (85 FR 3721).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Employment and Training Administration Quick Turnaround Surveys.

OMB Control Number: 1205–0436.

Affected Public: State, Local, and Tribal Governments; Private Sector—businesses or other for-profit and not-for profit institutions.

Total Estimated Number of Respondents 5,000.

Total Estimated Number of Responses: 150,000.

Total Estimated Annual Time Burden: 7,500 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 21, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–08899 Filed 4–27–20; 8:45 am]

BILLING CODE 4510–FM–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Formaldehyde Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored 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 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 28, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Formaldehyde Standard and its collections of information are designed to provide protection for workers from the adverse health effects associated with occupational exposure to formaldehyde. The Standard requires employers to monitor worker exposure and provide notification to workers of their exposure. Employers are required to make available medical surveillance to workers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 26, 2020 (85 FR 11107).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an

information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Formaldehyde Standard.

OMB Control Number: 1218–0145.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 86,320.

Total Estimated Number of Responses: 906,101.

Total Estimated Annual Time Burden: 240,294 hours.

Total Estimated Annual Other Costs Burden: $46,843,874.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 21, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–08900 Filed 4–27–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Interstate Arrangement for Combining Employment and Wages

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored 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 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 28, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This report provides data necessary to measure the scope and effect of the program for combining employment and wages covered under different States' laws of a single State and to monitor States' payment and wage transfer performance. States are required to provide this information under Section 3304(a)(9)(B), of the Internal Revenue Code of 1986. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 30, 2020 (85 FR 5478).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Interstate Arrangement for Combining Employment and Wages.

OMB Control Number: 1205–0029.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Time Burden: 848 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 21, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–08897 Filed 4–27–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Protections for Transit Workers under Section 5333(b) Urban Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Labor-Management Standards (OLMS)-sponsored 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 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 28, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used

in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL Procedural Guidelines (29 CFR part 215), encourage the development of employee protections through local negotiations, but establish time frames for certification to expedite the process and make it more predictable, while assuring that the required protections are in place. Pursuant to the Guidelines, DOL refers for review the grant application and the proposed terms and conditions to unions representing transit employees in the service area of the project and to the applicant and/or subrecipient. No referral is made if the application falls under one of the following exceptions: (1) Employees in the service area are not represented by a union; (2) the grant is for routine replacement items; (3) the grant is for a Job Access project serving populations less than 200,000. (29 CFR 215.3). Grants where employees in the service area are not represented by a union will be certified without referral based on protective terms and conditions set forth by DOL. When a grant application is referred to the parties, DOL recommends the terms and conditions to serve as the basis for certification. The parties have 15 days to inform DOL of any objections to the recommended terms including reasons for such objections. If no objections are registered and no circumstances exist inconsistent with the statue, or if objections are found not sufficient, DOL certifies the project on the basis of the recommended terms. If DOL determines that the objections are sufficient, the Department, as appropriate, will direct the parties to negotiate for up to 30 days, limited to issues defined by DOL. If the parties are unable to reach agreement within 30 days, DOL will review the final proposals and where no circumstances exist inconsistent with the statute, issue an interim certification permitting FTA to release funds, provided that no action is taken relating to the issues in dispute that would irreparably harm employees. Following the interim certification, the parties may continue negotiations. If they are unable to reach agreement, DOL sets the terms for Final Certification within 60 days. DOL may request briefs on the issues in dispute before issuing the final certification. Notwithstanding the above, the Department retains the right to withhold certification where circumstances inconsistent with the statue so warrant until such circumstances have been resolved. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 23, 2020 (85 FR 3946).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OLMS.

Title of Collection: Protections for Transit Workers under Section 5333(b) Urban Program.

OMB Control Number: 1245–0006.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 1,671.

Total Estimated Number of Responses: 1,671.

Total Estimated Annual Time Burden: 13,368 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 21, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–08901 Filed 4–27–20; 8:45 am]

BILLING CODE 4510–86–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Corps Enrollee Allotment Determination

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored 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 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 28, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Job Corps enrollees may elect to have a portion of their readjustment allowance/transition payment sent to a dependent biweekly. Form ETA 658 provides the information necessary to administer these allotments. For additional substantive information about this ICR, see the related notice published in the **Federal**

Register on February 5, 2020 (85 FR 6578).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Job Corps Enrollee Allotment Determination.

OMB Control Number: 1205–0030.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1749.

Total Estimated Number of Responses: 1749.

Total Estimated Annual Time Burden: 87 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 21, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–08898 Filed 4–27–20; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0021]

Susan Harwood Training Grant Program Grantee Quarterly Progress Report; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Susan Harwood Training Grant Program Grantee Quarterly Progress Report.

DATES: Comments must be submitted (postmarked, sent, or received) by June 29, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0021, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2010–0021) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security numbers and dates of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Donna Robertson, Office of Training Programs and Administration, OSHA Directorate of Training and Education; email *robertson.donna@dol.gov;* telephone (847) 759–7769.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (29 U.S.C. 657).

Section 21 of the OSH Act (29 U.S.C. 670) authorizes OSHA to conduct directly, or through grants and contracts, education and training courses. These courses must ensure an adequate number of qualified personnel to fulfill the purposes of the OSH Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and workers to recognize, avoid, and prevent unsafe and unhealthful working conditions.

Under Section 21, OSHA awards training grants to nonprofit organizations to provide part of the required training. The agency requires organizations that receive these grants to submit quarterly progress reports that provide information on their grant-funded training activities; these reports allow OSHA to monitor the grantee's performance and to determine if an organization is using grant funds as specified in the grant application. Accordingly, the agency compares the information provided in the quarterly progress report to the quarterly milestones proposed by the organization

in the work plan and budget that accompanied the grant application. This information includes: Identifier data (organization name and grant number); the date and location where the training occurred; the length of training (hours); the number of workers and employers attending training sessions provided by the organization during the quarter; a description of the training provided; a narrative account of grant activities conducted during the quarter; and an evaluation of progress regarding planned versus actual work accomplished. This comparison permits OSHA to determine if the organization is meeting the proposed program goals and objectives, and spending funds in the manner described in the proposed budget.

Requiring these reports on a quarterly basis enables OSHA to identify work plan, training, and expenditure discrepancies in a timely fashion so that it can implement appropriate action. In addition, this information permits the agency to assess an organization's ability to meet projected milestones and expenditures.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Grantee Quarterly Progress Report. The agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Susan Harwood Grant Program Grantee Quarterly Progress Report.

OMB Control Number: 1218–0100.

Affected Public: Not-for-profit organizations.

Number of Respondents: 110.

Frequency: Quarterly.

Average Time per Response: Various.

Estimated Number of Response: 440.

Estimated Total Burden Hours: 6,160.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number (Docket No. OSHA–2010–0021) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350; TTY (877) 889–5627.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 21, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–08907 Filed 4–27–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–045)]

NASA Advisory Council; Regulatory and Policy Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Regulatory and Policy Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Friday, May 15, 2020, from 10:30 a.m.–2:30 p.m., Eastern Time.

ADDRESSES: Virtual meeting by dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rowe, Designated Federal Officer, Office of Legislative and Intergovernmental Affairs, NASA Headquarters, Washington, DC 20546, (202) 358–4269 or *andrew.rowe@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be held virtually and will be available telephonically and by WebEx only. Any interested person may dial the toll number 1–415–527–5035 and then the numeric passcode 903548068, followed by the # sign, or toll-free 1–844–467–6272 and then the numeric passcode 713620, followed by the # sign. NOTE: If dialing in, please ''mute'' your phone. To join via WebEx, the link is *https://nasaenterprise.webex.com/.* The meeting number is: 900 459 481 and the meeting password is RPC–May–15 (case sensitive).

The agenda for the meeting will include the following topics:

—Regulatory Issues for Commercial and Governmental Payloads on LEO Private Sector Modules and Free Flying Habitats

—Discussion of Spectrum Issues

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–08908 Filed 4–27–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extensions of currently approved collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before May 28, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Mackie Malaka at (703) 548–2704, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0092.

Title: Loans to Members and Lines of Credit to Members, 12 CFR 701.21 and Appendix B to 741.

Type of Review: Extension of a currently approved collection.

Abstract: Section 107(5) of the Federal Credit Union Act authorizes Federal Credit Unions (FCU) to make loans to members and issue lines of credit (including credit cards) to members. Section 701.21 governs the requirements related to loans to members and lines of credit to members for FCUs. Additionally, Part 741 established requirements for all federally insured credit unions (both Federal and state charters) related to loans to members and lines of credit union members. NCUA reviews the information collections to ensure compliance with applicable regulations and laws, and to assess the safety and soundness of the credit union's lending program.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 21,534.

OMB Number: 3133–0101.

Title: Member Business Loans; Commercial Lending, 12 CFR 723.

Type of Review: Extension of a currently approved collection.

Abstract: As part of NCUA's Regulatory Modernization Initiative, the NCUA Board amended Part 723 to provide federally insured credit unions with greater flexibility and individual autonomy in safely and soundly providing commercial and business loans to serve their members. The rule modernizes the regulatory requirements that govern credit union commercial lending activities by replacing the current rule's prescriptive requirement and limitations with a broad principles-based regulatory approach.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 3,656.

OMB Number: 3133–0140.

Title: Secondary Capital for Low-Income Designated Credit Unions, 12 CFR 701.34(b).

Type of Review: Extension of a currently approved collection.

Abstract: Section 701.34 (b) of NCUA's regulations provide that designated low-income credit unions (LICU) may accept secondary capital under certain conditions. For those LICUs wishing to exercise their option to access secondary capital, NCUA requires that credit unions accepting secondary capital must develop and submit a plan for its acquisition, use, and repayment. The information is used by NCUA to determine if the secondary capital will be managed by the credit union without risk to its financial condition, the U.S. government, or the National Credit Union Share Insurance Fund. This collection of information is necessary to obtain the information needed to ensure compliance with requirements related to acceptance and management of secondary capital.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 1,020.

Reason for change: An adjustment has been made due to a decrease in the number of credit unions requesting redemption of secondary capital. A total of 80 burden hours has been removed as result of the adjustment. A total of 1,020 burden hours is being requested.

OMB Number: 3133–0152.

Title: Management Official Interlocks, 12 CFR 711.

Type of Review: Extension of a currently approved collection.

Abstract: NCUA requires this information collection to ensure federally insured credit unions comply with NCUA's Management Official Interlocks regulation at 12 CFR part 711, implementing the Depository Institution Management Interlocks Act (''Interlocks Act'') (12 U.S.C. 3201–3208). The Interlocks Act generally prohibits financial institutions management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies. For credit unions, the Interlocks Act restricts interlocks only between credit unions and other financial institutions, such as banks and their holding companies. The information collection requirements of this part covers interlock relationships permitted by statute.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 6.

OMB Number: 3133–0196.

Title: Contractor's Diversity Profile.

Type of Review: Extension of a currently approved collection.

Abstract: On January 2011, NCUA created the Office of Minority and Women Inclusion (OMWI), as mandated by sec. 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act'') (Pub. L. 111–203). As prescribed by sec. 342(c) of the Act, OMWIs shall develop and implement standards and procedures to ensure the fair inclusions and utilization of minorities, women, and minority-owned and women-owned business in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts. As a result, NCUA developed the Contractor Profile form to be completed by a contractor to ensure the fair inclusion and utilization of minorities and women in the workforce of the contractor and, as applicable, subcontractor. The Contractor Profile form includes a series of questions covering a contractor's, and, as applicable, a subcontractor's diversity strategies, policies, recruitment, succession planning, and outreach. The information provided is used by NCUA to determine if good faith efforts are met and to fulfill statutory requirements of the Act. Determinations are valid for a two-year period.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 30.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on April 22, 2020.

Dated: April 22, 2020.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2020–08943 Filed 4–27–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Survey of College Graduates

AGENCY: National Center for Science and Engineering Statistics; National Science Foundation.

ACTION: Notice.

SUMMARY: The National Center for Science and Engineering Statistics (NCSES), within the National Science Foundation (NSF) is announcing plans to request renewal of the National Survey of College Graduates (OMB Control Number 3145–0141). In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NCSES will prepare the submission requesting that OMB approve clearance of this collection for three years.

DATES: Written comments on this notice must be received by June 29, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: 2021 National Survey of College Graduates.

OMB Control Number: 3145–0141.

Expiration Date of Current Approval: February 28, 2022.

Type of Request: Intent to seek approval to extend an information collection for three years.

Abstract

Established within the NSF by the America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, the National Center for Science and Engineering Statistics (NCSES) serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public.

The National Survey of College Graduates (NSCG) is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers. The purpose of the NSCG is to collect data that will be used to provide national estimates on the size, composition, and activities of the science and engineering workforce and changes in their employment, education, and demographic characteristics. The NSCG has been conducted biennially since the 1970s. The 2021 NSCG sample will be selected from the 2019 American Community Survey (ACS) and the 2019 NSCG. By selecting the sample from these two sources, the 2021 NSCG will provide coverage of the college graduate population residing in the United States.

The U.S. Census Bureau, as the agency responsible for the ACS, will serve as the NSCG data collection contractor for NCSES. The survey data collection is expected to begin in February 2021 and continue for approximately seven months. Data will be collected using web and mail questionnaires, and follow-up will be conducted with nonrespondents by computer-assisted telephone interviewing (CATI). The individual's response to the survey is voluntary. The survey will be conducted in conformance with Census Bureau statistical quality standards and, as such, the NSCG data will be afforded confidentiality protection under the applicable Census Bureau confidentiality statutes.

Use of the Information: The NSF uses the information from the NSCG to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering* (*https://www.nsf.gov/statistics/women/*) and *Science and Engineering Indicators* (*https://ncses.nsf.gov/indicators*), both of which are available online. A public release file of collected data, designed to protect respondent confidentiality, will be made available on the internet and will be accessible through an online data tool (*https://ncsesdata.nsf.gov/ids/*).

Expected Respondents: A statistical sample of approximately 164,000 individuals (90,000 returning sample members and 74,000 new sample members) will be contacted in 2021. Based on recent survey cycles, NCSES expects the response rate to be 65 to 75 percent.

Estimate of Burden: The amount of time to complete the questionnaire may vary depending on an individual's educational history, employment status, and past response to the NSCG. The time to complete the 2019 NSCG web survey ranged from 15.4 minutes for some returning sample members to 23.6 minutes for new sample members, and approximately 85% of respondents completed the web mode. Likewise, CATI interview times during the 2019 NSCG ranged from 29.6 minutes for some returning sample members to 34.3 minutes for new sample members, and about 5% of respondents completed via CATI. It was estimated that all forms of the 2019 NSCG paper questionnaire took 30 minutes to complete, and about 10% of respondents completed the paper form. Based on the 2019 cycle's survey completion times, it is estimated that it will take approximately 25 minutes, on average, to complete the 2021 NSCG questionnaire. NSF estimates that the average annual burden for the 2021 survey cycle over the course of the three-year OMB clearance period will be no more than 17,083 hours [(164,000 individuals × 75% response × 25 minutes)/3 years].

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 22, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–09000 Filed 4–27–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Request for Information—Interagency Arctic Research Policy Committee, Chaired by the Director of the National Science Foundation; Extension of Public Comment Period

AGENCY: National Science Foundation.

ACTION: Request for information; extension of public comment period.

SUMMARY: On April 3, 2020, the National Science Foundation, on behalf of the Interagency Arctic Research Policy Committee (IARPC), announced a request for information regarding development of the next 5-year Arctic Research Plan: 2022–2026, originally open for a 90-day public comment period. In response to the challenges of providing input on the next 5-year Arctic Research Plan: 2022–2026 during the current global pandemic, IARPC is extending the public comment period for an additional 30 days.

DATES: Written comments must be submitted no later than August 2, 2020.

ADDRESSES: Email comments to *IARPCPlan@nsf.gov.* Send written submissions to Roberto Delgado, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Contact Meredith LaValley at 940–733–5675.

SUPPLEMENTARY INFORMATION: On April 3, 2020, IARPC, chaired by the National Science Foundation, announced the start of a public comment period on the content and organization of the next 5-year Arctic Research Plan: 2022–2026 (85 FR 19031). In response to the challenges of providing input during the current global pandemic, IARPC is extending the public comment period by an additional 30 days. Comments must be received or postmarked by no later than August 2, 2020. Please see the original **Federal Register** notice for further information (85 FR 19031).

Dated: April 23, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–08997 Filed 4–27–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; NRC–2020–0100]

Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Unit Nos. 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued an exemption in response to an April 13, 2020, request from Entergy Nuclear Operations, Inc. (the licensee), as supplemented by letter dated April 16, 2020. The exemption grants the licensee's request for a temporary exemption for Indian Point Nuclear Generating Unit Nos. 2 and 3 (Indian Point 2 and 3) from the requirements with respect to extending the completion time for annual fire brigade physical examinations by 90 days for 15 fire brigade members.

DATES: The exemption was issued on April 22, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0100 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–2020–0100. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room 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 the document.

FOR FURTHER INFORMATION CONTACT: Richard V. Guzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1030, email: *Richard.Guzman@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: April 22, 2020.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment: Exemption

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–247 and 50–286

Entergy Nuclear Operations, Inc.

Indian Point Nuclear Generating Unit Nos. 2 and 3

Exemption

I. Background

Entergy Nuclear Operations, Inc. (the licensee) is the holder of Renewed Facility Operating License Nos. DPR–26 and DPR–64 for Indian Point Nuclear Generating Units Nos. 2 and 3, respectively (Indian Point 2 and 3). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission), now or hereafter in effect. The Indian Point 2 and 3 facility consists of two pressurized-water reactors located in Buchanan, New York.

II. Request/Action

By letter dated April 13, 2020, as supplemented by letter dated April 16, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML20104C121 and ML20107J551, respectively), the licensee requested a temporary exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, Section III.H, which requires (among other things) that the qualifications of fire brigade members include an annual physical examination to determine their ability to perform strenuous firefighting activities. Due to the Coronavirus Disease 2019 (COVID–19) Public Health Emergency (PHE) currently affecting the United States, and the state of emergency declared by the State of New York on March 7, 2020, the licensee has implemented pandemic planning strategies that include isolation activities and is requesting a temporary exemption from Appendix R, Section III.H, to extend the due dates for fire brigade members to have an annual physical examination in order to protect required site fire brigade personnel in response to the COVID–19 PHE. The

exemption would apply to 15 Indian Point 2 and 3 staff who are members of the fire brigade and extend, by 90 days, the due dates to conduct their physical examinations from April 23 through June 19, 2020, to July 22 through September 17, 2020, based on when an individual brigade member's physical examination is due.

The regulatory framework that applies to Indian Point 2 and 3 is contained in 10 CFR 50.48(b)(1), which requires that plants licensed before January 1, 1979, meet all sections of Appendix R to 10 CFR part 50 (expect Sections III.G, III.J, and III.O), unless the fire protection feature was specifically accepted by the NRC staff in a safety evaluation report (1) issued before February 19, 1981, as satisfying the provisions of Appendix A to Branch Technical Position (BTP) APCSB 9.5–1, ''Guidelines for Fire Protection for Nuclear Power Plants,'' or (2) issued before the publication of Appendix A of BTP APCSB 9.5–1 (August 1976). Indian Point 2 and 3 began commercial operations in 1974 and 1976, respectively. The acceptability to conduct annual fire brigade physical examinations was not discussed in any safety evaluation report before August 1976 or February 19, 1981. Thus, Section III.H of 10 CFR part 50, Appendix R, requires, among other things, that ''the qualification of fire brigade members shall include an annual physical examination to determine their ability to perform strenuous fire-fighting activities.''

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

The licensee requested an exemption from 10 CFR part 50, Appendix R, Section III.H, which requires, in part, annual fire brigade physical examinations be conducted for fire brigade members. The licensee claims that special circumstances in 10 CFR 50.12(a)(2)(v), which state that, ''The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation,'' are present.

A. The Exemption is Authorized by Law

The proposed exemption from 10 CFR part 50, Appendix R, Section III.H, would temporarily extend, by 90 days, due dates occurring from April 23 through June 19, 2020, to conduct annual physical examinations for fire brigade members.

In accordance with 10 CFR 50.12, the NRC may grant an exemption from the requirements of 10 CFR part 50 if it makes the requisite findings, including findings that the exemption is authorized by law and that special circumstances are present. The requested exemption is authorized by law based on the findings set forth below and because no other prohibition of law exists to preclude the activities that would be authorized by the exemption. The NRC staff also finds that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the NRC staff concludes that the exemption is authorized by law.

B. The Exemption Will Not Present an Undue Risk to the Public Health and Safety

The proposed exemption from 10 CFR part 50, Appendix R, Section III.H, would temporarily extend, by 90 days, the due dates to conduct annual physical examinations for fire brigade members. The NRC staff finds that the exemption would not present an undue risk to the public health and safety because the licensee will implement the following actions prior to the expiration dates of the current physical examinations:

1. Each affected fire brigade member will complete an annual medical history questionnaire based on American National Standards Institute (ANSI) Z–86.6–2006, ''Physical Qualifications for Respirator Use,'' and the Occupational Safety and Health Administration Respirator Medical Evaluation Questionnaire from 29 CFR 1910.134, Appendix C.
2. Each completed medical history questionnaire will be reviewed by a licensed physician who will compare the answers to the previous medical examination to determine if a 90-day extension is acceptable.
3. Telehealth conferencing will be used to conduct a one-on-one assessment of the fire brigade member to complete the review, if needed.

In addition to the above, each fire brigade member is part of an Operations Watch Team and is subject to the provisions of the licensee's behavioral observation program, which is established by procedure, to ensure compliance with 10 CFR 73.56, ''Access Authorization Program for Nuclear Power Plants.'' Under this program, a decrease in health or performance of a fire brigade member would be identified by an Operations supervisor. Also, as part of this program, fire brigade members are made acutely aware of the need to immediately report any change in their current health to their supervisor.

Also, a supervisor will inform each of the 15 affected fire brigade members, in person, of the exemption; the risks of conducting fire brigade activities, including wearing respiratory protection; the rationale for annual physical examinations; the deviation from the annual examination requirements; and the requirement that compliance be restored within 90 days of each original annual physical examination due date, or another date as indicated by a physician, whichever is sooner. The licensee indicated that it will use its corrective action program to document the performance of the planned actions discussed above.

Based on the performance of the above activities as described in the licensee's exemption request, as supplemented, the NRC staff concludes that granting the temporary exemption from the requirement in 10 CFR part 50, Appendix R, Section III.H, related to conducting annual physical examinations for fire brigade members will not present an undue risk to the public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The proposed exemption from 10 CFR part 50, Appendix R, Section III.H, would temporarily extend, by 90 days, the due dates to conduct annual physical examinations for fire brigade members currently due from April 23 through June 19, 2020. The 90-day extension would not adversely impact the firefighting capability of the Indian Point 2 and 3 fire brigade, because all members are currently qualified for all tasks, and the plant fire protection features, firefighting plans, and fire protection equipment have not been altered. In addition, this temporary exemption would allow the affected fire brigade members to continue to be available to perform their functions during the COVID–19 PHE, provided a review of each member's medical history yields satisfactory results. Therefore, the NRC staff concludes that the common defense and security is not impacted by this temporary exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(v), are present whenever an exemption would provide

only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

The licensee is requesting an exemption to allow a temporary extension of the 10 CFR part 50, Appendix R, Section III.H requirement that annual physical examinations be conducted for fire brigade members. The exemption would apply to 15 Indian Point 2 and 3 staff who are members of the fire brigade and extend, by 90 days, the due dates to conduct these physical examinations currently due from April 23 through June 19, 2020, to July 22 through September 17, 2020, based on when an individual brigade member's physical examination is due.

The licensee had scheduled these annual physical examinations to comply with the regulation, and prior to the implementation of isolation activities (*e.g.,* social distancing, group size limitations, self-quarantining, etc.) necessary to protect brigade personnel in response to the COVID–19 PHE, the licensee had successfully scheduled and completed previous annual fire brigade physical examinations within the specified frequency. As discussed in Section III.B above, the licensee will implement certain actions, including having each member complete an annual medical history questionnaire, having that medical questionnaire reviewed by a licensed physician, and using telehealth conferencing if a one-on-one assessment is needed, prior to the respective member's approved extension period.

Since the exemption would only grant temporary relief from the regulation, and the licensee has made good faith efforts to comply with the regulation, the NRC staff finds that the special circumstances required by 10 CFR 50.12(a)(2)(v) exist for the granting of an exemption from 10 CFR part 50, Appendix R, Section III.H, in regard to conducting the annual physical examinations for fire brigade members.

E. Environmental Considerations

The granting of the proposed exemption is categorically excluded under 10 CFR 51.22(c)(25) and there are no special (or extraordinary) circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the proposed action would grant an exemption from education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined, per 10 CFR 51.22(c)(25)(i), that granting the proposed exemption involves no significant hazards consideration because the 90-day extension of due dates to conduct annual physical examinations for fire brigade members does not change the way the reactor protections systems perform, authorize any hardware or design changes, alter any assumptions made in the safety analyses, introduce any new failure modes, or alter any safety limits. Thus, the issuance of the exemption does 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. Similarly, per 10 CFR 51.22(c)(25)(v), there is no significant increase in the potential for or consequences from radiological accidents.

In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, air or terrestrial resources, historic properties, cultural resources, or socioeconomic conditions in the region. The requested temporary deferral of physical examinations, based on the medical review and other actions the licensee plans to implement, would maintain fire brigade availability during the COVID–19 PHE. Thus, per 10 CFR 51.22(c)(25)(ii) and (iii), there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite and no significant increase in individual or cumulative public or occupational radiation exposure. In addition, because the proposed exemption does not authorize any construction, per 10 CFR 51.22(c)(25)(iv), there is no significant construction impact. As such, there are no special (or extraordinary) circumstances present that would preclude reliance on this categorical exclusion.

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, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the granting of this exemption.

IV. Conclusions

Accordingly, the Commission 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, and there are special circumstances present. Therefore, based upon the medical review and other actions described in the exemption request, as supplemented, the Commission hereby grants the licensee's request for a temporary exemption from the 10 CFR part 50, Appendix R, Section III.H, fire brigade annual qualification requirement by extending, by 90 days, the completion time for annual fire brigade physical examinations due from April 23 through June 19, 2020, to July 22 through September 17, 2020, for 15 brigade members at Indian Point 2 and 3.

Dated: April 22, 2020.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–08918 Filed 4–27–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No(s). 72–1031; 72–1037; 72–64; 72–38; and 72–45; NRC–2020–0092]

ZionSolutions LLC; Dominion Energy Kewaunee, Inc.; Duke Energy Carolinas, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued four exemptions in response to requests from ZionSolutions LLC; Dominion Energy Kewaunee, Inc.; and Duke Energy Carolinas, LLC. The exemptions allow the licensees to deviate from the requirements for the MAGNASTOR® storage cask system in Certificate of Compliance No. 1031, Amendment No. 7 (for Catawba and McGuire) and Amendment No. 6 (for Zion and Kewaunee), by utilizing two exceptions to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. The NRC is issuing a single notice to announce the issuance of these exemptions because these are nearly identical.

DATES: The four exemptions were issued on April 21, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0092 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–2020–0092. Address questions about NRC dockets 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.*

For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

FOR FURTHER INFORMATION CONTACT: Bernard White, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6577, email: *Bernard.White@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC issued four exemptions in response to requests dated December 30, 2019, January 16, 2020, and January 9, 2020, from ZionSolutions LLC; Dominion Energy Kewaunee, Inc.; Duke Energy Carolinas, LLC, respectively. The exemptions allow exemption from the requirements of title 10 of the *Code of Federal Regulations* (10 CFR) sections 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and the portion of 10 CFR 72.212(b)(11), which requires compliance with the terms and conditions set forth in the certificate of compliance for each spent fuel cask used by an independent spent fuel storage installation general licensee.

The exemptions requested use of two exceptions to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, one for the Section III, Division 1, Subsection NG–2300, Charpy V-notch testing direction requirement for carbon steel plate material greater than 0.625 inches thick and the other to the post-heat treatment ultrasonic testing requirements in Section III, Division 1, Subsection NG–2500, for rolled carbon steel plate material greater than 0.75 inches thick. The requested exemptions do not change the fundamental design, components, contents, or safety features of the storage system.

II. Availability of Documents

The table below provides the plant name, docket number, and ADAMS Accession Numbers related to this action. For further details with respect to these exemptions, see the requests for exemption for each facility in ADAMS. For additional direction on accessing information related to this document, see the **ADDRESSES** section of this document.

Document title	ADAMS Accession No.
Zion*Solutions* Independent Spent Fuel Storage Installation Docket No. 72–1037	
Request for an Exemption to the Requirements of Certificate of Compliance No. 1031, Amendment No. 6 for the NAC MAGNASTOR Storage System Zion Nuclear Power Station, Units 1 and 2 Facility Operating License Nos. DPR–39 and DPR–48 NRC Docket Nos. 50–295 and 50–304 Independent Spent Fuel Storage Installation Docket No. 72–1037	ML20003D845
Revised Request for an Exemption to the Requirements of Certificate of Compliance No. 1031 Amendment No. 6 for the NAC MAGNASTOR Storage System Zion Nuclear Power Station, Units 1 and 2 Facility Operating License Nos. DPR–39 and DPR–48 NRC Docket Nos. 50–295 and 50–304 Independent Spent Fuel Storage Installation Docket No. 72–1037	ML20035E402
Response to NRC Request for Additional Information for MAGNASTOR Basket Material Investigation for NAC CARs 19–01 and 19–02	ML20076C526
Issuance of Exemption for Zion Independent Spent Fuel Storage Installation	ML20098E710
Catawba Independent Spent Fuel Storage Installation Docket No. 72–45	
Request for an Exemption to the Requirements of Certificate of Compliance No. 1031, Amendment No. 7 for the NAC MAGNASTOR Storage System	ML20009E527
Response to Requests for Additional Information for Exemption Request to the Requirements of Certificate of Compliance No. 1031, Amendment No. 7 for the NAC MAGNASTOR Storage System	ML20072M224
Issuance of Exemption for Catawba Independent Spent Fuel Storage Installation	ML20098D956
McGuire Independent Spent Fuel Storage Installation Docket No. 72–38	
Request for an Exemption to the Requirements of Certificate of Compliance No. 1031, Amendment No. 7 for the NAC MAGNASTOR Storage System	ML20009E527
Response to Requests for Additional Information for Exemption Request to the Requirements of Certificate of Compliance No. 1031, Amendment No. 7 for the NAC MAGNASTOR Storage System	ML20072M224
Issuance of Exemption for McGuire Independent Spent Fuel Storage Installation	ML20098C982
Kewaunee Independent Spent Fuel Storage Installation Docket No. 72–38	
Dominion Energy Kewaunee, Inc. Kewaunee Power Station Request for Exemption from Certain Code of Federal Regulation Requirements of Certificate of Compliance No. 1031, Amendment No. 6 for the NAC MAGNASTOR Storage System	ML20035C759
Dominion Energy Kewaunee, Inc. Kewaunee Power Station Application for Exemption-MAGNASTOR Storage System Response to Request for Additional Information	ML20086K860
Issuance of Exemption for McGuire Independent Spent Fuel Storage Installation	ML20098D404

The NRC may post additional materials to the Federal rulemaking website at *https://www.regulations.gov,* under Docket ID NRC–2020–0092. The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2020–0092); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated: April 22, 2020.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–08925 Filed 4–27–20; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Multiemployer Plan Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information in PBGC's regulations on multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of PBGC's request and solicits public comment on the collection.

DATES: Comments must be submitted by May 28, 2020.

ADDRESSES: Written comments and recommendations for the information collections should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* These particular information collections may be found by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment.* Copies of the collections of information may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040). PBGC's regulations on multiemployer plans may be accessed on PBGC's website at *https://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202–229–3839. TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–3839.

SUPPLEMENTARY INFORMATION: OMB has approved and issued control numbers for seven collections of information in PBGC's regulations relating to multiemployer plans. These collections of information are described below. OMB approvals for these collections of information expire August 31, 2020.

On February 11, 2020, PBGC published in the **Federal Register** (at 85 FR 7803) a notice informing the public of its intent to request an extension of these collections of information. No comments were received. PBGC is requesting that OMB extend approval of the collections of information for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB Control Number 1212–0023)

Sections 4203(f) and 4208(e)(3) of ERISA allow PBGC to permit a multiemployer plan to adopt special rules for determining whether a withdrawal from the plan has occurred, subject to PBGC approval.

The regulation specifies the information that a plan that adopts special rules must submit to PBGC about the rules, the plan, and the industry in which the plan operates. PBGC uses the information to determine whether the rules are appropriate for the industry in which the plan functions and do not pose a significant risk to the insurance system.

PBGC estimates that at most one plan sponsor submits a request each year under this regulation. The estimated annual burden of the collection of information is 3 hours and $7,000.

2. Variances for Sale of Assets (29 CFR Part 4204) (OMB Control Number 1212–0021)

If an employer's covered operations or contribution obligation under a plan ceases, the employer must generally pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide for secondary liability of the seller.

The regulation establishes general variances (rules for avoiding the bond/escrow and sale-contract requirements) and authorizes plans to determine whether the variances apply in particular cases. It also allows buyers and sellers to request individual variances from PBGC. Plans and PBGC use the information to determine whether employers qualify for variances. PBGC estimates that each year, 100 employers submit, and 100 plans respond to, variance requests under the regulation, and one employer submits a variance request to PBGC. The estimated annual burden of the collection of information is 1,050 hours and $501,000.

3. Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207) (OMB Control Number 1212–0044)

Section 4207 of ERISA allows PBGC to provide for abatement of an employer's complete withdrawal liability, and for plan adoption of alternative abatement rules, where appropriate.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year, at most one employer submits, and one plan responds to, an application for abatement of complete withdrawal liability, and no plan sponsors request approval of plan abatement rules from

PBGC. The estimated annual burden of the collection of information is 0.5 hours and $450.

4. Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208) (OMB Control Number 1212–0039)

Section 4208 of ERISA provides for abatement, in certain circumstances, of an employer's partial withdrawal liability and authorizes PBGC to issue additional partial withdrawal liability abatement rules.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year, at most one employer submits, and one plan responds to, an application for abatement of partial withdrawal liability and no plan sponsors request approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 0.50 hours and $450.

5. Allocating Unfunded Vested Benefits To Withdrawing Employers (29 CFR Part 4211) (OMB Control Number 1212–0035)

Section 4211(c)(5)(A) of ERISA requires PBGC to prescribe how plans can, with PBGC approval, change the way they allocate unfunded vested benefits to withdrawing employers for purposes of calculating withdrawal liability.

The regulation prescribes the information that must be submitted to PBGC by a plan seeking such approval. PBGC uses the information to determine how the amendment changes the way the plan allocates unfunded vested benefits and how it will affect the risk of loss to plan participants and PBGC.

PBGC estimates that 10 plan sponsors submit approval requests each year under this regulation. The estimated annual burden of the collection of information is 100 hours and $100,000.

6. Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219) (OMB Control Number 1212–0034)

Section 4219(c)(1)(D) of ERISA requires that PBGC prescribe regulations for the allocation of a plan's total unfunded vested benefits in the event of a ''mass withdrawal.'' ERISA section 4209(c) deals with an employer's liability for de minimis amounts if the employer withdraws in a ''substantial withdrawal.''

The reporting requirements in the regulation give employers notice of a mass withdrawal or substantial withdrawal and advise them of their rights and liabilities. They also provide notice to PBGC so that it can monitor the plan, and they help PBGC assess the possible impact of a withdrawal event on participants and the multiemployer plan insurance program.

PBGC estimates that there are six mass withdrawals and three substantial withdrawals per year. The plan sponsor of a plan subject to a withdrawal covered by the regulation provides notices of the withdrawal to PBGC and to employers covered by the plan, liability assessments to the employers, and a certification to PBGC that assessments have been made. (For a mass withdrawal, there are two assessments and two certifications that deal with two different types of liability. For a substantial withdrawal, there is one assessment and one certification (combined with the withdrawal notice to PBGC).) The estimated annual burden of the collection of information is 45 hours and $148,500.

7. Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) (OMB Control Number 1212–0031)

Under section 4220 of ERISA, a plan may within certain limits adopt special plan rules regarding when a withdrawal from the plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such special rule is effective only if, within 90 days after receiving notice and a copy of the rule, PBGC either approves or fails to disapprove the rule. The regulation provides rules for requesting PBGC's approval of an amendment. PBGC needs the required information to identify the plan, evaluate the risk of loss, if any, posed by the plan amendment, and determine whether to approve or disapprove the amendment.

PBGC estimates that at most one plan sponsor submits an approval request per year under this regulation. The estimated annual burden of the collection of information is 2 hours and $5,000 dollars.

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–09106 Filed 4–27–20; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0215, Verification of Adult Student Enrollment Status, RI 25–49

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection (ICR), Verification of Adult Student Enrollment Status, RI 25–49.

DATES: Comments are encouraged and will be accepted until June 29, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION:

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106),

OPM is soliciting comments for this collection (OMB No. 3206–0215). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 25–49 is used to verify that adult student annuitants are entitled to payment. The Office of Personnel Management must confirm that a full-time enrollment has been maintained.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Verification of Full-Time School Attendance.

OMB Number: 3206–0215.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 10,000.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 10,000.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–09004 Filed 4–27–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Initial Certification of Full-Time School Attendance, RI 25–41, 3206–0099

AGENCY: Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection (ICR) 3206–0099, Initial Certification of Full-Time School Attendance, RI 25–41.

DATES: Comments are encouraged and will be accepted until June 29, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–AC, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0099). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 25–41, Initial Certification of Full-Time School Attendance is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older under title 5, U.S.C. Sections 8341(A)(4) and Chapter 84, Section 8441(4)(C).

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Initial Certification of Full-Time School Attendance.

OMB: 3206–0099.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,200.

Estimated Time per Respondent: 90 minutes.

Total Burden Hours: 1,800.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–08993 Filed 4–27–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0174, Survivor Annuity Election for a Spouse, RI 20–63; Cover Letter Giving Information About The Cost To Elect Less Than the Maximum Survivor Annuity, RI 20–116; Cover Letter Giving Information About the Cost To Elect the Maximum Survivor Annuity, RI 20–117

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR), Survivor Annuity Election for a Spouse (RI 20–63), Cover Letter Giving Information about the Cost to Elect Less Than the Maximum Survivor Annuity (RI 20–116) and Cover Letter Giving Information About the Cost to Elect the Maximum Survivor Annuity (RI 20–117).

DATES: Comments are encouraged and will be accepted until June 29, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson or sent via email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0174). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 20–63 is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. RI 20–116 is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter is used to supply the information that may have been requested by the annuitant about the cost of electing less than the maximum survivor annuity. RI 20–117 is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Survivor Annuity Election for a Spouse/Cover Letter Giving Information about the Cost to Elect Less Than the Maximum Survivor Annuity/Cover Letter Giving Information about the Cost to Elect the Maximum Survivor Annuity.

OMB Number: 3206–0174.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: RI 20–63 = 2,400; RI 20–116 & RI 20–117 = 200.

Estimated Time per Respondent: 55 minutes [RI 20–63 = 45 min., RI 20–116 & 20–117 = 10 min.]

Total Burden Hours: 1,834.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–08991 Filed 4–27–20; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: April 23, 2020, at 10:30 a.m.

PLACE: Washington, DC.

STATUS: Closed.

ITEMS CONSIDERED:

1. Administrative Issues.
2. Strategic Issues.

On April 23, 2020, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88730; File No. SR–GEMX–2020–09]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX Rules at Options 3, Section 8, Titled Options Opening Process

April 22, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2020, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX Rules at Options 3, Section 8, titled ''Options Opening Process.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend GEMX Rules at Options 3, Section 8, titled ''Options Opening Process.'' The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposal seeks to amend aspects of the current functionality of the Exchange's System regarding the opening of trading in an option series. Each amendment is described below.

Definitions

The Exchange proposes to define the term ''imbalance'' at proposed Options 3, Section 8(a)(10) as the number of unmatched contracts priced through the Potential Opening Price. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This description is consistent with the current System operation. This is a non-substantive rule change. In conjunction with this rule change, the Exchange proposes to remove the text within Options 3, Section 8(j)(1) which seeks to define an imbalance as an unmatched contracts. The Exchange is proposing a description which is more specific than this rule text and is intended to bring greater clarity to the term ''imbalance.''

Eligible Interest

Options 3, Section 8(b) describes the eligible interest that will be accepted during the Opening Process. This includes Valid Width Quotes, Opening Sweeps and orders. The Exchange proposes to specifically exclude orders with a Time in Force of ''Immediate-or-Cancel'' [3] and Add Liquidity Orders [4] from the type of orders that are eligible during the Opening Process. Today, the Exchange does not accept Immediate-or-Cancel Orders during the Opening Process, except for Opening Only Orders.[5] The Exchange does permit orders marked as Opening Only Orders to be entered as Immediate-or-Cancel. These are the only acceptable Immediate-or-Cancel Orders for the Opening Process. All other types of Immediate-or-Cancel Orders may not be entered during the Opening Process. For example, All-or-None [6] Orders may not be entered during the Opening Process because they have a time-in-force designation of Immediate-or-Cancel. With respect to Add Liquidity Orders, these orders are not appropriate for the Opening Process because these orders cannot add liquidity during the Opening Process. The Exchange notes that today, these orders may not be entered into the Opening Process. This amendment does not result in a System change. The Exchange believes the addition of this rule text will clarify which order types are eligible to be entered during the Opening Process. The Exchange also proposes to add commas to the second sentence of Options 3, Section 8(b).

Additionally, the Exchange proposes a non-substantive amendment at Options 3, Section 8(b)(2) to replace the phrase ''aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes'' with ''allocate interest'' pursuant to Options 3, Section 10. Options 3, Section 10 describes the manner in which interest is allocated on GEMX. The Exchange believes that simply referring to the allocation rule will accurately describe the manner in which the System will allocate interest.

Valid Width Quotes

The Exchange proposes to amend the requirements for GEMX Market Makers [7] to enter Valid Width Quotes within Options 3, Section 8(c). Today, a Primary Market Maker is required to enter a Valid Width Quote within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the opening price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website), or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website). Alternatively, the Valid Width Quote of at least two Competitive Market Makers entered within the above-referenced timeframe would also open an option series. Finally, if neither the Primary Market Maker's Valid Width Quote nor the Valid Width Quotes of two Competitive Market Makers have been submitted within such timeframe, one Competitive Market Maker may submit a Valid Width Quote to open the options series.

The Exchange proposes to amend the requirement to submit Valid Width Quotes in an effort to streamline its current process. The Exchange proposes to continue to require a Primary Market Maker to submit a Valid Width Quote, but also would permit the Valid Width Quote of one Competitive Market Maker to open an option series without waiting for the two minute timeframe described above to conclude. This effectively would take the 2 step process for accepting quotes to a one step process. The Exchange believes this proposal would allow the market to open more efficiently as well as enable greater participation by Competitive Market Makers in the Opening Process. As is the case today, Primary Market Makers are required to ensure each option series to which it is appointed is opened each day by submitting a Valid Width Quote.[8] Moreover, a Primary Market Maker has continuing obligations to

[3] An Immediate-or-Cancel order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. An Immediate-or-Cancel order entered by a Market Maker through the Specialized Quote Feed protocol will not be subject to the Limit Order Price Protection and Size Limitation Protection as defined in GEMX Options 3, Section 15(b)(2) and (3). *See* Options 3, Section 7(b)(3).

[4] An Add Liquidity Order is a limit order that is to be executed in whole or in part on the Exchange (i) only after being displayed on the Exchange's limit order book; and (ii) without routing any portion of the order to another market center. Members may specify whether an Add Liquidity Order shall be cancelled or re-priced to the minimum price variation above the national best bid price (for sell orders) or below the national best offer price (for buy orders) if, at the time of entry, the order (i) is executable on the Exchange; or (ii) the order is not executable on the Exchange, but would lock or cross the national best bid or offer. If at the time of entry, an Add Liquidity Order would lock or cross one or more non-displayed orders on the Exchange, the Add Liquidity Order shall be cancelled or re-priced to the minimum price variation above the best non-displayed bid price (for sell orders) or below the best non-displayed offer price (for buy orders). An Add Liquidity Order will only be re-priced once and will be executed at the re-priced price. An Add Liquidity Order will be ranked in the Exchange's limit order book in accordance with Options 3, Section 10. *See* Options 3, Section 7(n).

[5] An Opening Only Order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled. *See* Options 3, Section 7(o).

[6] An All-Or-None order is a limit or market order that is to be executed in its entirety or not at all. An All-Or-None Order may only be entered as an Immediate-or-Cancel Order. *See* Options 3, Section 7(c).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[8] Options 3, Section 8(c)(3) provides, ''The PMM assigned in a particular equity or index option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. Provided an options series has not opened pursuant to Options 3, Section 8 (c)(1)(ii) or (iii), PMMs must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening.''

quote intra-day pursuant to Options 2, Section 5.

Potential Opening Price

The Exchange proposes to amend Options 3, Section 8(g) to add an introductory sentence to the Potential Opening Process paragraph which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met.'' This paragraph is not intended to amend the function of the Opening Process, rather it is intended to provide context to the process and describe a Potential Opening Price within Options 3, Section 8(g). This is a non-substantive amendment. The Exchange also proposes to correct the reference to (h)(3)(i) to (h)(3)(i).

An amendment is proposed to Options 3, Section 8(g)(3) to replace the words ''Potential Opening Price calculation'' with the more defined term ''Opening Price.'' The Opening Price is defined within Options 3, Section 8(a)(3) and provides, ''The Opening Price is described herein in sections (h) and (j).'' The Exchange notes that ''Opening Price'' is the more accurate term that represents current System functionality as compared to Potential Opening Price. Options 3, Section 8(g)(3) provides that ''the Potential Opening Price calculation is bounded by the better away market price that may not be satisfied with the Exchange routable interest.'' In fact, the Opening Price is bounded by the better away market price that may not be satisfied with Exchange routable interest pursuant to sections (h) and (j). The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met. The Potential Opening Price is a less accurate term and the Exchange proposes to utilize the more precise term by changing the words in this sentence to ''Opening Price'' for specificity. This amendment is not substantive, rather it is clarifying.

Opening Quote Range

The Exchange proposes to add a sentence to Options 3, Section 8(i) to describe the manner in which the Opening Quote Range or ''OQR'' is bound. The Exchange proposes to provide, ''OQR is constrained by the least aggressive limit prices within the broader limits of OQR. The least aggressive buy order or Valid Width Quote bid and least aggressive sell order or Valid Width Quote offer within the OQR will further bound the OQR.'' The Exchange previously described [9] the OQR as an additional type of boundary beyond the boundaries mentioned in Options 3, Section 8 at proposed paragraph (j). OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the Best Bid or Best Offer (''BBO''), the OQR is outside of the BBO. It is meant to provide a price that can satisfy more size without becoming unreasonable. The Exchange proposes to add rule text within Options 3, Section 8 to describe the manner in which today OQR is bound. This proposed amendment does not change the manner in which GEMX's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price. Below is an example of the manner in which OQR is constrained.

Assume the below pre-opening interest:

Primary Market Maker quotes 4.10 (100) × 4.20 (50)

Order 1: Priority Customer Buy 300 @ 4.39

Order 2: Priority Customer Sell 50 @ 4.13

Order 3: Priority Customer Sell 5 @ 4.37

Opening Quote Range configuration in this scenario is +/− 0.18

9:30 a.m. events occur, underlying opens

First imbalance message: Buy imbalance @ 4.20, 100 matched, 200 unmatched

Next 4 imbalance messages: Buy imbalance @ 4.37, 105 matched, 195 unmatched

Potential Opening Price calculation would have been 4.20 + 0.18 = 4.38, but OQR is further bounded by the least aggressive sell order @ 4.37

Order 1 executes against Order 2 50 @ 4.37

Order 1 executes against Primary Market Maker quote 50 @ 4.37

Order 1 executes against Order 3 5 @ 4.37

Remainder of Order 1 cancels as it is through the Opening Price

Primary Market Maker quote purges as its entire offer side volume has been exhausted

Similarly, the Exchange proposes to amend Options 3, Section 8(i)(3) which currently provides, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (c)(5)) and there are Valid Width Quotes on the Exchange that are executable against each other or the ABBO:''. The Exchange proposes to instead state, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (c)(5)) and there are Valid Width Quotes on the Exchange that *cross each other or are marketable against* the ABBO:''. The proposed language more accurately describes the current Opening Process. Valid Width Quotes are not routable and would not be executable against the ABBO. A similar change is also proposed to Options 3, Section 8(i)(4) to replace the words ''are executable against'' with ''cross''. The Exchange believes that the amended rule text adds greater transparency to the Opening Process. These are non-substantive amendments.

The Exchange proposes to replace the phrase ''route'' with ''route routable'' and also replace the phrase ''in price/time priority to satisfy the away market'' with ''pursuant to Options 3, Section 10(c)(1)(A)'' at the end of Options 3, Section 8(i)(7). The final sentence would provide, ''The System will route routable Public Customer interest pursuant to Options 3, Section 10(c)(1)(A).'' The current rule text is imprecise. When routing, the Exchange first determine if the interest is routable. A DNR Order [10] would not be routable. Of the routable interest, the Exchange will route the interest in price/time priority to satisfy the away market interest. The Exchange believes changing the word ''route'' to ''route routable'' and adding the citation to the allocation rule within Options 3, Section 10 clarifies the meaning of this sentence and better explains the System handling. This is a non-substantive amendment which is intended to bring greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange proposes to add new rule text to Options 3, Section 8(j)(1)(A) to describe the information conveyed in an Imbalance Message. The Exchange proposes to provide at Options 3, Section 8(j)(1)(A),

An Imbalance Message will be disseminated showing a ''0'' volume and a $0.00 price if: (1) No executions are possible but routable interest is priced at or through the ABBO; (2) internal quotes are crossing each other; or (3) there is a Valid Width

[9] *See* Securities Exchange Commission Release No. 80014 (February 10, 2017), 82 FR 10952 (February 16, 2017) (SR–GEMX–2016–18).

[10] The manner in which the System will handle orders marked with the instruction ''Do-Not-Route'' (''DNR'' Orders) is described in Options 3, Section 8(j)(6).

Quote, but there is no Quality Opening Market. Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.

This rule text is consistent with the current operation of the System. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. The Exchange believes that explaining the potential scenarios which led to the dissemination of a ''0'' volume, such as (1) when no executions are possible and routable interest is priced at or through the ABBO; (2) internal quotes are crossing; and (3) there is a Valid Width Quote, but there is no Quality Opening Market, will provide greater detail to the potential state of the interest available. The Exchange further clarifies in this new rule text, ''Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.'' The Exchange believes that this proposed text will bring greater transparency to the information available to market participants during the Opening Process.

The Exchange proposes to amend Options 3, Section 8(j)(3)(ii) to remove the phrase ''at the Opening Price'' within the paragraph in two places. The current second sentence of paragraph 8(j)(3)(ii) states, ''If during the Route Timer, interest is received by the System which would allow the Opening Price to be within OQR without trading through away markets and without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price, the System will open with trades at the Opening Price and the Route Timer will simultaneously end.'' The Exchange proposes to remove the words ''at the Opening Price'' because while anything traded on GEMX would be at the Opening Price, the trades that are routed away would be at an ABBO price which may differ from the GEMX Opening Price. To avoid any confusion, the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(ii) which currently only references quotes. During the Price Discovery Mechanism, both quotes and orders are considered.

The Exchange proposes to amend the last sentence of Options 3, Section 8(j)(5) to add the phrase ''if consistent with the Member's instructions'' to the end of the paragraph to make clear that the instructions provided by a Member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading. This amendment brings greater clarity to the Exchange's Rules.

The Exchange proposes to amend the last sentence of Options 3, Section 8(j)(6) which provides, ''The System will only route non-contingency Public Customer orders, except that only the full volume of Public Customer Reserve Orders may route.'' The Exchange proposes to instead provide, ''The System will only route non-contingency Public Customer orders, except that Public Customer Reserve Orders may route up to their full volume.'' The Exchange is rewording the current sentence to make clear that Public Customer Reserve Orders may route up to their full volume. The current sentence is awkward in that is seems to imply that only full volume would route. This was not the intent of the sentence. As revised, the sentence more clearly conveys its intent. The Exchange believes that this amendment brings greater clarity to the rule.

The Exchange proposes to add an introductory sentence of Options 3, Section 8(j)(6)(i) which provides, ''For contracts that are not routable, pursuant to Options 3, Section 8(j)(6), such as DNR Orders and orders priced through the Opening Price. . .''. The addition of this sentence is intended to provide context to the handling of orders. The Exchange opens and routes simultaneously during its Opening Process. This proposed sentence is a transition sentence from Options 3, Section 8(j)(6), wherein the System executes and routes orders. Options 3, Section 8(j)(6)(i) describes DNR Orders, which are not routed. The proposed introductory sentence would reflect that Options 3, Section 8(j)(6) is intended to make clear that as DNR Orders and orders priced through the Opening Price are not routable orders that will cancel. The System will cancel any portion of a Do-Not-Route order that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur. An order *or quote* that is priced through the Opening Price will also be cancelled. All other interest will be eligible for trading after opening. This amended rule text is consistent with the behavior of the System. This non-substantive amendment is intended to add greater clarity to the Exchange's Rules. The Exchange also proposes to remove the phrase ''will be cancelled'', which is duplicative, and add the words ''or quote'' to the first sentence so it would provide, ''[t]he System will cancel (1) any portion of a Do-Not-Route order that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur, or (2) any order or quote that is priced through the Opening Price. All other interest will be eligible for trading after opening.'' Today, any order or quote that is priced through the Opening Price will be cancelled. This new rule text makes clear that all interest applies.

The Exchange proposes to renumber current Options 3, Section 8(k) as Section 8(j)(6)(ii) and renumber current Options 3, Section 8(l) as Section 8(j)(6)(iii).

The Exchange proposes to add a new paragraph at Options 3, Section 8(j)(6)(iv) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price.'' The Exchange notes that this paragraph describes current System behavior. This rule text accounts for orders which routed away and were returned unsatisfied to GEMX as well as interest that was unfilled during the Opening Process, provided it was not priced through the Opening Price. This sentence is being included to account for the manner in which all interest is handled today by GEMX and how certain interest rests on the order book once the Opening Process is complete. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will bring greater transparency to the Rules and is consistent with the Exchange's current System operation. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once GEMX opens an options series.

Opening Process Cancel Timer

The Exchange proposes to adopt an Opening Process Cancel Timer within Options 3, Section 8(k), similar to The Nasdaq Options Market LLC's (''NOM'') Rules and Nasdaq BX, Inc.'s (''BX'') at Options 3, Section 8(c).[11] The Exchange proposes to add a process whereby if an

[11] NOM Options 3, Section 8(c) provides, ''Absence of Opening Cross. If an Opening Cross in a symbol is not initiated before the conclusion of the Opening Process Cancel Timer, a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Process Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by Nasdaq on its website.'' BX Options 3, Section 8 is worded similarly.

options series has not opened before the conclusion of the Opening Process Cancel Timer, a Member may elect to have orders returned by providing written notification to the Exchange. The Opening Process Cancel Timer would be established by the Exchange and posted on the Exchange's website. Similar to NOM and BX, orders submitted through OTTO or FIX with a TIF of Good-Till-Canceled [12] or ''GTC'' or Good-Till-Date [13] or ''GTD'' may not be cancelled. GEMX has monitored the operation of the Opening Process to identify instances where market efficiency can be enhanced. The Exchange believes that adopting a cancel timer similar to NOM and BX will increase the efficiency of GEMX's Opening Process. This provision would provide for the return of orders for un-opened options symbols. This enhancement will provide market participants the ability to elect to have orders returned, except for non-GTC/GTD Orders, when options do not open. It provides Members with choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow GEMX to continue to have a robust Opening Process.

Implementation

The Exchange proposes to implement the amendments proposed herein prior to Q3 2020. The Exchange will issue an Options Trader Alert announcing the date of implementation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. The Exchange believes that the proposed changes significantly improve the quality of execution of GEMX's opening.

Definitions

The Exchange's proposal to define the term ''imbalance'' at proposed Options 3, Section 8(a)(10) and remove the text within Options 3, Section 8(j)(1), which seeks to define an imbalance as an unmatched contract, will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This is a non-substantive rule change and represents current System functionality. Today, the term ''imbalance'' is simply defined as unmatched contracts. The proposed definition is more precise in its representation of the current System functionality.

Eligible Interest

The Exchange's proposal to amend Options 3, Section 8(b) which describes the eligible interest that will be accepted during the Opening Process is consistent with the Act. Specifically, only accepting Opening Only Orders and excluding all other orders with a Time in Force of ''Immediate-or-Cancel'' is the manner in which the System operates today. The Exchange proposes to specifically note within the Opening Process that all other Immediate-or-Cancel Orders would not be acceptable if they are not Opening Only Orders. Notwithstanding the foregoing, Opening Only Orders would be accepted. Further, Add Liquidity Orders are not accepted from the Opening Process because these orders cannot add liquidity during the Opening Process. The Exchange notes that today, both of these types of orders may not be entered into the Opening Process. The Exchange believes making clear which orders are not accepted within the Opening Process will bring greater transparency for market participants who desire to enter interest and understand the System handling.

The proposed amendment to Options 3, Section 8(b)(2) to replace the phrase ''aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes'' with ''allocate interest pursuant to Options 3, Section 10 is consistent with the Act. This amendment is non-substantive and merely points to Options 3, Section 10, which today describes the manner in which interest is allocated on GEMX. The Exchange believes that simply referring to the allocation rule will accurately describe the manner in which the System will allocate interest.

Valid Width Quotes

The Exchange's proposal to amend the requirements within Options 3, Section 8(c) for GEMX Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Competitive Market Maker to open an option series without waiting for the two minute timeframe is consistent with the Act. This proposal would allow the market to open more efficiently as well as enable greater participation by Competitive Market Makers in the Opening Process. A Primary Market Maker has continuing obligations to quote throughout the trading day pursuant to Options 2, Section 5. In addition, Primary Market Makers are required to ensure each option series to which it is appointed is opened each day GEMX is open for business by submitting a Valid Width Quote.[16] Primary Market Makers will continue to remain responsible to open an options series, unless it is otherwise opened by a Competitive Market Maker. A Competitive Market Maker also has obligations to quote intra-day, once they commence quoting for that day.[17] The Exchange notes if Competitive Market Makers entered quotes during the Opening Process to open an option series, those quote must qualify as Valid Width Quotes. This ensures that the quotations that are entered are in alignment with standards that help ensure a quality opening. The Exchange believes that allowing one Competitive Market Maker to enter a quotation continues to protect investors and the general public because the Competitive Market Maker will be held to the same standard for entering quotes as a Primary Market Maker and the process will also ensure an efficient and timely opening, while continuing to hold Primary Market Makers responsible for entering Valid Width Quotes during the Opening Process.

Potential Opening Price

The Exchange's proposal to amend Options 3, Section 8(g) to add an introductory sentence to the Potential Opening Process which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met,'' is consistent with the Act. This paragraph is not intended to amend the current function of the Opening Process, rather it is intended to provide context to the process described within Options 3, Section 8(g). Specifically, the new text describes a Potential Opening Price.

[12] An order to buy or sell that remains in force until the order is filled, canceled or the option contract expires; provided, however, that GTC Orders will be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. *See* Options 3, Section 7(r).

[13] A Good-Till-Date Order is a limit order to buy or sell which, if not executed, will be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series. *See* Options 3, Section 7(p).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* note 9 above.

[17] *See* Options 2, Section 5.

This rule text is consistent with the current operation of the System. This is a non-substantive amendment.

Further, the amendment to Options 3, Section 8(g)(3) to replace the words ''Potential Opening Price calculation'' with the more defined term ''Opening Price'' is consistent with the Act. ''Opening Price'' is the more accurate term that represents current System functionality. The Opening Price is bounded by any better away market price that may not be satisfied with the Exchange routable interest. Changing the words in this sentence to ''Opening Price'' will make this statement accurate. This amendment is not substantive.

Opening Quote Range

The Exchange's proposal to add a sentence to Options 3, Section 8(i) to describe the manner in which the OQR is bound will bring greater clarity to the manner in which OQR is calculated. OQR is an additional type of boundary beyond the boundaries mentioned within the Opening Process rule. The System will calculate an OQR for a particular option series that will be utilized in the Price Discovery Mechanism if the Exchange has not opened, pursuant to the provisions in Options 3, Section 8(c)–(h). OQR would broaden the range of prices at which the Exchange may open to allow additional interest to be eligible for consideration in the Opening Process. OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the BBO, the OQR provides a range of prices that may be able to satisfy additional contracts while still ensuring a reasonable Opening Price. More specifically, the Exchange's Opening Price is bounded by the OQR without trading through the limit price(s) of interest within OQR, which is unable to fully execute at the Opening Price in order to provide participants with assurance that their orders will not be traded through. The Exchange seeks to execute as much volume as is possible at the Opening Price. The Exchange's method for determining the Potential Opening Price and Opening Price is consistent with the Act because the proposed process seeks to discover a reasonable price and considers both interest present in System as well as away market interest. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices. The rule provides for opening with a trade, which is consistent with the Act because it enables an immediate opening to occur within a certain boundary without the need for the price discovery process. The boundary provides protections while still ensuring a reasonable Opening Price. The Exchange's proposal protects investors and the general public by more clearly describing how the boundaries are handled by the System. This proposed amendment does not change the manner in which GEMX's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price.

The Exchange's proposal to amend Options 3, Section 8(i)(3) to replace the phrase ''that are executable against each other or the ABBO:'' with ''that *cross each other or are marketable against* the ABBO:'' will more accurately describes the current Opening Process. Valid Width Quotes are not routable and would not be executable against the ABBO. This rule text is more specific than ''executable against each other.'' The Exchange believes that this rule text adds greater transparency to the Opening Process. This is a non-substantive amendment.

The Exchange's proposal to make a similar change to Options 3, Section 8(i)(4) to replace the words ''are executable against'' with ''cross,'' is consistent with the Act. The Exchange believes that the amended rule text adds greater transparency to the Opening Process. These are non-substantive amendments.

The Exchange's proposal to replace the phrase ''route'' with ''route routable'' and also replace the phrase ''in price/time priority to satisfy the away market'' with ''pursuant to Options 3, Section 10(c)(1)(A)'' at the end of Options 3, Section 8(i)(7) is consistent with the Act. The current rule text is imprecise. When allocating, the Exchange first determines if the interest is routable, it may be marked as a DNR Order, which is not routable. Of the routable interest, the Exchange will route the interest in price/time priority to satisfy the away market interest. The Exchange believes changing the word ''route'' to ''route routable'' and adding the citation to the allocation rule within Options 3, Section 10 clarifies the meaning of this sentence and better explains the System handling. The final sentence would provide, ''The System will route routable Public Customer interest pursuant to Options 3, Section 10(c)(1)(A).'' This is a non-substantive amendment which is intended to bring greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange's proposal to add new rule text at Options 3, Section 8(j)(1)(A) to describe the current operation of the System with respect to imbalance messages is consistent with the Act. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. An imbalance process is intended to attract liquidity to improve the price at which an option series will open, as well as to maximize the number of contracts that can be executed on the opening. This process will only occur if the Exchange has not been able to otherwise open an option series utilizing the other processes available in Options 3, Section 8. The Imbalance Timer is intended to provide a reasonable time for participants to respond to the Imbalance Message before any opening interest is routed to away markets and, thereby, maximize trading on the Exchange. The Exchange believes that the proposed rule text provides market participants with additional information as to the imbalance message. The following potential scenarios, which may lead to the dissemination of a ''0'' volume, include (1) when no executions are possible and routable interest is priced at or through the ABBO: (2) Internal quotes are crossing; and (3) there is a Valid Width Quote, but there is no Quality Opening Market. The Exchange believes adding this detail will provide greater information as to the manner in which Imbalance Messages are disseminated today. The Exchange's process of disseminating zero imbalance messages is consistent with the Act because the Exchange is seeking to identify a price on the Exchange without routing away, yet which price may not trade through another market and the quality of which is addressed by applying the OQR boundary. Announcing a price of zero will permit market participants to respond to the Imbalance Message, which interest would be considered in determining a fair and reasonable Opening Price.

The Exchange further proposes to clarify its current System functionality by stating, ''Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.'' The Exchange believes that this proposed text will bring greater transparency to the information available to market participants during the Opening Process.

The Exchange's proposal to amend Options 3, Section 8(j)(3)(ii) to remove the phrase ''at the Opening Price'' within the paragraph in two places is consistent with the Act because removing the current phrase will avoid confusion. The Exchange notes that anything traded on GEMX would be at the Opening Price, the trades that are routed away would be at an ABBO price, which differs from the GEMX Opening Price. To avoid any confusion the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(ii) which currently only references quotes. During the Price Discovery Mechanism both quotes and orders are considered.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(j)(5) to amend the phrase ''if consistent with the Member's instructions'' to the end of the paragraph will make clear that the instructions provided by a Member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading. This proposal is consistent with the Act and will add greater clarity to the Exchange's Rules.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(j)(6) to provide, ''The System will only route non-contingency Public Customer orders, except that Public Customer Reserve Orders may route up to their full volume,'' is consistent with the Act. The Exchange is re-wording the current sentence to make clear that Public Customer Reserve Orders may route up to their full volume. The current sentence is awkward in that is seems to imply that only full volume would route. This was not the intent of the sentence. As revised, the sentence more clearly conveys its intent. The Exchange believes that this amendment is non-substantive and is a more precise manner of expressing the quantity of Reserve Orders that may route.

The Exchange's proposal to add an introductory phrase to Options 3, Section 8(j)(6)(i) which provides, ''For contracts that are not routable, pursuant to Options 3, Section 8(j)(6), such as DNR Orders and orders priced through the Opening Price . . . ,'' is consistent with the Act. The addition of this sentence is intended simply to provide context to the handling of orders. The prior paragraph, Options 3, Section 8(j)(6), describes how the System executes and routes orders. This proposed new text explains why DNR Orders are cancelled. This sentence is being added to indicate that at this stage in the Opening Process, routable interest would have routed, non-routable interest does not route and may not execute if priced through the Opening Price. This information is currently not contained within the rules, however the rule text is consistent with the behavior of the System. This non-substantive amendment is consistent with the Act because it adds greater clarity to the Exchange's Rules.

The proposal to remove the duplicative text ''will be cancelled'' and add the words ''or quote'' to the second sentence are non-substantive rule changes. All other interest will be eligible for trading after opening,'' is consistent with the Act. Today, any order or quote that is priced through the Opening Price will be cancelled. This rule text is consistent with the System's current operation. This amendment is intended to add greater clarity to the Exchange's Rules.

The Exchange's proposal to add a new paragraph at Options 3, Section 8(j)(6)(iv) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price,'' will bring greater transparency to the handling of orders once an option series is opened for trading. After away interest is cleared by routable interest and the opening cross has occurred, DNR Orders are handled by the System. DNR Order interest will rest on the Order Book, provided it was not priced through the Opening Price. This rule text accounts for orders which have routed away and returned to GEMX unsatisfied and also accounts for interest that remains unfilled during the Opening Process, provided it was not priced through the Opening Price. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will protect investors and the general public by adding greater transparency to the Exchange's current System operation by explaining how all interest is handled during the Opening Process. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once GEMX opens its options series. This amendment represents the System's current function.

Opening Process Cancel Timer

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(k), similar to NOM's and BX's Rules at Options 3, Section 8(c) is consistent with the Act. The Exchange's proposal to add a process whereby if an options series has not opened before the conclusion of the Opening Process Cancel Timer, a Member may elect to have orders returned by providing written notification to the Exchange is consistent with the Act. GEMX believes that this amendment will promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. Adopting a cancel timer similar to NOM and BX will increase the efficiency of GEMX's Opening Process by providing Members with the ability to elect to have orders returned, except for non-GTC/GTD orders. This functionality provides Members with choice, when symbols do not open, about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow GEMX to continue to have a robust Opening Process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While the Exchange does not believe that the proposal should have any direct impact on competition, it believes the proposal will enhance the Opening Process by making it more efficient and beneficial to market participants. Moreover, the Exchange believes that the proposed amendments will significantly improve the quality of execution of GEMX's Opening Process. The proposed amendments provide market participants more choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this should attract new order flow.

The Exchange's s proposal to define the term ''imbalance'' at proposed Options 3, Section 8(a)(10) and remove the text within Options 3, Section 8(j)(1), which seeks to define an imbalance as an unmatched contract does not impose an undue burden on competition. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined

within the System. This description is consistent with the current System operation. This is a non-substantive rule change.

The Exchange's proposal to specifically exclude orders with a Time in Force of ''Immediate-or-Cancel'' and Add Liquidity Orders from the type of orders that are eligible during the Opening Process does not impose an undue burden on competition. The Exchange notes that today all market participants may enter Opening Only Orders. Today, the Exchange does not permit Immediate-or-Cancel Orders to be entered unless they are Opening Only Orders. With respect to Add Liquidity Orders, these orders are not appropriate for the Opening Process because these orders cannot add liquidity during the Opening Process and would not be accepted from any market participant today. The addition of these exceptions does not impact any market participant as today all market participants are restricted from utilizing ''Immediate-or-Cancel''or Add Liquidity Orders.

The Exchange's proposal to amend the requirements within Options 3, Section 8(c) for GEMX Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Competitive Market Maker to open an option series without waiting for the two minute timeframe does not impose an undue burden on competition. This proposal would allow the market to open more efficiently as well as enable greater participation by Competitive Market Makers in the Opening Process. Primary Market Makers continue to remain obligated to open their appointed options series. Competitive Market Maker may participate in the Opening Process, as is the case today, provided they enter Valid Width Quotes, which is intended to ensure a quality opening. The Exchange does not believe this proposal would burden the ability of market participants who enter quotes to participate in the Opening Process.

The Exchange's proposal to add a sentence to Options 3, Section 8(i) to describe the manner in which the OQR is bound does not impose an undue burden on competition. OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices for the protection of all investors. This proposed amendment does not change the manner in which GEMX's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price.

The Exchange's proposal to add new rule text at Options 3, Section 8(j)(1)(A) to describe the current operation of the System with respect to imbalance messages does not impose an undue burden on competition. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. All market participants are able to respond to an imbalance messages and have their interest considered in determining a fair and reasonable Opening Price.

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(k), similar to NOM's and BX's Rules at Options 3, Section 8(c), does not impose an undue burden on competition. Adopting a cancel timer similar to NOM and BX will increase the efficiency of GEMX's Opening Process for all market participants. All market participants will have the ability to elect to have orders returned, except for non-GTC/GTD orders, when symbols do not open. This feature provides Members with choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange.

The remainder of the proposed rule text is intended to bring greater transparency to the Opening Process rule while also adding additional detail and clarity and therefore does not have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2020–09 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–GEMX–2020–09. 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

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–GEMX–2020–09 and should be submitted on or before May 19, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08941 Filed 4–27–20; 8:45 am]

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[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33848; File No. 812–14905]

FS Credit Income Fund, et al.

April 22, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: FS Credit Income Fund (''FSC''), FS Credit Income Advisor, LLC (''FSC Advisor''), GoldenTree Asset Management Credit Advisor LLC (''GTAM Credit''), GoldenTree Loan Management LP (''GLM''), GoldenTree Asset Management LP (''GTAM''), GoldenTree Master Fund, Ltd., GoldenTree Partners, LP, GoldenTree Offshore Fund, Ltd., GoldenTree Offshore Intermediate Fund, LP, GoldenTree Select Partners, LP, GoldenTree Select Offshore Fund, Ltd., GoldenTree Select Offshore Intermediate Fund, LP, GoldenTree Entrust Intermediate Fund SPC (Segregated Portfolio I), GoldenTree Entrust Offshore Fund SPC (Segregated Portfolio I), GoldenTree Entrust Master Fund SPC (Segregated Portfolio I), GT NM, L.P., GoldenTree Credit Opportunities Master Fund, Ltd., GoldenTree Credit Opportunities, LP, GoldenTree Credit Opportunities, Ltd., GoldenTree Multi-Sector Master Fund ICAV, GoldenTree Multi-Sector, LP, GoldenTree Multi-Sector Cayman Ltd., GoldenTree NJ Distressed Fund 2015 LP, GoldenTree Emerging Markets Master Fund ICAV, GoldenTree Emerging Markets Fund ICAV, GoldenTree High Yield Value Master ICAV, GoldenTree High Yield Value Fund Offshore (Strategic) Ltd., GoldenTree Multi-Sector Fund Offshore ERISA Ltd., GoldenTree Loan Opportunities IX Ltd., GoldenTree Loan Opportunities X Ltd., GoldenTree Loan Opportunities XII Ltd., GoldenTree Loan Financing I, Ltd., GoldenTree Structured Products Opportunities Offshore Fund Extension Holdings LLC, GoldenTree Structured Products Opportunities Domestic Fund Extension Holdings LLC, GoldenTree Structured Products Opportunities Fund Extension Holdings LLC, GoldenTree Structured Products—C LP, Guadalupe Fund, LP, Gresham Multi-Sector Credit Fund, Ltd., GoldenTree 2017 K–SC, Ltd, GoldenTree Distressed Master Fund III Ltd, GoldenTree Distressed Fund III LP, GoldenTree Distressed Master (ECI) Fund III LP, GoldenTree Distressed Fund 2014 LP, GoldenTree Distressed Master Fund 2014 Ltd., GoldenTree Distressed Master (ECI) Fund 2014 LP, GoldenTree Distressed Debt Master Fund LP, GoldenTree Distressed Debt Fund LP, GoldenTree Distressed Debt Master (ECI) Fund LP, Laurelin 2016–1 DAC, Ginkgo Tree, LLC, GoldenTree Co-Invest Fund II LP, GoldenTree Co-Invest Fund II Ltd., GoldenTree Co-Invest Master Fund II Ltd., GoldenTree V1 Fund, LP, GoldenTree V1 Master Fund, LP, GT Credit Fund LP (the ''GTAM Private Funds''), GoldenTree Loan Management US CLO 1, Ltd., GoldenTree Loan Management US CLO 2, Ltd., GoldenTree Loan Management US CLO 3, Ltd., GoldenTree Loan Opportunities XI, Ltd., GoldenTree Loan Management EUR CLO 1 DAC, GoldenTree Loan Management (US Feeder), LP, GoldenTree Loan Management (Offshore Feeder), LP, GLM EUR BAR WH DAC, GLM EUR CB WH DAC, GLM EUR MS WH DAC, GLM MS WH, Ltd., GoldenTree Loan Management US CLO 4, Ltd., GoldenTree Loan Management US CLO 5, Ltd., GoldenTree Loan Management EUR CLO 2 DAC, GoldenTree Loan Management EUR CLO 3 DAC, GoldenTree Distressed Onshore Master Fund III LP, GoldenTree Distressed Parallel Fund III LP, GoldenTree Loan Management US CLO 6, Ltd., GoldenTree Loan Management US CLO 7, Ltd., GoldenTree Loan Management US CLO 8, Ltd., GoldenTree Loan Management EUR CLO 4 DAC (the ''GLM Private Funds,'' together with the GTAM Private Funds, the ''Private Funds'').

FILING DATES: The application was filed on May 15, 2018, and amended on December 13, 2018, December 5, 2019 and March 10, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request email. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2020, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Comission: *Secretarys-Office@sec.gov.* Applicants: FS Credit Income Advisor, LLC, Attn: Neal Helbe, *legalnotices@fsinvestments.com;* GoldenTree Asset Management LP, Attn: Barry Ritholz, *britholz@goldentree.com.*

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. FSC is a Delaware Statutory Trust and is a non-diversified, closed-end management investment company that operates as an interval fund pursuant to Rule 23c–3 under the Act. FSC's Objectives and Strategies [1] are to provide attractive total returns, which will include current income and capital appreciation, by investing, under normal market conditions, at least 80% of its assets (including borrowings for investment purposes) in debt obligations. FSC has a board of trustees, a majority of which is comprised of members who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Non-Interested Trustees''). No Non-Interested Trustee will have any direct or indirect financial interest in any Co-Investment Transaction (as defined below) or any interest in any portfolio company, other than indirectly through share ownership (if any) in FSC or a Future Regulated Fund (as defined below).

2. Each of the GTAM Private Funds and the GLM Private Funds are entities that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

3. FSC Advisor, a Delaware limited liability company, is an investment adviser registered with the Commission under the Investment Advisers Act of 1940 (''Advisers Act''). FSC Advisor serves as investment adviser to FSC and has engaged GTAM Credit to serve as sub-adviser to FSC.

4. GTAM Credit, a Delaware limited liability company, is an investment adviser registered under the Advisers Act. GTAM Credit identifies investment opportunities and executes on its trading strategies for FSC subject to guidelines agreed to by FSC Advisor and GTAM Credit. FSC Advisor is not an affiliated person (as defined in Section 2(a)(3) of the Act) of GTAM Credit and is not responsible for making or ratifying any investment decisions made by GTAM Credit.

5. GTAM, a Delaware limited partnership, is an investment adviser registered with the Commission under the Advisers Act. GTAM serves as investment adviser to each of the GTAM Private Funds.

6. GLM, a Cayman Islands limited partnership, is an investment adviser registered with the Commission under the Advisers Act. GLM serves as the investment adviser to each of the GLM Private Funds.

7. Applicants seek an order (''Order'') to permit one or more Regulated Funds [2] and/or one or more Affiliated Funds [3] to participate in the same investment opportunities through a proposed co-investment program (the ''Co-Investment Program''), where such participation would otherwise be prohibited under rule 17d–1, by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price; [4] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or a Wholly-Owned Investment Subsidiary (as defined below)) participates together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or a Wholly-Owned Investment Subsidiary (defined below)) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[5]

8. Applicants state that FSC Advisor has delegated responsibility for the Co-Investment Program to GTAM Credit. Applicants further state that GTAM Credit has sole responsibility for causing FSC and any Affiliated Fund to enter into a Potential Co-Investment Transaction and is responsible for ensuring that the GTAM Adviser, the Regulated Funds, and any Affiliated Funds comply with the conditions of the application.

9. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subsidiaries.[6] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of rule 17d–1. Applicants request that each Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Subsidiary. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in

[1] ''Objectives and Strategies'' means, with respect to a Regulated Fund (as defined below), the investment objectives and strategies of such Regulated Fund, as described in such Regulated Fund's registration statement, other filings the Regulated Fund has made with the Commission under the Act, under the Securities Act of 1933, as amended (''1933 Act'') or under the Securities Exchange Act of 1934, as amended, or in the Regulated Fund's reports to shareholders.

[2] ''Regulated Fund'' means FSC and any Future Regulated Fund. ''Future Regulated Fund'' means any closed-end investment management company (a) that is registered under the Act, (b) whose investment adviser (and any sub-adviser, if any) is a GTAM Adviser, and (c) that intends to participate in the Co-Investment Program. The term ''FS Adviser'' means (a) FSC Advisor and (b) any future investment adviser that controls, is controlled by or is under common control with FSC Advisor, is registered as an investment adviser under the Advisers Act and is not a Regulated Fund or a subsidiary of a Regulated Fund. The term ''GTAM Adviser'' means (a) GTAM, GTAM Credit, or GLM and (b) any future investment adviser that controls, is controlled by or is under common control with GTAM, GTAM Credit, or GLM, is registered as an investment adviser under the Advisers Act and is not a Regulated Fund or a subsidiary of a Regulated Fund. The term ''Adviser'' means (a) a FS Adviser or (b) a GTAM Adviser; provided that a GTAM Adviser serving as a sub-adviser to an Affiliated Fund (defined below) is included in this term only if (i) the investment adviser is also a GTAM Adviser and (ii) such Adviser controls the entity. Applicants state that the FS Advisers will only be subject to conditions 2(c)(iv), 13 and 14 of the application.

[3] ''Affiliated Fund'' means the Private Funds and any Future Affiliated Fund. ''Future Affiliated Fund'' means any entity (a) whose investment adviser (and any sub-adviser, if any) is a GTAM Adviser, (b) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

[4] The term ''private placement transactions'' means transactions in which the offer and sale of securities by the issuer are exempt from registration under the 1933 Act.

[5] All existing entities that currently intend to rely upon the requested Order have been named as Applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the Application.

[6] The term ''Wholly-Owned Investment Subsidiary'' means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments and incur debt (which is or would be consolidated with other indebtedness of such Regulated Fund for financial reporting or compliance purposed under the Act) on behalf of the Regulated Fund; (iii) with respect to which the Regulated Fund's board of trustees (''Board'') has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act.

a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Subsidiary.

10. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment (''Available Capital''), and other pertinent factors applicable to that Regulated Fund. Each Adviser, as applicable, undertakes to perform these duties consistently for each Regulated Fund, as applicable, regardless of which of them serves as investment adviser for these entities. The participation of a Regulated Fund in a Potential Co-Investment Transaction may only be approved by both a majority of the trustees of the Board who have no financial interest in such transaction, plan or arrangement and a majority of such trustees who are Non-Interested Trustees (a ''Required Majority''),[7] eligible to vote on that Co-Investment Transaction (the ''Eligible Trustees'').[8]

11. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Regulated Fund's Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the Regulated Fund's Eligible Trustees, and the Required Majority will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

12. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

13. Applicants also represent that if the Advisers, the principals of the Advisers (''Principals'') or any person controlling, controlled by, or under common control with an Adviser or the Principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25% of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as required under condition 14. Applicants believe this condition will ensure that the Non-Interested Trustees will act independently in evaluating the Co-Investment Program, because the ability of an Adviser and its principals to influence the Non-Interested Trustees by a suggestion, explicit or implied, that the Non-Interested Trustees can be removed will be limited significantly. Applicants represent that the Non-Interested Trustees will evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Trustees of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Trustees with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction

[7] ''Required Majority'' has the meaning provided in Section 57(o) of the Act. The trustees of a Regulated Fund that make up the Required Majority will be determined as if the Regulated Fund were a business development company (''BDC'') subject to Section 57(o).

[8] The term ''Eligible Trustees'' means the trustees who are eligible to vote under Section 57(o) as if the Regulated Fund were a BDC subject to Section 57(o).

(including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Trustees of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) The Potential Co-Investment Transaction is consistent with:

(A) The interests of the Regulated Fund's shareholders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of any other Regulated Funds or Affiliated Funds; provided that if any other Regulated Funds or Affiliated Funds, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) He Eligible Trustees will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of the Affiliated Fund or Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Fund in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, any Affiliated Funds or other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[9] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, an Affiliated Fund or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Fund or Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify each Regulated Fund that participated in the co-investment

[9] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which the Regulated Fund already holds investments.

transaction of the proposed Follow-On Investment at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable GTAM Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Trustees of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by any other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Trustees may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Trustees will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Trustee of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [10] (including break-up or commitment fees but excluding broker's fees contemplated section 17(e) of the Act) received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the Co-Investment Transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds, or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the investment advisory agreements between such Adviser and the Regulated Fund or Affiliated Fund).

14. If the Holders own in the aggregate more than 25% of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4) under the Act, will prepare an annual report for the Board of such Regulated Fund that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[10] The Applicants are not requesting, and the staff is not providing, any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88722; File No. SR–CBOE–2020–037]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove Its Optional Daily Risk Limits Pursuant to Rule 5.34

April 22, 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 April 13, 2020, Cboe Exchange, Inc. (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to remove its optional daily risk limits pursuant to Rule 5.34. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove the optional daily risk limit settings for Users in Rule 5.34(c)(4).[5] The daily risk limits are voluntary functionality. Pursuant to current Rule 5.34(c)(4), if a User enables this functionality they may establish one or more of the following values for each of its ports, which the System aggregates (for simple and complex orders) across all of a User's ports (*i.e.,* applies on a firm basis): (i) Cumulative notional booked bid value (''CBB''); (ii) cumulative notional booked offer value (''CBO''); (iii) cumulative notional executed bid value (''CEB''); and (iv) cumulative notional executed offer value (''CEO''). The User may then establish a limit order notional cutoff, a market order notional cutoff, or both, each of which it may establish on a net basis, gross basis, or both. If a User exceeds a cutoff value, the System cancels or rejects all incoming limit orders or market orders, respectively. If a User establishes a limit order notional cutoff but does not establish (or sets as zero) the market order notional cutoff, the System cancels or rejects all market orders. The System calculates a notional cutoff on a gross basis by summing CBB, CBO, CEB, and CEO. The System calculates a notional cutoff on a net basis by summing CEO and CBO, then subtracting the sum of CEB and CBB, and then taking the absolute value of the resulting amount. This functionality does not apply to bulk messages.

The Exchange proposes to remove the daily limit risk mechanism because use of this mechanism on Users' ports is infrequent. Indeed, no Users currently have the daily risk limit enabled on a port connected to the Exchange. Because so few Users enable this functionality for their ports, the Exchange believes the current demand does not warrant the Exchange resources necessary for ongoing System support for the risk mechanism (*e.g.,* the System must maintain and apply algorithms that track and calculate gross and net notional exposure). The Exchange again notes that the use of the daily risk limit is voluntary. The Exchange will continue to offer to Users a full suite of price protection mechanisms and risk controls which sufficiently mitigate risks associated with Users entering orders and quotes at unintended prices, and risks associated with orders and quotes trading at prices that are extreme and potentially erroneous, as a likely result of human or operational error. This includes other price protections and risk controls associated with notional value of a User's orders and quotes. For example, Rule 5.34(c)(3) provides for a voluntary functionality in which the System cancels or rejects an incoming order or quote with a notional value that exceeds the maximum notional value a User establishes for each of its ports, and Rule 5.34(c)(5) [6] provides for a voluntary functionality in which a User may establish risk limits within a class or across classes [7] defined by certain parameters, of which the notional value of executions is an parameter option. Once a risk parameter is reached, no new trades are executed and any orders or quotes in route are System-rejected.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and national market system and benefit investors, because it will delete from the Rules a risk control that the Exchange will no longer offer, thereby promoting transparency in its Rules. The Exchange notes, too, that other options exchange do not offer daily risk limits, or other risk controls, associated with notional value of their users' order or quotes.[11] The Exchange

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] As a result of the proposed rule change, the Exchange also updates the subsequent paragraph numbering in current subparagraphs (c)(5) through (c)(11).

[6] The Exchange notes that as a result of the proposed removal of Rule 5.34(c)(4), current Rule 5.34(c)(5) will become new Rule 5.34(c)(4).

[7] And for one Executing Firm ID (''EFID'') or a group of EFIDs.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *See* NYSE CGW FIX Gateway Specification for NYSE American Options and NYSE Arca Options (last updated February 27, 2020) available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/FIX_Specification_and_API.pdf,* which provides for various User-defined risk controls, like those of the Exchange, but does not offer parameter settings in connection with aggregate notional values. NYSE American Options and NYSE Arca

does not believe that the proposed rule change will affect the protection of investors or the public interest or the maintenance of a fair and orderly market because this risk control is so infrequently implemented, and currently, no User has this risk control established in any port connected to the Exchange. In addition to this, the Exchange notes that the use of this risk control is voluntary and the Exchange will continue to offer a full suite of price protection mechanisms and risk controls, including those associated with notional value of a Users' orders and quotes, which sufficiently mitigate risks associated with Users entering orders and quotes at unintended prices, and risks associated with orders and quotes trading at prices that are extreme and potentially erroneous, as a likely result of human or operational error. Also, the Exchange believes the low usage rate for the daily risk limits does not warrant the continued resources necessary for System support of such controls. As a result, the Exchange believes the proposed rule change will also remove impediments to and perfect the mechanism of a free and open market and national market system by allowing the Exchange to reallocate System capacity and resources to more frequently elected System functionality, including other price protection and risk control functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not competitive in nature, but rather is intended to remove a risk control that is rarely used on the Exchange. The Exchange does not believe that the proposed rule change would impose a burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will remove the option to use this risk control for all Users on the Exchange. In addition to this, and as stated above, the use of the daily risk limit is voluntary and the Exchange will continue to offer various other price protections and risk controls that sufficiently mitigate risks associated with market participants entering and/or trading orders and quotes at unintended or extreme prices. Further, the Exchange does not believe that the proposed rule change would impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change reflects the current risk control offerings on other options exchanges.[12]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) [14] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay.[15] The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange represents that generally the Daily Risk Limits are utilized infrequently by its Users and that currently the functionality is not being used at all. The Exchange also indicates that eliminating Daily Risk Limits will enable the efficient allocation of technical resources and the Exchange will continue to offer an effective suite of risk management options to its Users pursuant to Rule 5.34. Accordingly, the Commission designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–037. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–037 and should be submitted on or before May 19, 2020.

Options also do not offer such settings in their rules.

[12] *See supra* note 11.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88727; File No. SR–CboeEDGA–2020–012]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide Members Certain Optional Risk Settings Under Proposed Interpretation and Policy .03 of Rule 11.10

April 22, 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 April 16, 2020, Cboe EDGA Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 the Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') proposes to provide Members certain optional risk settings under proposed Interpretation and Policy .03 of Rule 11.10. 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 purpose of the proposed rule change is to provide Members[5] the option to utilize certain risk settings under proposed Interpretation and Policy .03 of Rule 11.10.[6] In order to help Members manage their risk, the Exchange proposes to offer optional risk settings that would authorize the Exchange to take automated action if a designated limit for a Member is breached. Such risk settings would provide Members with enhanced abilities to manage their risk with respect to orders on the Exchange. Paragraph (a) of proposed Interpretation and Policy .03 of Rule 11.10 sets forth the specific risk controls the Exchange proposes to offer. Specifically, the Exchange proposes to offer two credit risk settings as follows:

- The ''Gross Credit Risk Limit'', which refers to a pre-established maximum daily dollar amount for purchases and sales across all symbols, where both purchases and sales are counted as positive values. For purposes of calculating the Gross Credit Risk Limit, only executed orders are included; and
- The ''Net Credit Risk Limit'', which refers to a pre-established maximum daily dollar amount for purchases and sales across all symbols, where purchases are counted as positive values and sales are counted as negative values. For purposes of calculating the Net Credit Risk Limit, only executed orders are included.

The Gross Credit and Net Credit risk settings are similar to credit controls measuring both gross and net exposure provided for in paragraph (h) of Interpretation and Policy .01 of Rule 11.10, but with certain notable differences. Importantly, the proposed risk settings would be applied at a Market Participant Identifier (''MPID'') level, while the controls noted in paragraph (h) of Interpretation and Policy .01 are applied at the logical port level.[7] Therefore, the proposed risk management functionality would allow a Member to manage its risk more comprehensively, instead of relying on the more limited port level functionality offered today. Further, the proposed risk settings would be based on a notional execution value, while the controls noted in paragraph (h) of Interpretation and Policy .03 are applied based on a combination of outstanding orders on the Exchange's book and notional execution value. The Exchange notes that the current gross and net notional controls noted in paragraph (h) of Interpretation and Policy .03 will continue to be available in addition to the proposed risk settings.

Paragraph (c) of proposed Interpretation and Policy .03 of Rule 11.10 provides that a Member that does not self-clear may allocate and revoke[8] the responsibility of establishing and adjusting the risk settings identified in proposed paragraph (a) to a Clearing Member that clears transactions on behalf of the Member, if designated in a manner prescribed by the Exchange. The Exchange proposes to harmonize Exchange Rule 11.13(a) with BZX and Cboe BYX Exchange, Inc. (''BYX'') Rules 11.15(a). Specifically, in proposed Rule 11.13(a), the Exchange proposes to (i) define the term ''Clearing Member'';[9] (ii) memorialize in its rules the process by which a Clearing Member shall affirm its responsibility for clearing any and all trades executed by the Member designating it as its Clearing Firm; and (iii) memorialize the fact that the rules of a Qualified Clearing Agency shall govern with respect to the clearance and settlement of any transactions executed by the Member on the Exchange. While the foregoing proposed changes to Rule

[17] 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] *See* Exchange Rule 1.5(n).

[6] The proposed rule changes are substantially similar to a recent rule amendment by Cboe BZX Exchange, Inc. (''BZX''). *See* Securities Exchange Act No. 88599 (April 8, 2020) 85 FR 20793 (April 14, 2020) (the ''BZX Approval'').

[7] A logical port represents a port established by the Exchange within the Exchange's System for trading and billing purposes. Each logical port established is specific to a Member or non-Member and grants that Member or non-Member the ability to accomplish a specific function, such as order entry, order cancellation, or data receipt.

[8] As discussed below, if a Member revokes the responsibility of establishing and adjusting the risk settings identified in proposed paragraph (a), the settings applied by the Member would be applicable.

[9] As proposed, the term ''Clearing Member'' refers to a Member that is a member of a Qualified Clearing Agency and clears transactions on behalf of another Member. *See* proposed Rule 11.13(a).

11.13(a) were not previously memorialized in Exchange Rules, they were contemplated in Exhibit F of the Exchange's original Form 1 application.[10] As such, the proposed changes to Rule 11.13(a) involve no substantive changes.

By way of background, Exchange Rule 11.13(a) requires that all transactions passing through the facilities of the Exchange shall be cleared and settled through a Qualified Clearing Agency using a continuous net settlement system.[11] As reflected in the proposed changes to Rule 11.13(a) above, this requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a corresponding clearing arrangement with another Member that clears through a Qualified Clearing Agency (*i.e.,* a Clearing Member). If a Member clears transactions through another Member that is a Clearing Member, such Clearing Member shall affirm to the Exchange in writing, through letter of authorization, letter of guarantee or other agreement acceptable to the Exchange, its agreement to assume responsibility for clearing and settling any and all trades executed by the Member designating it as its clearing firm.[12] Thus, while not all Members are Clearing Members, all Members are required to either clear their own transactions or to have in place a relationship with a Clearing Member that has agreed to clear transactions on their behalf in order to conduct business on the Exchange. Therefore, the Clearing Member that guarantees the Member's transactions on the Exchange has a financial interest in the risk settings utilized within the System[13] by the Member.

Paragraph (c) is proposed by the Exchange in order to offer Clearing Members an opportunity to manage their risk of clearing on behalf of other Members, if authorized to do so by the Member trading on the Exchange. Specifically, the Exchange believes such functionality would help Clearing Members to better monitor and manage the potential risks that they assume when clearing for Members of the Exchange. A Member may allocate or revoke the responsibility of establishing and adjusting the risk settings identified in proposed paragraph (a) to its Clearing Member via the risk management tool available on the web portal at any time. By allocating such responsibility, a Member would thereby cede all control and ability to establish and adjust such risk settings to its Clearing Member unless and until such responsibility is revoked by the Member, as discussed in further detail below. Because the Member is responsible for its own trading activity, the Exchange will not provide a Clearing Member authorization to establish and adjust risk settings on behalf of a Member without first receiving consent from the Member. The Exchange would consider a Member to have provided such consent if it allocates the responsibility to establish and adjust risk settings to its Clearing Member via the risk management tool available on the web portal. By allocating such responsibilities to its Clearing Member, the Member consents to the Exchange taking action, as set forth in proposed paragraph (d) of Interpretation and Policy .03, with respect to the Member's trading activity. Specifically, if the risk setting(s) established by the Clearing Member are breached, the Member consents that the Exchange will automatically block new orders submitted and cancel open orders until such time that the applicable risk setting is adjusted to a higher limit by the Clearing Member. A Member may also revoke responsibility allocated to its Clearing Member pursuant to this paragraph at any time via the risk management tool available on the web portal.

Paragraph (b) of proposed Interpretation and Policy .03 of Rule 11.10 provides that either a Member or its Clearing Member, if allocated such responsibility pursuant to paragraph (c) of the proposed Interpretation and Policy, may establish and adjust limits for the risk settings provided in proposed paragraph (a) of Interpretation and Policy .03. A Member or Clearing Member may establish and adjust limits for the risk settings through the Exchange's risk management tool available on the web portal. The risk management web portal page will also provide a view of all applicable limits for each Member, which will be made available to the Member and its Clearing Member, as discussed in further detail below.

Proposed paragraph (d) of Interpretation and Policy .03 of Rule 11.10 would provide optional alerts to signal when a Member is approaching its designated limit. If enabled, the alerts would generate when the Member breaches certain percentage thresholds of its designated risk limit, as determined by the Exchange. Based on current industry standards, the Exchange anticipates initially setting these thresholds at fifty, seventy, or ninety percent of the designated risk limit. Both the Member and Clearing Member[14] would have the option to enable the alerts via the risk management tool on the web portal and designate email recipients of the notification.[15] The proposed alert system is meant to warn a Member and Clearing Member of the Member's trading activity, and will have no impact on the Member's order and trade activity if a warning percentage is breached. Proposed paragraph (e) of Interpretation and Policy .03 of Rule 11.10 would authorize the Exchange to automatically block new orders submitted and cancel all open orders in the event that a risk setting is breached. The Exchange will continue to block new orders submitted until the Member or Clearing Member, if allocated such responsibility pursuant to paragraph (c) of proposed Interpretation and Policy .03, adjusts the risk settings to a higher threshold. The proposed functionality is designed to assist Members and Clearing Members in the management of, and risk control over, their credit risk. Further, the proposed functionality would allow the Member to seamlessly avoid unintended executions that exceed their stated risk tolerance.

The Exchange does not guarantee that the proposed risk settings described in proposed Interpretation and Policy .03, are sufficiently comprehensive to meet all of a Member's risk management needs. Pursuant to Rule 15c3–5 under the Act,[16] a broker-dealer with market access must perform appropriate due diligence to assure that controls are reasonably designed to be effective, and otherwise consistent with the rule.[17]

[10] Specifically, see item 3 entitled ''Clearing Letter of Guarantee'' included in Exhibit F of the Exchange's original Form 1 application.

[11] The term ''Qualified Clearing Agency'' means a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange. *See* Exchange Rule 1.5(w). The rules of any such clearing agency shall govern with the respect to the clearance and settlement of any transactions executed by the Member on the Exchange.

[12] A Member can designate one Clearing Member per Market Participant Identifier (''MPID'') associated with the Member.

[13] System is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Members are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[14] A Clearing Member would have the ability to enable alerts regardless of whether it was allocated responsibilities pursuant to proposed paragraph (c).

[15] The Member and Clearing Member may input any email address for which an alert will be sent via the risk management tool on the web portal.

[16] 17 CFR 240.15c3–5.

[17] *See* Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access, *available at https://*

Continued

Use of the Exchange's risk settings included in proposed Interpretation and Policy .03 will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the Member.

Lastly, as the Exchange currently has the authority to share any of a Member's risk settings specified in Interpretation and Policy .01 of Rule 11.10 under Exchange Rule 11.13(f) with the Clearing Member that clears transactions on behalf of the Member, the Exchange also seeks such authority as it pertains to risk settings specified in proposed Interpretation and Policy .03. Existing Rule 11.13(f) provides the Exchange with authority to directly provide Clearing Members that clear transactions on behalf of a Member, to share any of the Member's risk settings set forth under Interpretation and Policy .01 to Rule 11.10.[18] The purpose of such a provision under Rule 11.13(f) was implemented in order to reduce the administrative burden on participants on the Exchange, including both Clearing Members and Members, and to ensure that Clearing Members receive information that is up to date and conforms to the settings active in the System. Further, the provision was implemented because the Exchange believed such functionality would help Clearing Members to better monitor and manage the potential risks that they assume when clearing for Members of the Exchange. Now, the Exchange also proposes to amend paragraph (f) of Exchange Rule 11.13 to authorize the Exchange to share any of a Member's risk settings specified in proposed Interpretation and Policy .03 to Rule 11.10 with the Clearing Member that clears transactions on behalf of the Member and to update the term clearing firm to the proposed defined term Clearing Member. The Exchange notes that the use by a Member of the risk settings offered by the Exchange is optional. By using these proposed optional risk settings, a Member therefore also opts-in to the Exchange sharing its designated risk settings with its Clearing Member. The Exchange believes that its proposal to offer additional risk settings will allow Members to better manage their credit risk. Further, by allowing Members to allocate the responsibility for establishing and adjusting such risk settings to its Clearing Member, the Exchange believes Clearing Members may reduce potential risks that they assume when clearing for Members of the Exchange. The Exchange also believes that its proposal to share a Member's risk settings set forth under proposed Interpretation and Policy .03 to Rule 11.10 directly with Clearing Members reduces the administrative burden on participants on the Exchange, including both Clearing Members and Members, and ensures that Clearing Members are receiving information that is up to date and conforms to the settings active in the System.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[20] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes the proposed amendment will remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides additional functionality for a Member to manage its credit risk. In addition, the proposed risk settings could provide Clearing Members, who have assumed certain risks of Members, greater control over risk tolerance and exposure on behalf of their correspondent Members, if allocated responsibility pursuant to proposed paragraph (c), while also providing an alert system that would help to ensure that both Members and its Clearing Member are aware of developing issues. As such, the Exchange believes that the proposed risk settings would provide a means to address potentially market-impacting events, helping to ensure the proper functioning of the market.

In addition, the Exchange believes that the proposed rule change is designed to protect investors and the public interest because the proposed functionality is a form of risk mitigation that will aid Members and Clearing Members in minimizing their financial exposure and reduce the potential for disruptive, market-wide events. In turn, the introduction of such risk management functionality could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

Further, the Exchange believes that the proposed rule will foster cooperation and coordination with persons facilitating transactions in securities because the Exchange will provide alerts when a Member's trading activity reaches certain thresholds, which will be available to both the Member and Clearing Member. As such, the Exchange may help Clearing Members monitor the risk levels of correspondent Members and provide tools for Clearing Members, if allocated such responsibility, to take action.

The proposal will permit Clearing Members who have a financial interest in the risk settings of Members to better monitor and manage the potential risks assumed by Clearing Members, thereby providing Clearing Members with greater control and flexibility over setting their own risk tolerance and exposure. To the extent a Clearing Member might reasonably require a Member to provide access to its risk settings as a prerequisite to continuing to clear trades on the Member's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on participants on the Exchange, including both Clearing Members and Members. Moreover, providing Clearing Members with the ability to see the risk settings established for Members for which they clear will foster efficiencies in the market and remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal also ensures that Clearing Members are receiving information that is up to date and conforms to the settings active in the System. The Exchange believes that the proposal is consistent with the Act, particularly Section 6(b)(5),[21] because it will foster cooperation and coordination with persons engaged in facilitating transactions in securities and more generally, will protect investors and the public interest, by allowing Clearing

www.sec.gov/divisions/marketreg/faq-15c-5-risk-management-controls-bd.htm.

[18] By using the optional risk settings provided in Interpretation and Policy .01, a Member opts-in to the Exchange sharing its risk settings with its Clearing Member. Any Member that does not wish to share such risk settings with its Clearing Member can avoid sharing such settings by becoming a Clearing Member. *See* Securities Exchange Act Release No. 80608 (May 5, 2017) 82 FR 22030 (May 11, 2017) (SR–BatsEDGA–2017–07).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(5).

Members to better monitor their risk exposure and by fostering efficiencies in the market and removing impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that the proposed rule change does not unfairly discriminate among the Exchange's Members because use of the risk settings is optional and are not a prerequisite for participation on the Exchange. The proposed risk settings are completely voluntary and, as they relate solely to optional risk management functionality, no Member is required or under any regulatory obligation to utilize them.

The proposed amendments to Rule 11.13(a) will harmonize Exchange Rules with BZX and BYX Rules 11.15(a). While the proposed changes to Rule 11.13(a) were not previously memorialized in Exchange Rules, they were contemplated in Exhibit F of the Exchange's original Form 1 application. As such, the proposed changes to Rule 11.13(a) involve no substantive changes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposal may have a positive effect on competition because it would allow the Exchange to offer risk management functionality that is comparable to functionality that has been adopted by other national securities exchanges.[22] Further, by providing Members and their Clearing Members additional means to monitor and control risk, the proposed rule may increase confidence in the proper functioning of the markets and contribute to additional competition among trading venues and broker-dealers. Rather than impede competition, the proposal is designed to facilitate more robust risk management by Members and Clearing Members, which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

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.

[22] *Supra* note 6.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) thereunder.[24]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [25] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may implement the proposed risk controls on the anticipated launch date of April 17, 2020. The Exchange states that waiver of the operative delay would allow Members to immediately utilize the proposed functionality to manage their risk. For this reason, 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 proposal as operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] 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–CboeEDGA–2020–012 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–2020–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2020–012, and should be submitted on or before May 19, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08938 Filed 4–27–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88728; File No. SR–Phlx–2020–20]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Rules at Options 3, Section 8, Titled Options Opening Process

April 22, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to amend Phlx Rules at Options 3, Section 8, titled ''Options Opening Process.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Phlx Rules at Options 3, Section 8, titled ''Options Opening Process.'' The proposal seeks to amend aspects of the current functionality of the Exchange's System regarding the opening of trading in an option series. Each amendment is described below.

Definitions

The Exchange proposes to define the term ''imbalance'' at proposed Options 3, Section 8(a)(xi) as the number of unmatched contracts priced through the Potential Opening Price. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This description is consistent with the current System operation. This is a non-substantive rule change. In conjunction with this rule change, the Exchange proposes to remove the text within Options 3, Section 8(k)(A) which seeks to define an imbalance as an unmatched contracts. The Exchange is proposing a description which is more specific than this rule text and is intended to bring greater clarity to the term ''imbalance.''

Eligible Interest

The Exchange proposes to amend Options 3, Section 8(b)(ii) to amend the current phrase, ''The System will aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes pursuant to Options 3, Section 10.'' The Exchange proposes to instead provide, ''The System will allocate interest pursuant to Options 3, Section 10.'' The Exchange is proposing this amendment because Options 3, Section 10 explains how the Exchange will aggregate the size of all eligible interest for a particular participant category at a particular price level and the citation to that rule will provide that detail.

All-or-None Orders

The Exchange proposes to amend Options 3, Section 8(b) to remove the phrase ''that can be satisfied'' in relation to All-or-None Orders.[3] The Exchange notes that all All-or-None Orders are considered for execution and in determining the Opening Price throughout the Opening Process. At this point in the Opening Process the Exchange would be unable to determine which All-or-None Orders could be satisfied, so all All-or-None Orders are eligible.

Similarly, the Exchange proposes to amend Options 3, Section 8(h) to remove the phrase ''except All-or-None interest that cannot be satisfied.'' The Exchange proposes to instead provide, ''To calculate the Potential Opening Price, the System will take into consideration all Valid Width Quotes and orders (including Opening Sweeps, including All-or-None interest, for the option series and identify the price at which the maximum number of contracts can trade (''maximum quantity criterion'').'' Similarly, for purposes of determining the Potential Opening Price, the Exchange will consider all All-or-None interest because the Exchange would be unable to determine which All-or-None Orders could be satisfied until the Opening Process concludes.

Valid Width Quotes

The Exchange proposes to amend the requirements for Phlx Electronic Market Makers[4] to enter Valid Width Quotes within Options 3, Section 8(d). Today, a Lead Market Maker is required to enter a Valid Width Quote within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the opening price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website), or within two minutes of market opening for the underlying currency in the case of U.S. dollar-settled FCO. Alternatively, the Valid Width Quote of at least two Phlx Electronic Market Makers other than a Lead Market Maker entered within the above-referenced timeframe would also open an option series. Finally, if neither the Lead

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An All-or-None Order is a limit order or market order that is to be executed in its entirety or not at all. An All-or None Order may only be submitted by a Public Customer. All-or-None Orders are non-displayed and non-routable. All-or-None Orders are executed in price-time priority among all Public Customer orders if the size contingency can be met. The Acceptable Trade Range protection in Options 3, Section 15(a) is not applied to All-Or-None Orders. *See* Options 3, Section 7(b)(5).

[4] Phlx Electronic Market Makers are defined with Options 3, Section 8 as a Lead Market Maker, Streaming Quote Trader (''SQT'') or Remote SQT (''RSQT'') who is required to submit two sided electronic quotations pursuant to Options 2, Section 5.

Market Maker's Valid Width Quote nor the Valid Width Quotes of two Phlx Electronic Market Makers have been submitted within such timeframe, one Phlx Electronic Market Maker may submit a Valid Width Quote to open the options series.

The Exchange proposes to amend the requirement to submit Valid Width Quotes in an effort to streamline its current process. The Exchange proposes to continue to require a Lead Market Maker to submit a Valid Width Quote, but also would permit the Valid Width Quote of one Phlx Electronic Market Maker other than the Lead Market Maker to open an option series without waiting for the two minute timeframe described above to conclude. This effectively would take the 2 step process for accepting quotes to a one step process. The Exchange believes this proposal would allow the market to open more efficiently as well as enable greater participation by SQTs and RSQTs in the Opening Process. As is the case today, Lead Market Makers are required to ensure each option series to which it is appointed is opened each day by submitting a Valid Width Quote.[5] Moreover, a Lead Market Maker has continuing obligations to quote intra-day pursuant to Options 2, Section 5.

Potential Opening Price

The Exchange proposes to amend Options 3, Section 8(h) to add an introductory sentence to the Potential Opening Process paragraph which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met.'' This paragraph is not intended to amend the function of the Opening Process, rather it is intended to provide context to the process and describe a Potential Opening Price within Options 3, Section 8(h). This is a non-substantive amendment.

An amendment is proposed to Options 3, Section 8(h)(C) to replace the words ''Potential Opening Price calculation'' with the more defined term ''Opening Price.'' The Opening Price is defined within Options 3, Section 8(a)(iii) and provides, ''The Opening Price is described herein in sections (i) and (k).'' The Exchange notes that ''Opening Price'' is the more accurate terms that represents current System functionality as compared to Potential Opening Price. Options 3, Section 8(h)(C) provides that the Potential Opening Price calculation is bounded by the better away market price that may not be satisfied with the Exchange routable interest.'' In fact, the Opening Price is bounded by the better away market price that may not be satisfied with the Exchange routable interest pursuant to sections (i) and (k). The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met. The Potential Opening Price is a less accurate term and the Exchange proposes to utilize the more precise term by changing the words in this sentence to ''Opening Price'' for specificity. This amendment is not substantive, rather it is clarifying.

Opening Quote Range

The Exchange proposes to add a sentence to Options 3, Section 8(j) to describe the manner in which the Opening Quote Range or ''OQR'' is bound. The Exchange proposes to provide, ''OQR is constrained by the least aggressive limit prices within the broader limits of OQR. The least aggressive buy order or Valid Width Quote bid and least aggressive sell order or Valid Width Quote offer within the OQR will further bound the OQR.'' The Exchange previously described[6] the OQR as an additional type of boundary beyond the boundaries mentioned in Options 3, Section 8 at proposed paragraph (i). OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the Best Bid or Best Offer (''BBO''), the OQR is outside of the BBO. It is meant to provide a price that can satisfy more size without becoming unreasonable. The Exchange proposes to add rule text within Options 3, Section 8 to describe the manner in which today OQR is bound. This proposed amendment does not change the manner in which Phlx's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price. Below is an example of the manner in which OQR is constrained.

Assume the below pre-opening interest:

Lead Market Maker quotes 4.10 (100) × 4.20 (50)

Order 1: Public Customer Buy 300 @ 4.39

Order 2: Public Customer Sell 50 @ 4.13

Order 3: Public Customer Sell 5 @ 4.37

Opening Quote Range configuration in this scenario is +/−0.18

9:30 a.m. events occur, underlying opens

First imbalance message: Buy imbalance @ 4.20, 100 matched, 200 unmatched

Next 4 imbalance messages: Buy imbalance @ 4.37, 105 matched, 195 unmatched

Potential Opening Price calculation would have been 4.20 + 0.18 = 4.38, but OQR is further bounded by the least aggressive Sell order @ 4.37

Order 1 executes against Order 2 50 @ 4.37

Order 1 executes against Lead Market Maker quote 50 @ 4.37

Order 1 executes against Order 3 5 @ 4.37

Remainder of Order1 cancels as it is through the Opening Price

Lead Market Maker quote purges as its entire offer side volume has been exhausted

Similarly, the Exchange proposes to amend Options 3, Section 8(j)(3) which currently provides, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (d)(v)) and there are Valid Width Quotes on the Exchange that are executable against each other or the ABBO:''. The Exchange proposes to instead state, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (d)(v)) and there are Valid Width Quotes on the Exchange that *cross each other or are marketable against* the ABBO:''. The proposed language more accurately describes the current Opening Process. Valid Width Quotes are not routable and would not execute against the ABBO. This rule text is more specific than ''executable against each other.'' A similar change is also proposed to Options 3, Section 8(j)(4) to replace the words ''are executable against'' with ''cross''. The Exchange believes that the amended rule text adds

[5] Options 3, Section 8(d)(iii) provides, ''The Lead Market Maker assigned in a particular equity or index option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The Lead Market Maker assigned in a particular U.S. dollar-settled FCO must enter a Valid Width Quote, in 90% of their assigned series, not later than 30 seconds after the announced market opening. The Lead Market Maker must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to a U.S. dollar-settled FCO, following the announced market opening.''

[6] *See* Securities Exchange Commission Release No. 78408 (July 25, 2016), 81 FR 50026 (July 29, 2016) (SR–Phlx–2016–76).

greater transparency to the Opening Process. These are non-substantive amendments.

The Exchange proposes to make a non-substantive change to amend Options 3, Section 8(j)(7) to amend the last sentence to change the phrase ''consider routable'' with ''route routable.'' The Exchange also proposes to replace the phrase ''in price/time priority to satisfy the away market'' with the citation to Options 3, Section 10(a)(1)(A) which describes price/time priority within Options 3, Section 8(j)(7). This is a non-substantive amendment which is intended to bring greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange proposes to add new rule text to Options 3, Section 8(k)(A)(1) to describe the information conveyed in an Imbalance Message. The Exchange proposes to provide at Options 3, Section 8(k)(A)(1),

> An Imbalance Message will be disseminated showing a ''0'' volume and a $0.00 price if: (i) No executions are possible but routable interest is priced at or through the ABBO; (ii) internal quotes are crossing each other; or (iii) there is a Valid Width Quote, but there is no Quality Opening Market. Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.

This rule text is consistent with the current operation of the System. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. The Exchange believes that explaining the potential scenarios which led to the dissemination of a ''0'' volume, such as (i) when no executions are possible and routable interest is priced at or through the ABBO; (ii) internal quotes are crossing; and (iii) there is a Valid Width Quote, but there is no Quality Opening Market, will provide greater detail to the potential state of the interest available. The Exchange further clarifies in this new rule text, ''Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.'' The Exchange believes that this proposed text will bring greater transparency to the information available to market participants during the Opening Process.

The Exchange proposes to amend Options 3, Section 8(k)(C)(2) to remove the phrase ''at the Opening Price'' within the paragraph. The current second sentence of paragraph 8(j)(3)(B) states, ''If during the Route Timer, interest is received by the System which would allow the Opening Price to be within OQR without trading through away markets and without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price, the System will open with trades at the Opening Price and the Route Timer will simultaneously end.'' The Exchange proposes to remove the words ''at the Opening Price'' because while anything traded on Phlx would be at the Opening Price, the trades that are routed away would be at an ABBO price which may differ from the Phlx Opening Price. To avoid any confusion, the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(k)(C)(2) which currently only references quotes. During the Price Discovery Mechanism, both quotes and orders are considered.

The Exchange proposes to amend the last sentence of Options 3, Section 8(k)(C)(5) to add the phrase ''if consistent with the Member's instructions'' to the end of the paragraph at Options 3, Section 8(k)(C)(5) to make clear that the instructions provided by a member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading. This amendment brings greater clarity to the Exchange's Rules.

The Exchange proposes to add an introductory phrase to Options 3, Section 8(k)(D) which provides, ''Pursuant to Options 3, Section 8(k)(C)(6) . . .'' the System will re-price Do Not Route orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to a price that is one minimum trading increment inferior to the ABBO, and disseminate the re-priced DNR Order as part of the new PBBO.'' The addition of this sentence is intended to provide a transition from the prior paragraph relating to the routing of orders. The Exchange opens and routes simultaneously during its Opening Process. This sentence is being added to indicate that at this stage in the Opening Process, routable interest would have routed. The manner in which the System will handle orders marked with the instruction ''Do Not Route'' (''DNR Orders'') is described in Options 3, Section 8(k)(D). This rule text is consistent with the behavior of the System. This non-substantive amendment is intended to add greater clarity to the Exchange's Rules. The Exchange also proposes to add a hyphen to the word ''re-price'' in this paragraph.

The Exchange proposes to add a new paragraph at Options 3, Section 8(k)(G) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price.'' The Exchange notes that this paragraph describes current System behavior. This rule text accounts for orders which have routed away and returned unsatisfied and also accounts for interest that remain unfilled during the Opening Process, provided it was not priced through the Opening Price. This sentence is being included to account for the manner in which all interest is handled and how certain interest rests on the order book once the Opening Process is complete. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will bring greater transparency to the Rules and is consistent with the Exchange's current System operation. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once Phlx opens an options series.

Opening Process Cancel Timer

The Exchange proposes to adopt an Opening Process Cancel Timer within Options 3, Section 8(l), similar to The Nasdaq Options Market LLC's (''NOM'') and Nasdaq BX, Inc's (''BX'') Rules at Options 3, Section 8(c).[7] The Exchange proposes to add a process whereby if an options series has not opened before the conclusion of the Opening Process Cancel Timer, a member may elect to have orders returned by providing written notification to the Exchange. The Opening Process Cancel Timer would be established by the Exchange and posted on the Exchange's website. Similar to NOM and BX, orders submitted through FIX with a TIF of Good-Till-Canceled[8] or ''GTC'' may not

[7] NOM Options 3, Section 8(c) provides, ''Absence of Opening Cross. If an Opening Cross in a symbol is not initiated before the conclusion of the Opening Process Cancel Timer, a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Process Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by Nasdaq on its website.'' BX Options 3, Section 8 is worded similarly.

[8] A Good Til Cancelled (''GTC'') Order entered with a TIF of GTC, if not fully executed, will remain

be cancelled. Phlx has monitored the operation of the Opening Process to identify instances where market efficiency can be enhanced. The Exchange believes that adopting a cancel timer similar to NOM and BX will increase the efficiency of Phlx's Opening Process. This provision would provide for the return of orders for un-opened options symbols. This enhancement will provide market participants the ability to elect to have orders returned, except for non-GTC orders, when options do not open. It provides members with choice about where, and when, thy can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow Phlx to continue to have a robust Opening Process.

Implementation

The Exchange proposes to implement the amendments proposed herein prior to Q3 2020. The Exchange will issue an Options Trader Alert announcing the date of implementation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. The Exchange believes that the proposed changes significantly improve the quality of execution of Phlx's opening.

Definitions

The Exchange's proposal to define the term ''imbalance'' at proposed Options 3, Section 8(a)(xi) and remove the text within Options 3, Section 8(j)(1), which seeks to define an imbalance as an unmatched contract, will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This is a non-substantive rule change and represents current System functionality. Today, the term ''imbalance'' is simply defined as unmatched contracts. The proposed definition is more precise in its representation of the current System functionality.

Eligible Interest

The Exchange's proposal to amend Options 3, Section 8(b)(ii) to amend the current phrase, ''The System will aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes pursuant to Options 3, Section 10'' to instead provide, ''The System will allocate interest pursuant to Options 3, Section 10'' will bring greater clarity to the rule text. The Exchange is proposing this amendment because Options 3, Section 10 explains how the Exchange will aggregate the size of all eligible interest for a particular participant category at a particular price level and the citation to that rule will provide that detail.

All-or-None Orders

The Exchange's proposal to amend Options 3, Section 8(b) to remove the phrase ''that can be satisfied'' in relation to All-or-None Orders and to amend Options 3, Section 8(h) to remove the phrase ''except All-or-None interest that cannot be satisfied'' are consistent with the Act. The Exchange would include all All-or-None Orders as eligible interest and also consider all All-or-None Orders for purposes of determining the Potential Opening Price, because the Exchange would be unable to determine which All-or-None Orders could be satisfied.

Valid Width Quotes

The Exchange's proposal to amend the requirements within Options 3, Section 8(d) for Phlx Electronic Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Phlx Electronic Market Maker other than the Lead Market Maker to open an option series without waiting for the two minute timeframe is consistent with the Act. This proposal would allow the market to open more efficiently as well as enable greater participation by Phlx Electronic Market Makers in the Opening Process. A Lead Market Maker has continuing obligations to quote throughout the trading day pursuant to Options 2, Section 5. In addition, Lead Market Makers are required to ensure each option series to which it is appointed is opened each day Phlx is open for business by submitting a Valid Width Quote.[11] Primary Market Makers will continue to remain responsible to open an options series, unless it is otherwise opened by a Competitive Market Maker. A Competitive Market Maker also has obligations to quote intra-day, once they commence quoting for that day.[12] The Exchange notes if Electronic Market Makers entered quotes during the Opening Process to open an option series, those quote must qualify as Valid Width Quotes. This ensures that the quotations that are entered are in alignment with standards that help ensure a quality opening. The Exchange believes that allowing one Electronic Market Maker to enter a quotation continues to protect investors and the general public because the Electronic Market Maker will be held to the same standard for entering quotes as a Lead Market Maker and the process will also ensure an efficient and timely opening, while continuing to hold Lead Market Makers responsible for entering Valid Width Quotes during the Opening Process.

Potential Opening Price

The Exchange's proposal to amend Options 3, Section 8(h) to add an introductory sentence to the Potential Opening Process which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met,'' is consistent with the Act. This paragraph is not intended to amend the current function of the Opening Process, rather it is intended to provide context to the process described within Options 3, Section 8(h). The Opening Price is bounded by the better ABBO in this case. This rule text is consistent with the current operation of the System. This is a non-substantive amendment.

Similarly, the proposed amendment to Options 3, Section 8(h)(C) to replace ''Potential Opening Price calculation'' with the more accurate defined term ''Opening Price'' will bring greater clarity to the Exchange's Rule. This amendment is not substantive.

Opening Quote Range

The Exchange's proposal to add a sentence to Options 3, Section 8(j) to describe the manner in which the OQR is bound will bring greater clarity to the manner in which OQR is calculated. OQR is an additional type of boundary beyond the boundaries mentioned within the Opening Process rule. The System will calculate an OQR for a particular option series that will be utilized in the Price Discovery Mechanism if the Exchange has not opened, pursuant to the provisions in

available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close. *See* Options 3, Section 7(c)(4).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 5 above.

[12] *See* Options 2, Section 5.

Options 3, Section 8(d)–(i). OQR would broaden the range of prices at which the Exchange may open to allow additional interest to be eligible for consideration in the Opening Process. OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the BBO, the OQR provides a range of prices that may be able to satisfy additional contracts while still ensuring a reasonable Opening Price. More specifically, the Exchange's Opening Price is bounded by the OQR without trading through the limit price(s) of interest within OQR, which is unable to fully execute at the Opening Price in order to provide participants with assurance that their orders will not be traded through. The Exchange seeks to execute as much volume as is possible at the Opening Price. The Exchange's method for determining the Potential Opening Price and Opening Price is consistent with the Act because the proposed process seeks to discover a reasonable price and considers both interest present in System as well as away market interest. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices. The rule provides for opening with a trade, which is consistent with the Act because it enables an immediate opening to occur within a certain boundary without the need for the price discovery process. The boundary provides protections while still ensuring a reasonable Opening Price. The Exchange's proposal protects investors and the general public by more clearly describing how the boundaries are handled by the System. This proposed amendment does not change the manner in which Phlx's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price.

The Exchange's proposal to amend Options 3, Section 8(j)(3) to replace the phrase ''that are executable against each other or the ABBO:'' with ''that *cross each other or are marketable against* the ABBO:'' will more accurately describe the current Opening Process. Valid Width Quotes are not routable and would not execute against the ABBO. This rule text is more specific than ''executable against each other.'' The Exchange believes that this rule text adds greater transparency to the Opening Process. This is a non-substantive amendment.

The Exchange's proposal to amend the phrase ''consider routable'' to ''route routable'' and replacing the phrase ''in price/time priority to satisfy the away market'' with the citation to Options 3, Section 10(a)(1)(A), which describes price/time priority within Options 3, Section 8(j)(7), are non-substantive rule changes. These proposals will add greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange's proposal to add new rule text at Options 3, Section 8(k)(A)(1) to describe the current operation of the System with respect to imbalance messages is consistent with the Act. The propose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. An imbalance process is intended to attract liquidity to improve the price at which an option series will open, as well as to maximize the number of contracts that can be executed on the opening. This process will only occur if the Exchange has not been able to otherwise open an option series utilizing the other processes available in Options 3, Section 8. The Imbalance Timer is intended to provide a reasonable time for participants to respond to the Imbalance Message before any opening interest is routed to away markets and, thereby, maximize trading on the Exchange. The Exchange believes that the proposed rule text provides market participants with additional information as to the imbalance message. The following potential scenarios, which may lead to the dissemination of a ''0'' volume, include (1) when no executions are possible and routable interest is priced at or through the ABBO: (2) internal quotes are crossing; and (3) there is a Valid Width Quote, but there is no Quality Opening Market. The Exchange believes adding this detail will provide greater information as to the manner in which Imbalance Messages are disseminated today. The Exchange's process of disseminating zero imbalance messages is consistent with the Act because the Exchange is seeking to identify a price on the Exchange without routing away, yet which price may not trade through another market and the quality of which is addressed by applying the OQR boundary. Announcing a price of zero will permit market participants to respond to the Imbalance Message, which interest would be considered in determining a fair and reasonable Opening Price.

The Exchange's proposal to amend Options 3, Section 8(k)(C)(2) to remove the phrase ''at the Opening Price'' within the paragraph is consistent with the Act because removing the current phrase will avoid confusion. The Exchange notes that anything traded on Phlx would be at the Opening Price, the trades that are routed away would be at an ABBO price which differs from the Phlx Opening Price. To avoid any confusion the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(B) which currently only references quotes. During the Price Discovery Mechanism both quotes and orders are considered.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(k)(C)(5) to amend the phrase ''Any unexecuted contracts'' to ''Any unexecuted interest'' will make clear that this includes orders, quotes and sweeps. The Exchange's proposal to add the phrase ''if consistent with the Member's instructions'' to the end of the paragraph at Options 3, Section 8(k)(C)(5) will make clear that the instructions provided by a member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading. This proposal is consistent with the Act and will add greater clarity to the Exchange's Rules.

The Exchange's proposal to add an introductory phrase to Options 3, Section 8(k)(D) which provides, ''Pursuant to Options 3, Section 8(k)(C)(6),'' is consistent with the Act. The prior paragraph, Options 3, Section 8(k)(C)(6), describes how the System executes and routes orders. This introductory sentence is being added as a transition from the prior paragraph at Options 3, Section 8(k)(C)(6), relating to the routing of orders. All routable interest would have routed and non-routable interest, which does not route, is subsequently described. This introductory paragraph is meant to be informative. This non-substantive amendment is consistent with the Act because it adds greater clarity to the Exchange's Rules.

The Exchange's proposal to add a new paragraph at Options 3, Section 8(k)(G) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price,'' will bring greater transparency to the handling of orders once an option series is opened for trading. After away interest is cleared by routable interest and the opening cross has occurred, DNR Orders are handled by the System.

DNR Order interest will rest on the Order Book, provided it was not priced through the Opening Price. This rule text accounts for orders which have routed away and returned to Phlx unsatisfied and also accounts for interest that remains unfilled during the Opening Process, provided it was not priced through the Opening Price. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will protect investors and the general public by adding greater transparency to the Exchange's current System operation by explaining how all interest is handled during the Opening Process. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once Phlx opens its options series. This amendment represents the System's current function.

Opening Process Cancel Timer

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(l), similar to NOM's and BX's Rules at Options 3, Section 8(c) is consistent with the Act. The Exchange's proposal to add a process whereby if an options series has not opened before the conclusion of the Opening Process Cancel Timer, a member may elect to have orders returned by providing written notification to the Exchange is consistent with the Act. Phlx believes that this amendment will promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. Adopting a cancel timer similar to NOM and BX will increase the efficiency of Phlx's Opening Process by providing Members with the ability to elect to have orders returned, except for non-GTC orders. This functionality provides members with choice, when symbols do not open, about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow Phlx to continue to have a robust Opening Process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While the Exchange does not believe that the proposal should have any direct impact on competition, it believes the proposal will enhance the Opening Process by making it more efficient and beneficial to market participants. Moreover, the Exchange believes that the proposed amendments will significantly improve the quality of execution of Phlx's Opening Process. The proposed amendments provide market participants more choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this should attract new order flow.

Definitions

With respect to the amendment to the definition of ''imbalance'' at proposed Options 3, Section 8(a)(xi) as the number of unmatched contracts priced through the Potential Opening Price. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This description is consistent with the current System operation. This is a non-substantive rule change.

Eligible Interest

The Exchange's proposal to amend Options 3, Section 8(b)(ii) will bring greater clarity to the rule text. This proposal does not impose an undue burden on competition. The Exchange is proposing this amendment because Options 3, Section 10 explains how the Exchange will aggregate the size of all eligible interest for a particular participant category at a particular price level and the citation to that rule will provide that detail.

All-or-None Orders

The Exchange's proposal to amend Options 3, Section 8(b) to remove the phrase ''that can be satisfied'' in relation to All-or-None Orders and to amend Options 3, Section 8(h) to remove the phrase ''except All-or-None interest that cannot be satisfied'' does not impose an undue burden on competition. The Exchange would include all All-or-None Orders as eligible interest and also consider all All-or-None Orders for purposes of determining the Potential Opening Price, because the Exchange would be unable to determine which All-or-None Orders could be satisfied. Only Public Customers may submit All-or-None Orders.[13]

[13] *See* note 3 above.

Valid Width Quotes

The Exchange's proposal to amend the requirements within Options 3, Section 8(d) for Phlx Electronic Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Phlx Electronic Market Maker other than the Lead Market Maker to open an option series without waiting for the two minute timeframe does not impose an undue burden on competition. This proposal would allow the market to open more efficiently as well as enable greater participation by Phlx Electronic Market Makers in the Opening Process. Lead Market Makers continue to remain obligated to open their appointed options series. Electronic Market Maker may participate in the Opening Process, as is the case today, provided they enter Valid Width Quotes, which is intended to ensure a quality opening. The Exchange does not believe this proposal would burden the ability of market participants who enter quotes to participate in the Opening Process.

Potential Opening Price

The Exchange's proposal to amend Options 3, Section 8(h) to add an introductory sentence to the Potential Opening Process does not impose an undue burden on competition. This paragraph is not intended to amend the current function of the Opening Process, rather it is intended to provide context to the process described within Options 3, Section 8(h). The Opening Price is bounded by the better ABBO in this case. This rule text is consistent with the current operation of the System. This is a non-substantive amendment.

Similarly, the proposed amendment to Options 3, Section 8(h)(C) to replace ''Potential Opening Price calculation'' with the more accurate defined term ''Opening Price'' will bring greater clarity to the Exchange's Rule. This amendment is not substantive.

Opening Quote Range

The Exchange's proposal to add a sentence to Options 3, Section 8(j) to describe the manner in which the OQR is bound does not impose an undue burden on competition. OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices for the protection of all investors. This proposed amendment does not change the manner in which Phlx's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner

in which the Exchange arrives at an Opening Price.

The Exchange's proposal to amend Options 3, Section 8(j)(3) to replace the phrase ''that are executable against each other or the ABBO:'' with ''that *cross each other or are marketable against* the ABBO:'' does not impose an undue burden on competition, rather, this proposal will more accurately describe the current Opening Process. Valid Width Quotes are not routable and would not execute against the ABBO. This rule text is more specific than ''executable against each other.'' The Exchange believes that this rule text adds greater transparency to the Opening Process. This is a non-substantive amendment.

The Exchange's proposal to amend the phrase ''consider routable'' to ''route routable'' and replacing the phrase ''in price/time priority to satisfy the away market'' with the citation to Options 3, Section 10(a)(1)(A), which describes price/time priority within Options 3, Section 8(j)(7), are non-substantive rule changes. These proposals will add greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange's proposal to add new rule text at Options 3, Section 8(k)(A)(1) to describe the current operation of the System with respect to imbalance messages does not impose an undue burden on competition. The propose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. All market participants are able to respond to an imbalance messages and have their interest considered in determining a fair and reasonable Opening Price.

The Exchange's proposal to amend Options 3, Section 8(k)(C)(2) to remove the phrase ''at the Opening Price'' within the paragraph does not impose an undue burden on competition, rather, removing the current phrase will avoid confusion. In addition, the Exchange's proposal to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(B) which currently only references quotes does not impose an undue burden on competition. During the Price Discovery Mechanism both quotes and orders are considered.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(k)(C)(5) to amend the phrase ''Any unexecuted contracts'' to ''Any unexecuted interest'' does not impose an undue burden on competition, rather, it will make clear that this includes orders, quotes and sweeps. The Exchange's proposal to add the phrase ''if consistent with the Member's instructions'' to the end of the paragraph at Options 3, Section 8(k)(C)(5) does not impose an undue burden on competition. This rule text will make clear that the instructions provided by a member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading.

The Exchange's proposal to add an introductory phrase to Options 3, Section 8(k)(D) which provides, ''Pursuant to Options 3, Section 8(k)(C)(6),'' does not impose an undue burden on competition. The prior paragraph, Options 3, Section 8(k)(C)(6), describes how the System executes and routes orders. This introductory sentence is being added as a transition from the prior paragraph at Options 3, Section 8(k)(C)(6), relating to the routing of orders. This is a non-substantive amendment.

The Exchange's proposal to add a new paragraph at Options 3, Section 8(k)(G) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price,'' does not impose an undue burden on competition, rather this proposal will bring greater transparency to the handling of orders once an option series is opened for trading. This rule text accounts for orders which have routed away and returned to Phlx unsatisfied and also accounts for interest that remains unfilled during the Opening Process, provided it was not priced through the Opening Price. This additional clarity will explain how all interest is handled during the Opening Process.

Opening Process Cancel Timer

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(l), similar to NOM's and BX's Rules at Options 3, Section 8(c) does not impose an undue burden on competition. Adopting a cancel timer similar to NOM and BX will increase the efficiency of Phlx's Opening Process for all market participants. All market participants will have the ability to elect to have orders returned, except for non-GTC Orders, when symbols do not open. This feature provides Members with choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange.

The remainder of the proposed rule text is intended to bring greater transparency to the Opening Process rule while also adding additional detail and clarity and therefore does not have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–20 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2020–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2020–20 and should be submitted on or before May 19, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08939 Filed 4–27–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88721; File No. SR–C2–2020–004]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Remove Its Optional Daily Risk Limits Pursuant to Rule 6.14

April 22, 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 April 13, 2020, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') 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 C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to remove its optional daily risk limits pursuant to Rule 6.14. 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/ctwo/*), 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 remove the optional daily risk limit settings for Users in Rule 6.14(c)(4).[5] The daily risk limits are voluntary functionality. Pursuant to current Rule 6.14(c)(4), if a User enables this functionality they may establish one or more of the following values for each of its ports, which the System aggregates (for simple and complex orders) across all of a User's ports (*i.e.,* applies on a firm basis): (i) Cumulative notional booked bid value (''CBB''); (ii) cumulative notional booked offer value (''CBO''); (iii) cumulative notional executed bid value (''CEB''); and (iv) cumulative notional executed offer value (''CEO''). The User may then establish a limit order notional cutoff, a market order notional cutoff, or both, each of which it may establish on a net basis, gross basis, or both. If a User exceeds a cutoff value, the System cancels or rejects all incoming limit orders or market orders, respectively. If a User establishes a limit order notional cutoff but does not establish (or sets as zero) the market order notional cutoff, the System cancels or rejects all market orders. The System calculates a notional cutoff on a gross basis by summing CBB, CBO, CEB, and CEO. The System calculates a notional cutoff on a net basis by summing CEO and CBO, then subtracting the sum of CEB and CBB, and then taking the absolute value of the resulting amount. This functionality does not apply to bulk messages.

The Exchange proposes to remove the daily limit risk mechanism because use of this mechanism on Users' ports is infrequent. Indeed, no Users currently have the daily risk limit enabled on a port connected to the Exchange. Because so few Users enable this functionality for their ports, the Exchange believes the current demand does not warrant the Exchange resources necessary for ongoing System support for the risk mechanism (*e.g.,* the System must maintain and apply algorithms that track and calculate gross and net notional exposure). The Exchange again notes that the use of the daily risk limit is voluntary. The Exchange will continue to offer to Users

[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] As a result of the proposed rule change, the Exchange also updates the subsequent paragraph numbering in current subparagraphs (c)(5) through (c)(10).

a full suite of price protection mechanisms and risk controls which sufficiently mitigate risks associated with Users entering orders and quotes at unintended prices, and risks associated with orders and quotes trading at prices that are extreme and potentially erroneous, as a likely result of human or operational error. This includes other price protections and risk controls associated with notional value of a User's orders and quotes. For example, Rule 6.14(c)(3) provides for a voluntary functionality in which the System cancels or rejects an incoming order or quote with a notional value that exceeds the maximum notional value a User establishes for each of its ports, and Rule 6.14(c)(5) [6] provides for a voluntary functionality in which a User may establish risk limits within a class or across classes [7] defined by certain parameters, of which the notional value of executions is an parameter option. Once a risk parameter is reached, no new trades are executed and any orders or quotes in route are System-rejected.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and national market system and benefit investors, because it will delete from the Rules a risk control that the Exchange will no longer offer, thereby promoting transparency in its Rules. The Exchange notes, too, that other options exchange do not offer daily risk limits, or other risk controls, associated with notional value of their users' order or quotes.[11] The Exchange does not believe that the proposed rule change will affect the protection of investors or the public interest or the maintenance of a fair and orderly market because this risk control is so infrequently implemented, and currently, no User has this risk control established in any port connected to the Exchange. In addition to this, the Exchange notes that the use of this risk control is voluntary and the Exchange will continue to offer a full suite of price protection mechanisms and risk controls, including those associated with notional value of a Users' orders and quotes, which sufficiently mitigate risks associated with Users entering orders and quotes at unintended prices, and risks associated with orders and quotes trading at prices that are extreme and potentially erroneous, as a likely result of human or operational error. Also, the Exchange believes the low usage rate for the daily risk limits does not warrant the continued resources necessary for System support of such controls. As a result, the Exchange believes the proposed rule change will also remove impediments to and perfect the mechanism of a free and open market and national market system by allowing the Exchange to reallocate System capacity and resources to more frequently elected System functionality, including other price protection and risk control functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not competitive in nature, but rather is intended to remove a risk control that is rarely used on the Exchange. The Exchange does not believe that the proposed rule change would impose a burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will remove the option to use this risk control for all Users on the Exchange. In addition to this, and as stated above, the use of the daily risk limit is voluntary and the Exchange will continue to offer various other price protections and risk controls that sufficiently mitigate risks associated with market participants entering and/or trading orders and quotes at unintended or extreme prices. Further, the Exchange does not believe that the proposed rule change would impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change reflects the current risk control offerings on other options exchanges.[12]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) [14] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay.[15] The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange represents that generally the Daily Risk Limits are utilized infrequently by its Users and that currently the functionality is not being used at all. The Exchange also indicates that eliminating Daily Risk Limits will enable the efficient allocation of

[6] The Exchange notes that as a result of the proposed removal of Rule 6.14(c)(4), current Rule 6.14(c)(5) will become new Rule 6.14(c)(4).

[7] And for one Executing Firm ID (''EFID'') or a group of EFIDs.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *See* NYSE CGW FIX Gateway Specification for NYSE American Options and NYSE Arca Options (last updated February 27, 2020) available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/FIX_Specification_and_API.pdf,* which provides for various User-defined risk controls, like those of the Exchange, but does not offer parameter settings in connection with aggregate notional values. NYSE American Options and NYSE Arca Options also do not offer such settings in their rules.

[12] *See supra* note 11.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6)(iii).

technical resources and the Exchange will continue to offer an effective suite of risk management options to its Users pursuant to Rule 6.14. Accordingly, the Commission designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2020–004 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–C2–2020–004. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2020–004 and should be submitted on or before May 19, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08933 Filed 4–27–20; 8:45 am]

BILLING CODE 8011–01–P

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88729; File No. SR–ISE–2020–15]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rules at Options 3, Section 8, Titled Options Opening Process

April 22, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rules at Options 3, Section 8, titled ''Options Opening Process.''

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rules at Options 3, Section 8, titled ''Options Opening Process.'' The proposal seeks to amend aspects of the current functionality of the Exchange's System regarding the opening of trading in an option series. Each amendment is described below.

Definitions

The Exchange proposes to define the term ''imbalance'' at proposed Options 3, Section 8(a)(10) as the number of unmatched contracts priced through the Potential Opening Price. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This description is consistent with the current System operation. This is a non-substantive rule change. In conjunction with this rule change, the Exchange proposes to remove the text within Options 3, Section 8(j)(1) which seeks to define an imbalance as an unmatched contracts. The Exchange is proposing a description which is more specific than this rule text and is intended to bring greater clarity to the term ''imbalance.''

Eligible Interest

Options 3, Section 8(b) describes the eligible interest that will be accepted during the Opening Process. This includes Valid Width Quotes, Opening Sweeps and orders. The Exchange proposes to specifically exclude orders with a Time in Force of ''Immediate-or-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Cancel'' [3] and Add Liquidity Orders [4] from the type of orders that are eligible during the Opening Process. Today, the Exchange does not accept Immediate-or-Cancel Orders during the Opening Process, except for Opening Only Orders.[5] The Exchange does permit orders marked as Opening Only Orders to be entered as Immediate-or-Cancel. These are the only acceptable Immediate-or-Cancel Orders for the Opening Process. All other types of Immediate-or-Cancel Orders may not be entered during the Opening Process. For example, All-or-None [6] Orders may not be entered during the Opening Process because they have a time-in-force designation of Immediate-or-Cancel. With respect to Add Liquidity Orders, these orders are not appropriate for the Opening Process because these orders cannot add liquidity during the Opening Process. The Exchange notes that today, these orders may not be entered into the Opening Process. This amendment does not result in a System change. The Exchange believes the addition of this rule text will clarify which order types are eligible to be entered during the Opening Process. The Exchange also proposes to add commas to the second sentence of Options 3, Section 8(b).

Additionally, the Exchange proposes a non-substantive amendment at Options 3, Section 8(b)(2) to replace the phrase ''aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes'' with ''allocate interest'' pursuant to Options 3, Section 10. Options 3, Section 10 describes the manner in which interest is allocated on ISE. The Exchange believes that simply referring to the allocation rule will accurately describe the manner in which the System will allocate interest.

Valid Width Quotes

The Exchange proposes to amend the requirements for ISE Market Makers [7] to enter Valid Width Quotes within Options 3, Section 8(c). Today, a Primary Market Maker is required to enter a Valid Width Quote within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the opening price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website), or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website). Alternatively, the Valid Width Quote of at least two Competitive Market Makers entered within the above-referenced timeframe would also open an option series. Finally, if neither the Primary Market Maker's Valid Width Quote nor the Valid Width Quotes of two Competitive Market Makers have been submitted within such timeframe, one Competitive Market Maker may submit a Valid Width Quote to open the options series.

The Exchange proposes to amend the requirement to submit Valid Width Quotes in an effort to streamline its current process. The Exchange proposes to continue to require a Primary Market Maker to submit a Valid Width Quote, but also would permit the Valid Width Quote of one Competitive Market Maker to open an option series without waiting for the two minute timeframe described above to conclude. This effectively would take the 2 step process for accepting quotes to a one step process. The Exchange believes this proposal would allow the market to open more efficiently as well as enable greater participation by Competitive Market Makers in the Opening Process. As is the case today, Primary Market Makers are required to ensure each option series to which it is appointed is opened each day by submitting a Valid Width Quote.[8] Moreover, a Primary Market Maker has continuing obligations to quote intra-day pursuant to Options 2, Section 5.

Potential Opening Price

The Exchange proposes to amend Options 3, Section 8(g) to add an introductory sentence to the Potential Opening Process paragraph which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met.'' This paragraph is not intended to amend the function of the Opening Process, rather it is intended to provide context to the process and describe a Potential Opening Price within Options 3, Section 8(g). This is a non-substantive amendment.

An amendment is proposed to Options 3, Section 8(g)(3) to replace the words ''Potential Opening Price calculation'' with the more defined term ''Opening Price.'' The Opening Price is defined within Options 3, Section 8(a)(3) and provides, ''The Opening Price is described herein in sections (h) and (j).'' The Exchange notes that ''Opening Price'' is the more accurate term that represents current System functionality as compared to Potential Opening Price. Options 3, Section 8(g)(3) provides that ''the Potential Opening Price calculation is bounded by the better away market price that may not be satisfied with the Exchange

[3] An Immediate-or-Cancel order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. An Immediate-or-Cancel order entered by a Market Maker through the Specialized Quote Feed protocol will not be subject to the Limit Order Price Protection and Size Limitation Protection as defined in ISE Options 3, Section 15(b)(2) and (3). *See* Options 3, Section 7(b)(3).

[4] An Add Liquidity Order is a limit order that is to be executed in whole or in part on the Exchange (i) only after being displayed on the Exchange's limit order book; and (ii) without routing any portion of the order to another market center. Members may specify whether an Add Liquidity Order shall be cancelled or re-priced to the minimum price variation above the national best bid price (for sell orders) or below the national best offer price (for buy orders) if, at the time of entry, the order (i) is executable on the Exchange; or (ii) the order is not executable on the Exchange, but would lock or cross the national best bid or offer. If at the time of entry, an Add Liquidity Order would lock or cross one or more non-displayed orders on the Exchange, the Add Liquidity Order shall be cancelled or re-priced to the minimum price variation above the best non-displayed bid price (for sell orders) or below the best non-displayed offer price (for buy orders). An Add Liquidity Order will only be re-priced once and will be executed at the re-priced price. An Add Liquidity Order will be ranked in the Exchange's limit order book in accordance with Options 3, Section 10. *See* Options 3, Section 7(n).

[5] An Opening Only Order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled. *See* Options 3, Section 7(o).

[6] An All-Or-None order is a limit or market order that is to be executed in its entirety or not at all. An All-Or-None Order may only be entered as an Immediate-or-Cancel Order. *See* Options 3, Section 7(c).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[8] Options 3, Section 8(c)(3) provides, ''The PMM assigned in a particular equity or index option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. Provided an options series has not opened pursuant to Options 3, Section 8(c)(1)(ii) or (iii), PMMs must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening.''

routable interest.'' In fact, the Opening Price is bounded by the better away market price that may not be satisfied with Exchange routable interest pursuant to sections (h) and (j). The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met. The Potential Opening Price is a less accurate term and the Exchange proposes to utilize the more precise term by changing the words in this sentence to ''Opening Price'' for specificity. This amendment is not substantive, rather it is clarifying.

Opening Quote Range

The Exchange proposes to add a sentence to Options 3, Section 8(i) to describe the manner in which the Opening Quote Range or ''OQR'' is bound. The Exchange proposes to provide, ''OQR is constrained by the least aggressive limit prices within the broader limits of OQR. The least aggressive buy order or Valid Width Quote bid and least aggressive sell order or Valid Width Quote offer within the OQR will further bound the OQR.'' The Exchange previously described [9] the OQR as an additional type of boundary beyond the boundaries mentioned in Options 3, Section 8 at proposed paragraph (j). OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the Best Bid or Best Offer (''BBO''), the OQR is outside of the BBO. It is meant to provide a price that can satisfy more size without becoming unreasonable. The Exchange proposes to add rule text within Options 3, Section 8 to describe the manner in which today OQR is bound. This proposed amendment does not change the manner in which ISE's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price. Below is an example of the manner in which OQR is constrained.

Assume the below pre-opening interest:

Primary Market Maker quotes 4.10 (100) × 4.20 (50)

Order 1: Priority Customer Buy 300 @ 4.39

Order 2: Priority Customer Sell 50 @ 4.13

Order 3: Priority Customer Sell 5 @ 4.37

Opening Quote Range configuration in this scenario is +/−0.18

9:30 a.m. events occur, underlying opens

First imbalance message: Buy imbalance @ 4.20, 100 matched, 200 unmatched

Next 4 imbalance messages: Buy imbalance @ 4.37, 105 matched, 195 unmatched

Potential Opening Price calculation would have been 4.20 + 0.18 = 4.38, but OQR is further bounded by the least aggressive sell order @ 4.37

Order 1 executes against Order 2 50 @ 4.37

Order 1 executes against Primary Market Maker quote 50 @ 4.37

Order 1 executes against Order 3 5 @ 4.37

Remainder of Order 1 cancels as it is through the Opening Price

Primary Market Maker quote purges as its entire offer side volume has been exhausted

Similarly, the Exchange proposes to amend Options 3, Section 8(i)(3) which currently provides, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (c)(5)) and there are Valid Width Quotes on the Exchange that are executable against each other or the ABBO:''. The Exchange proposes to instead state, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (c)(5)) and there are Valid Width Quotes on the Exchange that *cross each other or are marketable against* the ABBO:''. The proposed language more accurately describes the current Opening Process. Valid Width Quotes are not routable and would not be executable against the ABBO. A similar change is also proposed to Options 3, Section 8(i)(4) to replace the words ''are executable against'' with ''cross''. The Exchange believes that the amended rule text adds greater transparency to the Opening Process. These are non-substantive amendments.

The Exchange proposes to replace the phrase ''route'' with ''route routable'' and also replace the phrase ''in price/time priority to satisfy the away market'' with ''pursuant to Options 3, Section 10(c)(1)(A)'' at the end of Options 3, Section 8(i)(7). The final sentence would provide, ''The System will route routable Public Customer interest pursuant to Options 3, Section 10(c)(1)(A).'' The current rule text is imprecise. When routing, the Exchange first determine if the interest is routable. A DNR Order [10] would not be routable. Of the routable interest, the Exchange will route the interest in price/time priority to satisfy the away market interest. The Exchange believes changing the word ''route'' to ''route routable'' and adding the citation to the allocation rule within Options 3, Section 10 clarifies the meaning of this sentence and better explains the System handling. This is a non-substantive amendment which is intended to bring greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange proposes to add new rule text to Options 3, Section 8(j)(1)(A) to describe the information conveyed in an Imbalance Message. The Exchange proposes to provide at Options 3, Section 8(j)(1)(A),

> An Imbalance Message will be disseminated showing a ''0'' volume and a $0.00 price if: (1) No executions are possible but routable interest is priced at or through the ABBO; (2) internal quotes are crossing each other; or (3) there is a Valid Width Quote, but there is no Quality Opening Market. Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.

This rule text is consistent with the current operation of the System. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. The Exchange believes that explaining the potential scenarios which led to the dissemination of a ''0'' volume, such as (1) when no executions are possible and routable interest is priced at or through the ABBO; (2) internal quotes are crossing; and (3) there is a Valid Width Quote, but there is no Quality Opening Market, will provide greater detail to the potential state of the interest available. The Exchange further clarifies in this new rule text, ''Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.'' The Exchange believes that this proposed text will bring greater transparency to the information available to market participants during the Opening Process.

The Exchange proposes to amend Options 3, Section 8(j)(3)(B) to remove the phrase ''at the Opening Price'' within the paragraph in two places. The current second sentence of paragraph

[9] *See* Securities Exchange Commission Release No. 79887 (February 2, 2017), 82 FR 9090 (January 27, 2017) (SR–ISE–2017–02).

[10] The manner in which the System will handle orders marked with the instruction ''Do-Not-Route'' (''DNR'' Orders) is described in Options 3, Section 8(j)(6).

8(j)(3)(B) states, ''If during the Route Timer, interest is received by the System which would allow the Opening Price to be within OQR without trading through away markets and without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price, the System will open with trades at the Opening Price and the Route Timer will simultaneously end.'' The Exchange proposes to remove the words ''at the Opening Price'' because while anything traded on ISE would be at the Opening Price, the trades that are routed away would be at an ABBO price which may differ from the ISE Opening Price. To avoid any confusion, the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(B) which currently only references quotes. During the Price Discovery Mechanism, both quotes and orders are considered.

The Exchange proposes to amend the last sentence of Options 3, Section 8(j)(5) to add the phrase ''if consistent with the Member's instructions'' to the end of the paragraph to make clear that the instructions provided by a Member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading. This amendment brings greater clarity to the Exchange's Rules.

The Exchange proposes to amend the last sentence of Options 3, Section 8(j)(6) which provides, ''The System will only route non-contingency Public Customer orders, except that only the full volume of Public Customer Reserve Orders may route.'' The Exchange proposes to instead provide, ''The System will only route non-contingency Public Customer orders, except that Public Customer Reserve Orders may route up to their full volume.'' The Exchange is rewording the current sentence to make clear that Public Customer Reserve Orders may route up to their full volume. The current sentence is awkward in that is seems to imply that only full volume would route. This was not the intent of the sentence. As revised, the sentence more clearly conveys its intent. The Exchange believes that this amendment brings greater clarity to the rule.

The Exchange proposes to add an introductory sentence of Options 3, Section 8(j)(6)(A) which provides, ''For contracts that are not routable, pursuant to Options 3, Section 8(j)(6), such as DNR Orders and orders priced through the Opening Price . . .''. The addition of this sentence is intended to provide context to the handling of orders. The Exchange opens and routes simultaneously during its Opening Process. This proposed sentence is a transition sentence from Options 3, Section 8(j)(6), wherein the System executes and routes orders. Options 3, Section 8(j)(6)(A) describes DNR Orders, which are not routed. The proposed introductory sentence would reflect that Options 3, Section 8(j)(6) is intended to make clear that as DNR Orders and orders priced through the Opening Price are not routable orders that will cancel. The System will cancel any portion of a Do-Not-Route order that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur. An order *or quote* that is priced through the Opening Price will also be cancelled. All other interest will be eligible for trading after opening. This amended rule text is consistent with the behavior of the System. This non-substantive amendment is intended to add greater clarity to the Exchange's Rules. The Exchange also proposes to remove the phrase ''will be cancelled'', which is duplicative, and add the words ''or quote'' to the first sentence so it would provide, ''[t]he System will cancel (i) any portion of a Do-Not-Route order that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur, or (ii) any order or quote that is priced through the Opening Price. All other interest will be eligible for trading after opening.'' Today, any order or quote that is priced through the Opening Price will be cancelled. This new rule text makes clear that all interest applies.

The Exchange proposes to renumber current Options 3, Section 8(k) as Section 8(j)(6)(B) and renumber current Options 3, Section 8(l) as Section 8(j)(6)(C).

The Exchange proposes to add a new paragraph at Options 3, Section 8(j)(6)(D) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price.'' The Exchange notes that this paragraph describes current System behavior. This rule text accounts for orders which routed away and were returned unsatisfied to ISE as well as interest that was unfilled during the Opening Process, provided it was not priced through the Opening Price. This sentence is being included to account for the manner in which all interest is handled today by ISE and how certain interest rests on the order book once the Opening Process is complete. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will bring greater transparency to the Rules and is consistent with the Exchange's current System operation. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once ISE opens an options series.

Opening Process Cancel Timer

The Exchange proposes to adopt an Opening Process Cancel Timer within Options 3, Section 8(k), similar to The Nasdaq Options Market LLC's (''NOM'') Rules and Nasdaq BX, Inc.'s (''BX'') at Options 3, Section 8(c).[11] The Exchange proposes to add a process whereby if an options series has not opened before the conclusion of the Opening Process Cancel Timer, a Member may elect to have orders returned by providing written notification to the Exchange. The Opening Process Cancel Timer would be established by the Exchange and posted on the Exchange's website. Similar to NOM and BX, orders submitted through OTTO or FIX with a TIF of Good-Till-Canceled[12] or ''GTC'' or Good-Till-Date[13] or ''GTD'' may not be cancelled. ISE has monitored the operation of the Opening Process to identify instances where market efficiency can be enhanced. The Exchange believes that adopting a cancel timer similar to NOM and BX will increase the efficiency of ISE's Opening Process. This provision would provide for the return of orders for un-opened options symbols. This enhancement will provide market participants the ability to elect to have orders returned, except for non-GTC/GTD Orders, when options do not open. It provides Members with choice about where, and when, they can send orders for the opening that would afford them

[11] NOM Options 3, Section 8(c) provides, ''Absence of Opening Cross. If an Opening Cross in a symbol is not initiated before the conclusion of the Opening Process Cancel Timer, a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Process Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by Nasdaq on its website.'' BX Options 3, Section 8 is worded similarly.

[12] An order to buy or sell that remains in force until the order is filled, canceled or the option contract expires; provided, however, that GTC Orders will be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. *See* Options 3, Section 7(r).

[13] A Good-Till-Date Order is a limit order to buy or sell which, if not executed, will be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series. *See* Options 3, Section 7(p).

the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow ISE to continue to have a robust Opening Process.

Implementation

The Exchange proposes to implement the amendments proposed herein prior to Q3 2020. The Exchange will issue an Options Trader Alert announcing the date of implementation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. The Exchange believes that the proposed changes significantly improve the quality of execution of ISE's opening.

Definitions

The Exchange's proposal to define the term ''imbalance'' at proposed Options 3, Section 8(a)(10) and remove the text within Options 3, Section 8(j)(1), which seeks to define an imbalance as an unmatched contract, will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This is a non-substantive rule change and represents current System functionality. Today, the term ''imbalance'' is simply defined as unmatched contracts. The proposed definition is more precise in its representation of the current System functionality.

Eligible Interest

The Exchange's proposal to amend Options 3, Section 8(b) which describes the eligible interest that will be accepted during the Opening Process is consistent with the Act. Specifically, only accepting Opening Only Orders and excluding all other orders with a Time in Force of ''Immediate-or-Cancel'' is the manner in which the System operates today. The Exchange proposes to specifically note within the Opening Process that all other Immediate-or-Cancel Orders would not be acceptable if they are not Opening Only Orders. Notwithstanding the foregoing, Opening Only Orders would be accepted. Further, Add Liquidity Orders are not accepted from the Opening Process because these orders cannot add liquidity during the Opening Process. The Exchange notes that today, both of these types of orders may not be entered into the Opening Process. The Exchange believes making clear which orders are not accepted within the Opening Process will bring greater transparency for market participants who desire to enter interest and understand the System handling.

The proposed amendment to Options 3, Section 8(b)(2) to replace the phrase ''aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes'' with ''allocate interest pursuant to Options 3, Section 10 is consistent with the Act. This amendment is non-substantive and merely points to Options 3, Section 10, which today describes the manner in which interest is allocated on ISE. The Exchange believes that simply referring to the allocation rule will accurately describe the manner in which the System will allocate interest.

Valid Width Quotes

The Exchange's proposal to amend the requirements within Options 3, Section 8(c) for ISE Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Competitive Market Maker to open an option series without waiting for the two minute timeframe is consistent with the Act. This proposal would allow the market to open more efficiently as well as enable greater participation by Competitive Market Makers in the Opening Process. A Primary Market Maker has continuing obligations to quote throughout the trading day pursuant to Options 2, Section 5. In addition, Primary Market Makers are required to ensure each option series to which it is appointed is opened each day ISE is open for business by submitting a Valid Width Quote.[16] Primary Market Makers will continue to remain responsible to open an options series, unless it is otherwise opened by a Competitive Market Maker. A Competitive Market Maker also has obligations to quote intra-day, once they commence quoting for that day.[17] The Exchange notes if Competitive Market Makers entered quotes during the Opening Process to open an option series, those quote must qualify as Valid Width Quotes. This ensures that the quotations that are entered are in alignment with standards that help ensure a quality opening. The Exchange believes that allowing one Competitive Market Maker to enter a quotation continues to protect investors and the general public because the Competitive Market Maker will be held to the same standard for entering quotes as a Primary Market Maker and the process will also ensure an efficient and timely opening, while continuing to hold Primary Market Makers responsible for entering Valid Width Quotes during the Opening Process.

Potential Opening Price

The Exchange's proposal to amend Options 3, Section 8(g) to add an introductory sentence to the Potential Opening Process which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met,'' is consistent with the Act. This paragraph is not intended to amend the current function of the Opening Process, rather it is intended to provide context to the process described within Options 3, Section 8(g). Specifically, the new text describes a Potential Opening Price. This rule text is consistent with the current operation of the System. This is a non-substantive amendment.

Further, the amendment to Options 3, Section 8(g)(3) to replace the words ''Potential Opening Price calculation'' with the more defined term ''Opening Price'' is consistent with the Act. ''Opening Price'' is the more accurate term that represents current System functionality. The Opening Price is bounded by any better away market price that may not be satisfied with the Exchange routable interest. Changing the words in this sentence to ''Opening Price'' will make this statement accurate. This amendment is not substantive.

Opening Quote Range

The Exchange's proposal to add a sentence to Options 3, Section 8(i) to describe the manner in which the OQR is bound will bring greater clarity to the manner in which OQR is calculated. OQR is an additional type of boundary beyond the boundaries mentioned within the Opening Process rule. The System will calculate an OQR for a particular option series that will be utilized in the Price Discovery Mechanism if the Exchange has not opened, pursuant to the provisions in Options 3, Section 8(c)–(h). OQR would broaden the range of prices at which the Exchange may open to allow additional interest to be eligible for consideration in the Opening Process. OQR is

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* note 9 above.

[17] *See* Options 2, Section 5.

intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the BBO, the OQR provides a range of prices that may be able to satisfy additional contracts while still ensuring a reasonable Opening Price. More specifically, the Exchange's Opening Price is bounded by the OQR without trading through the limit price(s) of interest within OQR, which is unable to fully execute at the Opening Price in order to provide participants with assurance that their orders will not be traded through. The Exchange seeks to execute as much volume as is possible at the Opening Price. The Exchange's method for determining the Potential Opening Price and Opening Price is consistent with the Act because the proposed process seeks to discover a reasonable price and considers both interest present in System as well as away market interest. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices. The rule provides for opening with a trade, which is consistent with the Act because it enables an immediate opening to occur within a certain boundary without the need for the price discovery process. The boundary provides protections while still ensuring a reasonable Opening Price. The Exchange's proposal protects investors and the general public by more clearly describing how the boundaries are handled by the System. This proposed amendment does not change the manner in which ISE's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price.

The Exchange's proposal to amend Options 3, Section 8(i)(3) to replace the phrase ''that are executable against each other or the ABBO:'' with ''that *cross each other or are marketable against* the ABBO:'' will more accurately describes the current Opening Process. Valid Width Quotes are not routable and would not be executable against the ABBO. This rule text is more specific than ''executable against each other.'' The Exchange believes that this rule text adds greater transparency to the Opening Process. This is a non-substantive amendment.

The Exchange's proposal to make a similar change to Options 3, Section 8(i)(4) to replace the words ''are executable against'' with ''cross,'' is consistent with the Act. The Exchange believes that the amended rule text adds greater transparency to the Opening Process. These are non-substantive amendments.

The Exchange's proposal to replace the phrase ''route'' with ''route routable'' and also replace the phrase ''in price/time priority to satisfy the away market'' with ''pursuant to Options 3, Section 10(c)(1)(A)'' at the end of Options 3, Section 8(i)(7) is consistent with the Act. The current rule text is imprecise. When allocating, the Exchange first determines if the interest is routable, it may be marked as a DNR Order, which is not routable. Of the routable interest, the Exchange will route the interest in price/time priority to satisfy the away market interest. The Exchange believes changing the word ''route'' to ''route routable'' and adding the citation to the allocation rule within Options 3, Section 10 clarifies the meaning of this sentence and better explains the System handling. The final sentence would provide, ''The System will route routable Public Customer interest pursuant to Options 3, Section 10(c)(1)(A).'' This is a non-substantive amendment which is intended to bring greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange's proposal to add new rule text at Options 3, Section 8(j)(1)(A) to describe the current operation of the System with respect to imbalance messages is consistent with the Act. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. An imbalance process is intended to attract liquidity to improve the price at which an option series will open, as well as to maximize the number of contracts that can be executed on the opening. This process will only occur if the Exchange has not been able to otherwise open an option series utilizing the other processes available in Options 3, Section 8. The Imbalance Timer is intended to provide a reasonable time for participants to respond to the Imbalance Message before any opening interest is routed to away markets and, thereby, maximize trading on the Exchange. The Exchange believes that the proposed rule text provides market participants with additional information as to the imbalance message. The following potential scenarios, which may lead to the dissemination of a ''0'' volume, include (1) when no executions are possible and routable interest is priced at or through the ABBO: (2) Internal quotes are crossing; and (3) there is a Valid Width Quote, but there is no Quality Opening Market. The Exchange believes adding this detail will provide greater information as to the manner in which Imbalance Messages are disseminated today. The Exchange's process of disseminating zero imbalance messages is consistent with the Act because the Exchange is seeking to identify a price on the Exchange without routing away, yet which price may not trade through another market and the quality of which is addressed by applying the OQR boundary. Announcing a price of zero will permit market participants to respond to the Imbalance Message, which interest would be considered in determining a fair and reasonable Opening Price.

The Exchange further proposes to clarify its current System functionality by stating, ''Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.'' The Exchange believes that this proposed text will bring greater transparency to the information available to market participants during the Opening Process.

The Exchange's proposal to amend Options 3, Section 8(j)(3)(B) to remove the phrase ''at the Opening Price'' within the paragraph in two places is consistent with the Act because removing the current phrase will avoid confusion. The Exchange notes that anything traded on ISE would be at the Opening Price, the trades that are routed away would be at an ABBO price, which differs from the ISE Opening Price. To avoid any confusion the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(B) which currently only references quotes. During the Price Discovery Mechanism both quotes and orders are considered.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(j)(5) to amend the phrase ''if consistent with the Member's instructions'' to the end of the paragraph will make clear that the instructions provided by a Member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading. This proposal is consistent with the Act and will add greater clarity to the Exchange's Rules.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(j)(6) to provide, ''The System will only route non-contingency Public Customer orders, except that Public Customer Reserve Orders may route up to their full volume,'' is consistent with the Act.

The Exchange is re-wording the current sentence to make clear that Public Customer Reserve Orders may route up to their full volume. The current sentence is awkward in that is seems to imply that only full volume would route. This was not the intent of the sentence. As revised, the sentence more clearly conveys its intent. The Exchange believes that this amendment is non-substantive and is a more precise manner of expressing the quantity of Reserve Orders that may route.

The Exchange's proposal to add an introductory phrase to Options 3, Section 8(j)(6)(A) which provides, ''For contracts that are not routable, pursuant to Options 3, Section 8(j)(6), such as DNR Orders and orders priced through the Opening Price . . .,'' is consistent with the Act. The addition of this sentence is intended simply to provide context to the handling of orders. The prior paragraph, Options 3, Section 8(j)(6), describes how the System executes and routes orders. This proposed new text explains why DNR Orders are cancelled. This sentence is being added to indicate that at this stage in the Opening Process, routable interest would have routed, non-routable interest does not route and may not execute if priced through the Opening Price. This information is currently not contained within the rules, however the rule text is consistent with the behavior of the System. This non-substantive amendment is consistent with the Act because it adds greater clarity to the Exchange's Rules.

The proposal to remove the duplicative text ''will be cancelled'' and add the words ''or quote'' to the second sentence are non-substantive rule changes. All other interest will be eligible for trading after opening,'' is consistent with the Act. Today, any order or quote that is priced through the Opening Price will be cancelled. This rule text is consistent with the System's current operation. This amendment is intended to add greater clarity to the Exchange's Rules.

The Exchange's proposal to add a new paragraph at Options 3, Section 8(j)(6)(D) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price,'' will bring greater transparency to the handling of orders once an option series is opened for trading. After away interest is cleared by routable interest and the opening cross has occurred, DNR Orders are handled by the System. DNR Order interest will rest on the Order Book, provided it was not priced through the Opening Price. This rule text accounts for orders which have routed away and returned to ISE unsatisfied and also accounts for interest that remains unfilled during the Opening Process, provided it was not priced through the Opening Price. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will protect investors and the general public by adding greater transparency to the Exchange's current System operation by explaining how all interest is handled during the Opening Process. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once ISE opens its options series. This amendment represents the System's current function.

Opening Process Cancel Timer

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(k), similar to NOM's and BX's Rules at Options 3, Section 8(c) is consistent with the Act. The Exchange's proposal to add a process whereby if an options series has not opened before the conclusion of the Opening Process Cancel Timer, a Member may elect to have orders returned by providing written notification to the Exchange is consistent with the Act. ISE believes that this amendment will promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. Adopting a cancel timer similar to NOM and BX will increase the efficiency of ISE's Opening Process by providing Members with the ability to elect to have orders returned, except for non-GTC/GTD orders. This functionality provides Members with choice, when symbols do not open, about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow ISE to continue to have a robust Opening Process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While the Exchange does not believe that the proposal should have any direct impact on competition, it believes the proposal will enhance the Opening Process by making it more efficient and beneficial to market participants. Moreover, the Exchange believes that the proposed amendments will significantly improve the quality of execution of ISE's Opening Process. The proposed amendments provide market participants more choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this should attract new order flow.

The Exchange's s proposal to define the term ''imbalance'' at proposed Options 3, Section 8(a)(10) and remove the text within Options 3, Section 8(j)(1), which seeks to define an imbalance as an unmatched contract does not impose an undue burden on competition. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This description is consistent with the current System operation. This is a non-substantive rule change.

The Exchange's proposal to specifically exclude orders with a Time in Force of ''Immediate-or-Cancel'' and Add Liquidity Orders from the type of orders that are eligible during the Opening Process does not impose an undue burden on competition. The Exchange notes that today all market participants may enter Opening Only Orders. Today, the Exchange does not permit Immediate-or-Cancel Orders to be entered unless they are Opening Only Orders. With respect to Add Liquidity Orders, these orders are not appropriate for the Opening Process because these orders cannot add liquidity during the Opening Process and would not be accepted from any market participant today. The addition of these exceptions does not impact any market participant as today all market participants are restricted from utilizing ''Immediate-or-Cancel''or Add Liquidity Orders.

The Exchange's proposal to amend the requirements within Options 3, Section 8(c) for ISE Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Competitive Market Maker to open an option series without waiting for the two minute timeframe does not impose an undue burden on competition. This proposal would allow the market to open more efficiently as well as enable greater participation by Competitive Market Makers in the Opening Process.

Primary Market Makers continue to remain obligated to open their appointed options series. Competitive Market Maker may participate in the Opening Process, as is the case today, provided they enter Valid Width Quotes, which is intended to ensure a quality opening. The Exchange does not believe this proposal would burden the ability of market participants who enter quotes to participate in the Opening Process.

The Exchange's proposal to add a sentence to Options 3, Section 8(i) to describe the manner in which the OQR is bound does not impose an undue burden on competition. OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices for the protection of all investors. This proposed amendment does not change the manner in which ISE's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price.

The Exchange's proposal to add new rule text at Options 3, Section 8(j)(1)(A) to describe the current operation of the System with respect to imbalance messages does not impose an undue burden on competition. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. All market participants are able to respond to an imbalance messages and have their interest considered in determining a fair and reasonable Opening Price.

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(k), similar to NOM's and BX's Rules at Options 3, Section 8(c), does not impose an undue burden on competition. Adopting a cancel timer similar to NOM and BX will increase the efficiency of ISE's Opening Process for all market participants. All market participants will have the ability to elect to have orders returned, except for non-GTC/GTD orders, when symbols do not open. This feature provides Members with choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange.

The remainder of the proposed rule text is intended to bring greater transparency to the Opening Process rule while also adding additional detail and clarity and therefore does not have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2020–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2020–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2020–15 and should be submitted on or before May 19, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08940 Filed 4–27–20; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88726; File No. SR–CboeBZX–2020–003]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the −1x Short VIX Futures ETF Under BZX Rule 14.11(f)(4), Trust Issued Receipts

April 22, 2020.

I. Introduction

On January 3, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the −1x Short VIX Futures ETF (''Fund''), a series of VS Trust (''Trust''), under BZX Rule 14.11(f)(4) (Trust Issued Receipts). The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[3] On February 25, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 24, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On April 13, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.[7] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposal, as Modified by Amendment No. 2 [9]

A. Description of the Fund

The Exchange proposes to list and trade Shares of the Fund [10] under BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts [11] on the Exchange. Volatility Shares LLC (''Sponsor''), a Delaware limited liability company and a commodity pool operator, serves as the Sponsor of the Trust.[12] Tidal ETF Services LLC serves as the administrator; U.S. Bank National Association serves as custodian of the Fund and the Shares; U.S. Bancorp Fund Services, LLC serves as the sub-administrator and transfer agent; and Wilmington Trust Company is the sole trustee of the Trust.

The Exchange states that the Fund seeks to provide daily investment results (before fees and expenses) that correspond to the performance of the Short VIX Futures Index (SHORTVOL) (''Index'').[13] The Index seeks to offer short exposure to market volatility through publicly traded futures markets and measures the daily inverse performance of a theoretical portfolio of first- and second-month futures contracts on the Cboe Volatility Index (''VIX'').[14] The Fund does not seek to achieve its primary investment objective over a period of time greater than a single day. The return of the Fund for a period longer than a single day is the result of its return for each day compounded over the period and usually will differ in amount and possibly even direction from either the inverse of the VIX or the inverse of a portfolio of short-term VIX Futures Contracts for the same period. These differences can be significant.

The Fund will primarily invest in VIX futures contracts traded on the Cboe Futures Exchange, Inc. (''CFE'') (''VIX Futures Contracts'') based on components of the Index to pursue its investment objective. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87992 (January 16, 2020), 85 FR 4023.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 88276, 85 FR 12353 (March 2, 2020). The Commission designated April 22, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboebzx-2020-003/srcboebzx2020003-6993242-214730.pdf.*

[7] In Amendment No. 2, the Exchange: (i) Clarified that the primary investments of the Fund will be VIX Futures Contracts (as defined herein) based on components of the Index (as defined herein); (ii) clarified that the Fund will collateralize its obligations with Cash and Cash Equivalents (as defined herein) consistent with the 1940 Act and interpretations thereunder; (iii) stated that the Index and the Fund should be expected to perform significantly different from the inverse of the VIX (as defined herein); (iv) clarified where pricing information for the Shares and the underlying investments of the Fund will be publicly available; (v) represented that all statements and representations made in the filing regarding the Index composition, description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of the Index, reference asset, and IIV (as defined herein), and the applicability of Exchange rules specified in the filing shall constitute continued listing requirements for the Fund; (vi) represented that the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees; (vii) added additional information regarding the Information Circular to be distributed prior to the commencement of trading, including a discussion of suitability obligations by Members; (viii) discussed increased sales practice and customer margin requirements for FINRA members applicable to the Shares; (ix) represented that the Fund does not seek to achieve its primary investment objective over a period of time greater than a single day; and (x) made technical, clarifying, and conforming changes. Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2020-003/srcboebzx2020003-7098109-215773.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] Additional information regarding the Fund, the Trust, and the Shares, including investment strategies, creation and redemption procedures, and portfolio holdings can be found in Amendment No. 2, *supra* note 7.

[10] The Exchange states that the Fund has filed a draft registration statement on Form S–1 under the Securities Act of 1933, dated December 6, 2019 (File No. 377–02945) (''Draft Registration Statement''). The Exchange represents that the Fund will not trade on the Exchange until there is an effective registration statement for the Fund.

[11] Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[12] The Exchange states that the Sponsor is not a broker-dealer or affiliated with a broker-dealer. The Exchange further states that in the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[13] The Index is sponsored by Cboe Global Indexes (''Index Sponsor''). The Index Sponsor is not a registered broker-dealer, but is affiliated with a broker-dealer. The Exchange represents that the Index Sponsor has implemented and will maintain a fire wall with respect to the broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Index. In addition, the Exchange represents that the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index.

[14] The Exchange states that the VIX is designed to measure the implied volatility of the S&P 500 over 30 days in the future and is calculated based on the prices of certain put and call options on the S&P 500. The Exchange states that the VIX is reflective of the premium paid by investors for certain options linked to the level of the S&P 500.

to VIX Futures Contracts, the Sponsor may cause the Fund to obtain exposure to the Index through over-the-counter (''OTC'') swaps referencing the Index or referencing particular VIX Futures Contracts comprising the Index (''VIX Swap Agreements'').

The Fund may also invest in VIX Swap Agreements if the market for a specific VIX Futures Contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX Futures Contracts (such as during periods of market volatility or illiquidity). The VIX Swap Agreements in which the Fund may invest may or may not be cleared.[15] The Fund will collateralize its obligations with Cash and Cash Equivalents [16] consistent with the 1940 Act and interpretations thereunder.

In addition to VIX Swap Agreements, if the Fund is unable to meet its investment objective through investments in VIX Futures Contracts, the Fund may also obtain exposure to the Index through listed VIX options contracts traded on the Cboe Exchange, Inc. (''Cboe'') (''VIX Options Contracts'').

The Fund may also invest in Cash and Cash Equivalents that may serve as collateral in the VIX Futures Contracts, VIX Swap Agreements, and VIX Options Contracts (collectively, ''VIX Derivative Products'').

If the Fund is successful in meeting its objective, its value (before fees and expenses) on a given day should gain approximately as much on a percentage basis as the level of the Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of the Index when it declines. The Fund primarily acquires short exposure to the VIX through VIX Futures Contracts, such that the Fund has exposure intended to approximate the Index at the time of the net asset value (''NAV'') calculation of the Fund.[17] However, as discussed above, in the event that the Fund is unable to meet its investment objective solely through the investment of VIX Futures Contracts, it may invest in VIX Swap Agreements or VIX Options Contracts. The Fund may also invest in Cash or Cash Equivalents that may serve as collateral to the Fund's investments in VIX Derivative Products.

The Fund is not actively managed but rather seeks to remain fully invested in VIX Derivative Products (and Cash and Cash Equivalents as collateral) that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction. In seeking to achieve the Fund's investment objective, the Sponsor uses a mathematical approach to determine the type, quantity and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with the Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Fund's investments in accordance with its investment objective.

B. VIX Futures Contracts

The Index is comprised of, and the value of the Fund will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such, will behave differently than current, or spot, VIX. According to the Exchange, while the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). As a result, the Index and the Fund should be expected to perform very differently from the inverse of the VIX over all periods of time.

C. Description of the Index

The Index is designed to express the daily inverse performance of a theoretical portfolio of first- and second-month VIX Futures Contracts (''Index Components''), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. The Index seeks to reflect the returns that are potentially available from holding an unleveraged short position in first- and second- month VIX Futures Contracts. While the Index does not correspond to the inverse of the VIX, as it seeks short exposure to VIX, the value of the Index, and by extension the Fund, will generally rise as the VIX falls and fall as the VIX rises. However, as noted above, because VIX Futures Contracts correlate to future volatility readings of VIX, while the VIX itself correlates to current volatility, the Index and the Fund should be expected to perform significantly different from the inverse of the VIX. Further, unlike the Index, the VIX, which is not a benchmark for the Fund, is calculated based on the prices of certain put and call options on the S&P 500.[18]

The Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX Futures Contracts, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of approximately one month. The roll period usually begins on the Wednesday falling 30 calendar days before the S&P 500 option expiration for the following month (''Cboe VIX Monthly Futures Settlement Date'') and runs to the Tuesday prior to the subsequent month's Cboe VIX Monthly Futures Settlement Date.

III. Proceedings To Determine Whether to Approve or Disapprove SR–CboeBZX–2020–003, as Modified by Amendment No. 2, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [19] to determine whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the

[15] The Exchange represents that the Fund will only enter into VIX Swap Agreements with counterparties that the Sponsor reasonably believes are capable of performing under the contract and will post collateral as required by the counterparty. The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Sponsor will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Sponsor will review approved counterparties using various factors, which may include the counterparty's reputation, the Sponsor's past experience with the counterparty and the price/market actions of debt of the counterparty. The Fund may use various techniques to minimize OTC counterparty credit risk including entering into arrangements with counterparties whereby both sides exchange collateral on a mark-to-market basis. Collateral posted by the Fund to a counterparty in connection with uncleared VIX Swap Agreements is generally held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund.

[16] For purposes of the proposal, ''Cash and Cash Equivalents'' has the meaning set forth in BZX Rule 14.11(i)(4)(C)(iii) applicable to Managed Fund Shares.

[17] The Exchange states the Fund's NAV will be calculated at 4:00 p.m. ET.

[18] *See supra* note 14.

[19] 15 U.S.C. 78s(b)(2)(B).

Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[20] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [21]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[22]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved by May 19, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 2, 2020.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 2,[23] in addition to any other comments they may wish to submit about the proposed rule change. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade Shares of the Fund, which seeks to provide daily investment results that correspond to the performance of an index that measures the daily inverse performance of a theoretical portfolio of first- and second-month VIX Futures Contracts, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and is consistent with the maintenance of a fair and orderly market under the Exchange Act. In particular, the Commission seeks commenters' views regarding whether the Exchange has adequately described the potential impact of sudden fluctuations in market volatility on the Index and on the Fund's operation and performance for the Commission to make a determination under Section 6(b)(5) of the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–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–CboeBZX–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–CboeBZX–2020–003 and should be submitted by May 19, 2020. Rebuttal comments should be submitted by June 2, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08937 Filed 4–27–20; 8:45 am]

BILLING CODE 8011–01–P

[20] *Id.*

[21] 15 U.S.C. 78f(b)(5).

[22] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[23] *See supra* note 7.

[24] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88725; File No. SR–NYSE–2020–37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Commentary .01 to Rule 7.35

April 22, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 21, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Rule 7.35 to provide that, for a temporary period that begins on April 21, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, for an IPO Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Commentary .01 to Rule 7.35 to provide that, for a temporary period that begins on April 21, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, for an IPO Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction.

Background

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility because of the ongoing spread of COVID–19. Beginning on March 16, 2020, to slow the spread of COVID–19 through social-distancing measures, significant limitations were placed on large gatherings throughout the country.

On March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.[4] Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

On March 26, 2020, the Exchange amended Rule 7.35A to add Commentary .02,[5] which provides:

> For a temporary period that begins on March 26, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange will permit a DMM limited entry to the Trading Floor to effect an IPO Auction manually. For such an IPO Auction, the Exchange will disseminate the following Auction Imbalance Information provided by the DMM via Trader Update: The Imbalance Reference Price; the Paired Quantity; the Unpaired Quantity; and the Side of the Unpaired Quantity. The Exchange will publish such Trader Update(s) promptly after each publication by the DMM of a pre-opening indication for such security. The Trader Update will also include the pre-opening indication range.

As described in the Rule 7.35A Filing, the Exchange added this Commentary because, while the Trading Floor is temporarily closed, Designated Market Makers (''DMMs'') cannot engage in any manual actions, such as facilitating an Auction manually or publishing pre-opening indications before a Core Open or Trading Halt Auction. Commentary .02 to Rule 7.35A permits entry to the Trading Floor to a single employee from the DMM member organization assigned to such security so that this DMM can access the Floor-based systems used to effect an Auction manually, and specifies the information that would be included in a Trader Update in advance of such IPO Auction.

On March 27, 2020, the Exchange effected an IPO Auction pursuant to Commentary .02 to Rule 7.35A.

On April 17, 2020, the Exchange amended Rule 7.35A to add Commentary .04,[6] which provides:

> For a temporary period that begins on April 17, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange will provide a DMM remote access to Floor-based systems for the sole purpose of effecting a manual (1) IPO Auction, or (2) Core Open Auction in connection with a listed company's post-IPO public offering. For such an IPO Auction, the Exchange will disseminate the following Auction Imbalance Information provided by the DMM via Trader Update: The Imbalance Reference Price; the Paired Quantity; the Unpaired Quantity; and the Side of the Unpaired Quantity. The Exchange will publish such Trader Update(s) promptly after each publication by the DMM of a pre-opening indication for such security. The Trader Update will also include the pre-opening indication range.

With these amendments to Rule 7.35A, during the temporary period while the Trading Floor is closed, a DMM can effect a manual IPO Auction either on the Trading Floor or remotely.

Proposed Rule Change

Rule 7.35(c)(3) provides that the Exchange will not disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction. The Exchange proposes to add Commentary .01 to Rule 7.35 to provide that, for a temporary period that begins on April 21, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, for an IPO Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction.

As noted above, during the temporary period while the Trading Floor is closed, pursuant to either Commentary .02 or Commentary .04 to Rule 7.35A, DMMs will be able to effect IPO Auctions manually, either on the Trading Floor or remotely. However, in either case, Floor brokers will not be present and therefore would not be available to disseminate Floor-based information about the IPO Auction to their customers. Accordingly, for this temporary period while the Trading Floor is closed and there are no Floor brokers, the Exchange believes it would be appropriate to temporarily suspend Rule 7.35(c)(3) relating to IPO Auctions.

The Auction Imbalance Information that the Exchange proposes to disseminate for an IPO Auction would be the same information that is disseminated in advance of a Core Open Auction, as set forth in Rule 7.35A(e),

[4] The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110.*

[5] *See* Securities Exchange Act Release No. 88488 (March 26, 2020) (SR–NYSE–2020–23), 85 FR 18286 (April 1, 2020) (Notice of filing and immediate effectiveness of proposed rule change) (''Rule 7.35A Filing'').

[6] *See* Securities Exchange Act Release No. 88705 (April 21, 2020) (SR–NYSE–2020–35) (Notice of filing and immediate effectiveness of proposed rule change).

except for how the Imbalance Reference Price would be determined. Rule 7.35A(e)(1) provides that the Exchange begins disseminating Auction Imbalance Information for a Core Open Auction at 8:00 a.m., and would do the same for an IPO Auction. In addition, Rule 7.35A(e)(2) specifies the content of the Auction Imbalance Information that is disseminated in advance of a Core Open Auction, which would be the same content for an IPO Auction.[7] Finally, Rule 7.35A(e)(3) specifies the Imbalance Reference Price, which for a Core Open Auction is the Consolidated Last Sale Price. The Exchange proposes that the Imbalance Reference Price for an IPO Auction would be the security's offering price, and that such Imbalance Reference Price would be updated as provided for in Rule 7.35A(e)(3)(A)—(C).[8]

To effect this change, the Exchange proposes to add Commentary .01 to Rule 7.35, which would provide:

For a temporary period that begins on April 21, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, for an IPO Auction, paragraph (c)(3) of this Rule will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction. Such Auction Imbalance Information will be disseminated in the same manner that Auction Imbalance Information is disseminated for a Core Open Auction, as set forth in Rule 7.35A(e)(1)—(3), except that references to the term ''Consolidated Last Sale Price'' in Rule 7.35A(e)(3) and subparagraphs (A)—(C) of that Rule will be replaced with the term ''the security's offering price.''

Disseminating such Auction Imbalance Information via the proprietary data feeds obviates the need to publish the Trader Updates described in Commentary .02 and Commentary .04 to Rule 7.35A, as described above.[9] Under these specific circumstances, when Floor brokers are absent and unavailable to relay Floor-based information about an IPO Auction to their customers, Auction Imbalance Information would provide more granular information in advance of an IPO Auction as compared to the Trader Updates. Specifically, as noted above, the Auction Imbalance Information disseminated via the proprietary data feeds would begin being published at 8:00 a.m. ET, would be published every second, and would include Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price information. By contrast, a Trader Update as provided for in Commentaries .02 or .04 to Rule 7.35A would be disseminated on a more limited basis, and only if the DMM were to publish a pre-opening indication. Accordingly, the Exchange proposes to amend those Commentaries to delete the following text:

For such an IPO Auction, the Exchange will disseminate the following Auction Imbalance Information provided by the DMM via Trader Update: The Imbalance Reference Price; the Paired Quantity; the Unpaired Quantity; and the Side of the Unpaired Quantity. The Exchange will publish such Trader Update(s) promptly after each publication by the DMM of a pre-opening indication for such security. The Trader Update will also include the pre-opening indication range.

The Exchange has tested the ability to disseminate such Auction Imbalance Information on the day of an IPO Auction. In addition, because such Auction Imbalance is already disseminated on a daily basis in connection with Core Open Auctions, the Exchange believes that member organizations that subscribe to such proprietary data feeds would be able to receive, read, and respond to Auction Imbalance Information for an IPO Auction without needing to make any changes. Accordingly, the Exchange would be able to implement the proposed rule change immediately upon effectiveness of this filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

As a result of uncertainty related to the ongoing spread of COVID–19, the U.S. equities markets are experiencing unprecedented market volatility. In addition, social-distancing measures have been implemented throughout the country, including in New York City, to reduce the spread of COVID–19. Directly related to such social-distancing measures, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because, during the temporary period while the Trading Floor is closed and Floor brokers are not present, it would promote fair and orderly IPO Auctions for the Exchange to disseminate Auction Imbalance Information on the same terms that such information is disseminated for a Core Open Auction. Specifically, during the period when the Trading Floor is temporarily closed, Floor brokers are not available to disseminate Floor-based information about the IPO Auction to their customers. Under these specific circumstances, the Exchange believes that the Auction Imbalance Information would provide more granular information in advance of an IPO Auction as compared to the Trader Updates described in Commentaries .02 and .04 to Rule 7.35A. As described above, the Auction Imbalance Information disseminated via the proprietary data feeds would begin being published at 8:00 a.m. ET, would be published every second, and would include Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price information. By contrast, a Trader Update as provided for in Commentaries .02 or .04 to Rule 7.35A would be disseminated on a more limited basis, and only if the DMM were to publish a pre-opening indication. The Exchange therefore believes that proposed rule change would therefore promote transparency in advance of an IPO Auction while the Trading Floor is closed.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 15, 2020, market participants will have advance notice that the Exchange would disseminate Auction Imbalance Information for an IPO Auction that may

[7] For Core Open Auctions, the Exchange disseminates Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price, as these terms are defined in Rule 7.35(a)(4).

[8] As provided for in Rule 7.35A(e)(3), the Imbalance Reference Price changes if a pre-opening indication has been published for such Auction.

[9] For example, as provided for in Rule 7.35A(d), a pre-opening indication is published via both the securities information processor and proprietary data feeds. Accordingly, pre-opening indications for an IPO Auction would be included in the Auction Imbalance Information that would be disseminated via the proprietary data feeds pursuant to this proposed rule change.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

be effected manually by the DMM during this period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to ensure fair and orderly IPO Auctions by providing that the Exchange would disseminate Auction Imbalance Information for such auctions via its proprietary data feeds during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID–19 virus.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. During this temporary period when the Exchange Trading Floor is closed, the Exchange would disseminate Auction Imbalance Information for IPO Auctions via proprietary data feeds. Because Floor brokers are not available to disseminate Floor-based information about an IPO Auction to their customers during this period, the Exchange believes that the Auction Imbalance Information would provide more granular information in advance of an IPO Auction as compared to the Trader Updates described in Commentaries .02 and .04 to Rule 7.35A. The Exchange represents that an IPO is scheduled to price on the Exchange on April 22, 2020, and that the Exchange has tested the relevant technology and is able to implement this proposed rule change immediately. The Commission believes that the Auction Imbalance Information disseminated pursuant to this proposed rule change could provide more detailed information with greater frequency in advance of an IPO Auction as compared to the current Trader Updates. Further, the Commission notes that the Exchange has tested this technology, and that the proposal is a temporary measure designed to respond to current, unprecedented market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–37, and should be submitted on or before May 19, 2020.

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12), (59).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08936 Filed 4–27–20; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2020–0020]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0020].

SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than May 28, 2020. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Agreement to Sell Property—20 CFR 416.1240–1245—0960–0127. Individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) payments, but whose resources exceed the allowable limit, may receive conditional payments if they agree to dispose of the excess non-liquid resources and make repayments. SSA uses Form SSA–8060–U3 to document this agreement, and to ensure the individuals understand their obligations. Respondents are applicants for, and recipients of, SSI payments who will be disposing of excess non-liquid resources.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–8060–U3	20,000	1	10	3,333	$22.50 *	24 **	$75,533 ***

* We based this figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data.

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Requests for Self-Employment Information, Employee Information, and Employer Information—20 CFR 422.120—0960–0508. When SSA cannot identify Form W–2 wage data for an individual, we place the data in an earnings suspense file and contact the individual (and certain instances the employer) to obtain the correct information. If the respondent furnishes the name and Social Security Number (SSN) information that agrees with SSA's records, or provides information that resolves the discrepancy, SSA adds the reported earnings to the respondent's Social Security record. We use Forms SSA–L2765, SSA–L3365, and SSA–L4002 for this purpose. The respondents are self-employed individuals and employees whose name and SSN information do not agree with their employer's and SSA's records.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–L2765	12,321	1	10	2,054	$22.50 *	24 **	$46,755 ***
SSA–L3365	179,749	1	10	29,958	22.50 *	24 **	674,595 ***
SSA–L4002	121,679	1	10	20,280	22.50 *	24 **	456,840 ***
Totals	313,749	.....	.....	52,292	.....	.....	1,178,190 ***

* We based this figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data.

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Supported Employment Demonstration (SED)—0960–0806. Sponsored by SSA, the SED builds on the success of the intervention designed for the Mental Health Treatment Study (MHTS) previously funded by SSA. The

MHTS provides integrated mental health and vocational services to disability beneficiaries with mental illness. The SED offers the same services to individuals with mental illness who SSA denied Social Security disability benefits. SSA seeks to determine whether offering this evidence-based package of integrated vocational and mental health services to denied disability applicants fosters employment that leads to self-sufficiency, improved mental health and quality of life, and reduced demand for disability benefits. The SED uses a randomized controlled trial to compare the outcomes of two treatment groups, and a control group. Study participation spans 36 months beginning on the day following the date of randomization to one of the three study groups. The SED study population consists of individuals aged 18 to 50 who apply for disability benefits alleging a mental illness and the initial decision is a denial of benefits in the past 60 days. The SED will enroll up to 1,000 participants in each of the three study arms for a total of 3,000 participants: 40 participants in each of three study arms for the 20 urban sites equaling an *n* of 2,400 urban site participants; and 20 participants in each of three arms for the 10 rural sites equaling an *n* of 600 rural site participants. We randomly select and assign each enrolled participant to one of three study arms:

- *Full-Service Treatment (n = 1,000).* The multi-component service model from the MHTS comprises the Full-Service Treatment. At its core are an Individual Placement and Support (IPS) supported employment specialist and behavioral health specialist providing IPS supported employment services integrated with behavioral health care. Participants in the full-service treatment group will also receive the services of a Nurse Care Coordinator who coordinates Systematic Medication Management services, as well assistance with: Out-of-pocket expenses associated with prescription behavioral health medications; work-related expenses; and services and treatment not covered by the participant's health insurance.
- *Basic-Service Treatment (n = 1,000).* The Basic-Service Treatment model leaves intact IPS supported employment integrated with behavioral health services as the centerpiece of the intervention arm. The Basic-Service Treatment is essentially the Full-Service model without the services of the Nurse Care Coordinator, Systematic Medication Management, and the funds associated with out-of-pocket expenses for prescription behavioral health medications.
- *Usual Services (n = 1,000).* This study arm represents a control group against which the two treatment groups we can compare. Participants assigned to this group seek services as they normally would (or would not) in their community. However, at the time of randomization, each Usual Service participant will receive a comprehensive manual describing mental health and vocational services in their locale, along with state and national resources.

This study will test the two treatment conditions against each other and against the control group on multiple outcomes of policy interest to SSA. The key outcomes of interest include: (1) Employment; (2) earnings; (3) income; (4) mental status; (5) quality of life; (6) health services utilization; and (7) SSA disability benefit receipt and amount. SSA is also interested in the study take up rate (participation), knowing who enrolls (and who does not), and fidelity to evidence-based treatments, among other aspects of implementation. Data collection for the evaluation of the SED will consist of the following activities: Baseline in-person participant interviews; quarterly participant telephone interviews; receipt of SSA administrative record data; and collection of site-level program data. Evaluation team members will also conduct site visits involving:

(1) Pre-visit environmental scans in order to understand the local context in which SED services are embedded; (2) independent fidelity assessments in conjunction with those carried out by state Mental Health/Vocational Rehabilitation staff; (3) key informant interviews with the IPS specialist, the nurse care coordinator, the case manager, and facility director; (4) focus groups with participants in the Full-Service and Basic-Service Treatment groups; and (5) ethnographic data collection consisting of observations in the natural environment and person-centered interviews with participants and non-participants. The respondents are study participants and non-participants, family members, IPS specialists, nurse care coordinators, case managers, and facility directors.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Competency and CIDI Screener	1,878	1	1,878	75	2,348	$7.50 *	$17,610 **
Baseline Interview	3,000	1	3,000	45	2,250	7.50 *	16,875 **
Quarterly Interview (Quarters 1, 2, 3, 5, 6, 7, 9, 10, and 11)	3,000	9	27,000	20	9,000	7.50 *	67,500 **
Annual Interview (Quarters 4, 8, and 11)	3,000	3	9,000	30	4,500	7.50 *	33,750 **
Fidelity Assessment Participant Interview	180	4	720	60	720	7.50 *	5,400 **
Key Informant Interview	120	4	480	60	480	17.22 *	8,266 **
Participant Focus Groups	600	2	1,200	60	1,200	7.50 *	9,000 **
Person-Centered Interview	180	4	720	60	720	7.50 *	5,400 **
Totals	11,958	.....	43,998	.....	21,218	.....	163,801 **

* We based these figures on average hourly wage for disabled workers and social and human service workers.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: April 22, 2020.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2020–08927 Filed 4–27–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11099]

Call for Reviewers of the World Ocean Assessment

ACTION: Notice; request for comment.

SUMMARY: The U.S. Department of State, in coordination with the Subcommittee on Ocean Science and Technology, requests expert review of the draft World Ocean Assessment.

DATES: Beginning on 27 April 2020, experts may register to review and access the draft WOA at *https://review.globalchange.gov,* a web-based review and comment system. Reviewers will have until midnight 21 May 2020 to submit their review comments using the web-based review and comment system.

ADDRESSES: Detailed instructions for review and submission of comments are available at *https://review.globalchange.gov.* Comments submitted as part of this review will not be attributed to individual experts, and no personal information submitted as part of the registration process will be disclosed publicly.

FOR FURTHER INFORMATION CONTACT: Adam Bloomquist, *BloomquistA@state.gov,* 202–647–0240

SUPPLEMENTARY INFORMATION: The United Nations (UN) undertakes a regular process for global reporting on, and assessment of, the state of the marine environment, including socioeconomic aspects, the product of which is called the World Ocean Assessment (WOA). The first WOA was completed in 2015, and the projected completion date for the second WOA is December 2020, with a goal of documenting trends in the state of the marine environment observed since the publication of the first WOA. The second WOA includes more than fifty subjects grouped within four main themes: Drivers of changes in the marine environment; current state of the marine environment and its trends; trends in pressures on the marine environment; and trends in management approaches to the marine environment. A scientific and technical summary will integrate content to show linkages through interdisciplinary subjects such as human impacts, ecosystem services, and habitats. More information regarding the evolution and methodology of the WOA can be found at *https://www.un.org/regularprocess/.*

This spring, UN Member States will have an opportunity to review the draft WOA, which is expected to be composed of 65 chapters and subchapters (approximately fifteen pages each) and a technical summary (approximately 70 pages); the outline (*https://www.un.org/regularprocess/sites/www.un.org.regularprocess/files/outline_for_the_second_world_ocean_assessment_rev.pdf*) illustrates the very wide range of expertise needed for such a review. The Department of State invites experts in relevant fields to participate in the U.S. Government review of the draft WOA.

A Review Coordination Team composed of Federal scientists and program managers will develop a consolidated U.S. Government review submission. Only comments received via the web-based review and comment system within the comment period will be considered by the Review Coordination Team for inclusion in the U.S. Government review submission.

Zachary A. Parker,

Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2020–08917 Filed 4–27–20; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent to Seek Extension of Approval: Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act

AGENCY: Surface Transportation Board.

ACTION: Notice and Request for Comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of Dispute Resolution Procedures, as described below. The Board previously published a notice about this collection in the **Federal Register** on February 24, 2020 (85 FR 10507). That notice allowed for a 60-day public review and comment period. No comments were received.

DATES: Comments on this information collection should be submitted by May 28, 2019.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board: Dispute Resolution Procedures.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: by email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, and to *PRA@stb.gov.* For further information regarding this collection, contact Michael Higgins, Deputy Director, Office f Public Assistance, Governmental Affairs (OPAGAC), and Compliance, at (202) 245–0284 or *michael.higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) The ccuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Dispute Resolution Procedures.

OMB Control Number: 2140–0036.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Parties seeking the Board's informal assistance under Fixing America's Surface Transportation Act, Public Law 114–94 (signed Dec. 4, 2015) (FAST Act).

Number of Respondents: Three.

Estimated Time Per Response: One hour.

Frequency: On occasion.

Total Burden Hours (annually including all respondents): Three hours (estimated hours per response (1) × total number of responses (3)).

Total Annual ''Non-hour Burden'' Cost (such as start-up and mailing costs): There are no non-hourly burden costs for this collection.

Needs and Uses: Title XI of the FAST Act, entitled ''Passenger Rail Reform and Investment Act of 2015,'' gives the Board jurisdiction to resolve cost allocation and access disputes between the National Railroad Passenger Corporation (Amtrak), the states, and potential non-Amtrak operations of intercity passenger rail service. The FAST Act directs the Board to establish procedures for the resolution of these disputes, ''which may include the provision of professional mediation services.'' 49 U.S.C. 24712(c)(2), 24905(c)(4). Under 49 CFR 1109.5, the Board provides that parties to a dispute involving the State-Sponsored Route Committee or the Northeast Corridor Committee may, by a letter submitted to OPAGAC, request the Board's informal assistance in securing outside professional mediation services. The letter shall include a concise description of the issues for which outside professional mediation services are sought. The collection by the Board of these request letters enables the Board to meet its statutory duty under the FAST Act.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: April 22, 2020.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–08955 Filed 4–27–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval: Household Goods Movers' Disclosure Requirements

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the information collection (here, third-party disclosures), as described below. The Board previously published a notice about this collection in the **Federal Register** on February 24, 2020 (85 FR 10506). That notice allowed for a 60-day public review and comment period. No comments were received.

DATES: Comments on this information collection should be submitted by May 28, 2020.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board: Household Goods Movers' Disclosure Requirements.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: By email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, and to *PRA@stb.gov.* For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245–0284 or *michael.higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Household Goods Movers' Disclosure Requirements.

OMB Control Number: 2140–0027.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Household goods movers that desire to offer a rate limiting their liability on interstate moves to anything less than replacement value of the goods.

Number of Respondents: 4,500 (This is the approximate number of active household goods carriers in the United States according to the Federal Motor Carrier Safety Administration. *See* 2019 Pocket Guide to Large Truck and Bus Statistics (January 2020) section 1–7 Household Goods Carriers and Brokers Operating in the United States, 2014–2018.))

Frequency: On occasion.

Total Burden Hours: None. The change to the estimate form was a one-time, start-up cost, which was considered in the cost analysis of the Board's initial approval for this collection. The Board's initial request for approval estimated that 15 of the approximately 4,500 household goods movers were large firms that print their own forms and would have to produce modified forms to meet the new requirement. Further, any new large mover entrants would have to create forms based on other agency regulations—with or without the released rate disclosure—and, therefore, there is no hourly burden for this collection.

Total ''Non-hour Burden'' Cost: Movers may provide these forms to shippers electronically. Further, as with the burden hours above, the one-time, start-up costs that were previously considered will no longer apply to existing movers, and new entrants will not incur any significant cost to add released rate information to the forms already required under other agency regulations. Therefore, there is no discernable, non-hourly cost burden for this collection.

Needs and Uses: In the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, section 4215, Public Law 109–59, 119 Stat. 1144, 1760 (2005), Congress directed the Board to review consumer protection regulations concerning the loss or damage that occurs during interstate household goods moves. In Docket No. RR 999, the Board required household goods motor carriers and freight forwarders wishing to offer a rate limiting their liability on interstate moves to anything less than replacement value of the goods to provide their customers with clear written information concerning the two available cargo-liability options (a full replacement-value protection option and a lower, released-rate protection option). Movers are required to provide this information on the standard written estimate form that the Federal Motor Carrier Safety Administration requires movers to provide to their household goods moving customers. *See* 49 CFR 375.213. This information allows for early notice to household goods moving customers regarding the two liability options, as well as adequate time and information to help consumers decide which option to choose. If the customer elects anything other than full-value protection, the mover must inform the customer of his or her rights and obtain a signed waiver, as provided on the form. By imposing these notice requirements, this collection enables the Board to meet its statutory duty.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: April 22, 2020.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–08954 Filed 4–27–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval: Petitions for Declaratory Order and Petitions for Relief Not Otherwise Specified

ACTION: Notice and Request for Comments.

AGENCY: Surface Transportation Board.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for extensions of the collections regarding petitions for declaratory order and petitions for relief not otherwise specified, as described below. The Board previously published a notice about these collections in the **Federal Register** on February 24, 2020 (85 FR 10508). That notice allowed for a 60-day public review and comment period. No comments were received.

DATE: Comments on these information collections should be submitted by May 28, 2020.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board: Petitions for Declaratory Order and Petitions for Relief Not Otherwise Specified.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: By email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, and to *PRA@stb.gov.* For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245–0284 or *michael.higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: For each collection, comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collections

Collection Number 1

Title: Petitions for declaratory order.

OMB Control Number: 2140–0031.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, railroads, communities, and other stakeholders that choose to seek a declaratory order from the Board to terminate a controversy or remove uncertainty.

Number of Respondents: Approximately 10.

Estimated Time Per Response: 183 hours.

Frequency: On occasion. In calendar years 2017–2019, approximately 10 petitions for declaratory order were filed with the Board per year.

Total Burden Hours (annually including all respondents): 1,830 hours (estimated hours per petition (183) × total number of petitions (10)).

Total ''Non-hour Burden'' Cost: $12,360 (estimated non-hour burden cost per petition ($1,236) × total number of petitions (10)).

Needs and Uses: Under 5 U.S.C. 554(e) and 49 U.S.C. 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. Because petitions for declaratory order can encompass a broad range of issues and types of requests, the Board does not prescribe specific instructions for their filing. The collection by the Board regarding petitions for declaratory order that parties choose to file enables the Board to meet its statutory duty to regulate the rail industry.

Collection Number 2

Title: Petitions for relief not otherwise provided.

OMB Control Number: 2140–0030.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, railroads, communities, and other

stakeholders that seek to address issues under the Board's jurisdiction that are not otherwise specifically provided for under the Board's other regulatory provisions.

Number of Respondents: Approximately four.

Estimated Time Per Response: 25 hours.

Frequency: On occasion. In calendar years 2017–2019, approximately four petitions of this type were filed with the Board per year.

Total Burden Hours (annually including all respondents): 100 hours (estimated hours per petition (25) × total number of petitions (4)).

Total ''Non-hour Burden'' Cost: $280 (estimated non-hour burden cost per petition ($70) × total number of petitions (four)).

Needs and Uses: Under 49 U.S.C. 1321 and 49 CFR part 1117 (the Board's catch-all petition provision), shippers, railroads, and the public in general may seek relief (such as waiver of the Board's regulations) not otherwise specifically provided for under the Board's other regulatory provisions. Under section 1117.1, such petitions should contain three items: (a) A short, plain statement of jurisdiction, (b) a short, plain statement of petitioner's claim, and (c) request for relief. The collection by the Board of these petitions that parties choose to file enables the Board to more fully meet its statutory duty to regulate the rail industry.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: April 22, 2020.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–08957 Filed 4–27–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–04]

Petition for Exemption; Summary of Petition Received; American Robotics, 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 May 18, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0775 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 April 22, 2020.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0775

Petitioner: American Robotics, Inc.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i); 91.9(b)(2); 91.119(c); 91.121; 91.151(b); & 91.203(a) & (b).

Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner to operate its proprietary Scout quadcopter unmanned aircraft system (UAS), with a maximum gross takeoff weight of 20 pounds, in rural agricultural settings in accordance with a Special Airworthiness Certificate in the experimental category for the purposes of: Research and development; crew training; and customer crew training. The Scout UAS is a highly-automated industrial vertical takeoff and landing electric multirotor that has been custom designed. Operations under the requested exemption would only be conducted in Class G airspace with areas having light air traffic, in daylight visual meteorological conditions, and would be limited to 400 feet above ground level. Individual missions will occur within the boundaries of controlled access farmland (or similar rural, controlled access environments) owned or controlled by the petitioner's customers.

[FR Doc. 2020–08952 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0215]

Hours of Service of Drivers: Right-A-Way LLC.; Application for Exemptions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemptions; request for comments.

SUMMARY: FMCSA announces that it has received an application from Right-A-Way, LLC (Right-A-Way) requesting an exemption from the requirement that its short-haul drivers use electronic logging devices (ELDs) when they are required to prepare records of duty status (RODS) more than eight days in a 30 consecutive day period. FMCSA requests public comment on Right-A-Way's application.

DATES: Comments must be received on or before May 28, 2020.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2019–0215 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Send comments to Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: Bring comments to Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Docket Operations, Room W12–140, on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202 366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0215), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2019–0215'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Currently, 49 CFR 395.1(e) provides exceptions from the requirement to prepare records of duty status (RODS) for drivers operating in short-haul operations, provided certain conditions are satisfied. Section 395.8(a)(1)(iii)(A)(1) allows motor carriers to require drivers to record drivers' duty status mannually rather than use an ELD, if the drivers are operating commercial motor vehicles ''in a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period.'' Taken together, drivers operating in short-haul operations are not required to prepare RODS, except for the days when they do not satisfy all the criteria provided in 49 CFR 395.1(e). They may prepare paper RODS for those occasions as long as RODS are not used more than eight days in a 30-day period. For operations where the short-haul drivers fail to satisfy the applicable criteria more than eight days in a 30-day period, the carrier and its drivers would be required to use ELDs.

Right-A-Way is requesting an exemption from the requirement to use ELDs when its drivers do not satisfy all the criteria for the short-haul exception to the RODS requirement, more than eight days in a 30-day period. The exemption would enable the company's short-haul drivers to use paper RODS rather than ELDs for more than eight days in a 30 consecutive day period. A copy of the exemption application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on Right-A-Way's application for an exemption. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the ''Addresses'' section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2020–09013 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0271]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Accident Recordkeeping Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled ''Accident Recordkeeping Requirements.'' This ICR relates to Agency requirements that motor carriers maintain a record of accidents involving their commercial motor vehicles (CMVs). Motor carriers are not required to report this data to FMCSA, but must produce it upon inquiry by authorized Federal, State or local officials.

DATES: We must receive your comments on or before June 29, 2020.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2019–0271 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 53(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, Driver and Carrier Operations Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: Title 49 of the Code of Federal Regulations, Section 390.15(b), requires motor carriers to make certain specified records and information pertaining to CMV accidents available to an authorized representative or special agent of FMCSA upon request or as part of an inquiry. Motor carriers are required to maintain an ''accident register'' consisting of information concerning all ''accidents'' involving their CMVs (49 CFR 390.15(b) (see ''Definition: Accident'' below). The following information must be recorded for each accident: date, location, driver name, number of injuries, number of fatalities, and whether certain dangerous hazardous materials were released. In addition, the motor carrier must maintain copies of all accident reports required by insurers or governmental entities. Motor carriers must maintain this information for three years after the date of the accident. Section 390.15 does not require motor carriers to submit any information or records to FMCSA or any other party.

This ICR supports the DOT strategic goal of safety. By requiring motor carriers to gather and record information concerning CMV accidents, FMCSA is strengthening its ability to assess the safety performance of motor carriers. This information is a valuable resource in Agency initiatives to prevent, and reduce the severity of, CMV crashes.

The Agency has modified several of its estimates for this ICR. The estimated number of annual respondents has decreased substantially, while the numbers of responses, burden hours, and annual costs to respondents have increased. Explanations for these changes are summarized below.

The previously-approved number of annual respondents is 866,122. This estimate was based on records of all interstate and intrastate motor carriers with ''recent activity'' in the Motor Carrier Management Information System (MCMIS) for calendar year 2015. However, not all of these motor carriers experience a DOT-reportable crash every calendar year. To more accurately estimate the annual number of respondents, we looked at the carriers associated with crashes reported in MCMIS for calendar years 2016 through 2018 and calculated the annual average. This gave us a significantly reduced estimate of 89,270 respondents per year.

The previously-approved burden is 36,157 burden hours. The Agency increases its estimate to 55,425 burden hours. The text of section 390.15(b) is unchanged; the increase in burden hours does not reflect changes in the requirements for accident

recordkeeping. The adjustment in annual burden hours is due to a revised estimate of the number of reportable accidents from 120,522 to 184,749 per year, using interstate and intrastate DOT-reportable motor carrier crash records in MCMIS for calendar years 2016 through 2018. In the previous iteration of this ICR, only crash records for calendar year 2015 were considered, and only crashes for carriers with a DOT number and ''recent activity'' in MCMIS were included. In the current iteration of this ICR, we include recorded crashes in which there is not a recorded DOT number, but the CRASH_CARRIER_INTERSTATE field in MCMIS is coded as ''Interstate'' or ''Intrastate'' (thus suggesting that they are commercial carriers). This change in approach has resulted in an increased estimate of annual crashes subject to the Accident Register reporting requirements, and thus an increase in the number of responses, as each crash is associated with one response.

The revised version of this ICR includes estimated labor costs associated with maintaining the Accident Register. The previous iteration of this ICR did not include such an estimate; it only reported the estimated annual burden hours. The estimated annual labor cost for industry resulting from the Accident Register reporting requirements is $1,860,617.

Finally, the estimated annual cost associated with accident recordkeeping (outside of labor costs) is increased from $8,437 to $106,785. In the previous iteration of this ICR, it was assumed that all motor carriers were storing hard copy records offsite, which is less costly than storing hard copy records onsite due to reduced space requirements. In the current iteration of this ICR, FMCSA is assuming that (1) approximately 15 percent of motor carriers are storing their Accident Registers electronically, at no extra cost, and (2) approximately 85 percent of motor carriers are storing hard copy versions of their Accident Registers. FMCSA is further assuming that motor carriers that maintain paper records are storing their Accident Registers at their primary place of business, so that they have easy access to such records during an FMCSA investigation. This change in storage location increases the cost of storage, from $0.07 to $0.68 per accident recorded. While FMCSA is now assuming that some motor carriers are storing documents electronically at no extra cost, the overall number of responses has increased over prior years, overtaking the reduction in number of carriers storing hard copy records.

Title: Accident Recordkeeping Requirements.

OMB Control Number: 2126–0009.

Type of Request: Renewal of a currently approved collection.

Respondents: Motor carriers.

Estimated Number of Respondents: 89,270.

Estimated Number of Responses: 184,749.

Estimated Time per Response: 18 minutes.

Expiration Date: September 30, 2020.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 55,425 burden hours (184,749 accidents × 18 minutes per response/60 minutes in an hour = 55,425 hours).

Definitions: ''Accident'' is an occurrence involving a CMV operating on a public road which results in: (1) A fatality, (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle (49 CFR 390.5).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87.

Kenneth Riddle,

Acting Associate Administrator, Office of Research and Registration.

[FR Doc. 2020–09006 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0068]

Request for Comments on the Approval of a Previously Approved Information Collection: War Risk Insurance, Applications and Related Information

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 will be used to determine the eligibility of the applicant and the vessel(s) for participation in the War Risk Insurance program. 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 June 29, 2020.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2020–0068] 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: Michael Yarrington, 202–366–1915, Office of Marine Insurance, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Title: War Risk Insurance Applications and Related Information.

OMB Control Number: 2133–0011.

Type of Request: Renewal of a previously approved collection.

Abstract: As authorized by Section 1202, Title XII, Merchant Marine Act, 1936, as amended, (46 U.S.C. §§ 53901–53912) (Act), the Secretary of the U.S. Department of Transportation (Secretary) may provide war risk insurance for national defense or the

adequate for the needs of the waterborne commerce of the United States, if such insurance cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a state of the United States.

Respondents: Vessel owners or charterers interested in participating in MARAD's war risk insurance program.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Hours per Response: 12.8.

Annual Estimated Total Annual Burden Hours: 256.

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: April 23, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–09005 Filed 4–27–20; 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 6:00 p.m. to 8:00 p.m. The public meeting will be preceded by an open house from 4:00 p.m. to 6:00 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 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: April 23, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–08970 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2020–0006]

Agency Information Collection Activities; Notice and Request for Comment; Government 5-Star Safety Ratings Label Consumer Research

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for public comment on proposed collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget on a new collection of information. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for consumer information purposes for which NHTSA intends to seek OMB approval.

DATES: Written comments should be submitted on or before June 29, 2020.

ADDRESSES: You may submit comments, identified by the docket number [NHTSA–2020–0006] in the heading of this document, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQ.''

• *Mail or Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the information collection process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Mike Joyce, Marketing Specialist, Office of Communications and Consumer Information (NCO–0200), National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE, W52–238, Washington, DC 20590. Mike Joyce's phone number is 202–366–5600 and his email address is *Mike.Joyce@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public

comments on the following proposed collection of information for which the agency is seeking approval from OMB:

Title: Government 5-Star Safety Ratings Label Consumer Research

Type of Request: Request for approval of a new information collection

Type of Review Requested: Regular

Requested Expiration Date of Approval: Three years from approval date.

Abstract: The National Highway Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of 1970 (23 U.S.C. 101) to save lives prevent injury, and reduce motor vehicle crashes on the Nation's highways. One of NHTSA's directives is to provide to the public the following information about passenger motor vehicles: Damage susceptibility; crashworthiness, crash avoidance, and any other areas NHTSA determines will improve safety of passenger motor vehicles; and the degree of difficulty of diagnosis and repair of damage to, or failure of, mechanical and electrical systems. (49 U.S.C. 32302). Under its New Car Assessment Program (NCAP) and 5-Star Safety Ratings Program, NHTSA conducts frontal crash, side crash and rollover resistance tests to new vehicles and, based on the results, assigns safety ratings to the tested vehicles. The ratings enable consumers to consider and assess the relative safety of vehicles before deciding which new vehicle they want to purchase.

In 2005, Congress enacted SAFETEA–LU (Pub. L. 109–49), which required the safety ratings assigned by NHTSA under NCAP or a statement that the vehicle was not assigned safety ratings under NCAP to be included on the window label for new vehicles, known as the Monroney label.[1] On December 4, 2015, Congress enacted the Fixing America's Surface Transportation (FAST) Act which requires the Secretary of Transportation (NHTSA by delegation) to issue a rule to ensure crash avoidance information is provided next to crashworthiness information on vehicle windows stickers.[2]

In continuing support of its mission and to assist the agency in meeting its FAST Act requirement, NHTSA proposes to conduct qualitative research using focus groups in four geographic markets located across the country to evaluate design and consumer information improvements to the Government 5-Star Safety Ratings section of the Monroney label.[3] This information collection will involve a one-time phone voluntary survey involving members of the public to identify research participants and a one-time, in-person, focus group. Participants in the research program will be asked to evaluate design and consumer information improvements to the Government 5-Star Safety Ratings section of the vehicle window sticker. NHTSA will use the findings from this research to support planned changes to the label and future consumer communications on vehicle safety ratings and advanced crash avoidance technology system performance assessments.

Summary of the Collection of Information: In this collection of information, NHTSA is seeking approval to conduct qualitative focus groups with 72 consumer participants. The focus groups aim to achieve the following objectives:

(1) Evaluate the overall appeal of each label concept and identify specific likes and dislikes associated with specific components of the label;

(2) Measure the ease of comprehension for each label concept and understand which visual and text features are most effective at conveying vehicle safety information;

(3) Assess the distinctiveness of how the information is displayed and understand how best to make the vehicle safety information stand out on the Monroney label; and,

(4) Identify additional areas of improvement related to the three main label sections relating to safety protection, safety technology and overall vehicle safety performance.

Description of the Need for the Information and the Proposed Use of the Information: This collection of information will allow NHTSA to obtain critical information needed to fulfill the 2015 Fixing America's Surface Transportation (FAST) Act requirement that NHTSA issue a rule to ensure crash avoidance information is provided next to crashworthiness information on vehicle windows stickers.[4] Specifically, the data from this collection will be used to not only enhance consumer understanding of NHTSA's vehicle safety ratings and advanced crash avoidance technology system performance assessments, but also guide the development of communications that will help consumers as they consider this information in their vehicle purchase decisions.

Affected Public: Members of the public.

Number of Respondents: 560.

For this information collection, NHTSA plans to conduct a total of 8 focus groups (2 groups in each of 4 markets), each lasting approximately 90 minutes. NHTSA intends for each focus group to consist of approximately 9 participants for a total of 72 participants in the focus group sessions. Based on experience, NHTSA will need to recruit up to 14 people per focus group in order to ensure that at least 9 will appear at the focus group facility at the appointed time. If more than 9 participants show up at the facility for a given session, the research team will select 9 participants based on their profile information provided in the recruitment grid to seat. The remaining participants will be paid their honorarium and sent home. Therefore, in order to ensure that there are approximately 9 participants per focus group session, a total of 112 potential participants (14 per focus group) will be recruited via telephone screening calls, which are estimated to take 5 minutes per call. In order to recruit 112 potential participants, NHTSA estimates that it will be necessary to initially reach out to and screen 560 people. This is based on experience that demonstrates that of the people that are contacted, 20% will qualify for the study, be available, and be interested in participating in the focus group.

Estimated Total Annual Burden Hours: 154.7 hours.

NHTSA estimates the total burden per person actually participating in this focus group research is estimated to be 95 minutes (5 minutes for the screening/recruiting telephone call plus 90 minutes in the focus group discussion session). Additionally, the total burden per person recruited (but not participating in the discussions) is 5 minutes. Therefore, the total annual estimated burden imposed by this collection is approximately 154.7 hours.

[1] The Automobile Information Disclosure Act of 1958, 15 U.S.C. 1231–1233, requires that new vehicles carry a sticker on a window containing specified information about the vehicle.

[2] Section 24322 of Part II—Safety Through Informed Consumers Act of 2015. Public Law 114–94.

[3] The Automobile Information Disclosure Act of 1958, 15 U.S.C. 1231–1233, requires that new vehicles carry a sticker on a window containing specified information about the vehicle.

[4] Section 24322 of Part II—Safety Through Informed Consumers Act of 2015 requires the Secretary of Transportation (NHTSA by delegation) to issue a rule to ensure that crash avoidance information is indicated next to crashworthiness information on stickers placed on motor vehicles by their manufacturers. Public Law 114–94, December 4, 2015.

Category of respondent	Number of respondents	Participation time (minutes)	Burden (hours)
Recruit/Screening call (assumes 20% qualify; are available and interested in participating in the focus group)	560	5	46.7
Participation in 90-minute group	72	90	108
Total Burden			154.7

Estimated Costs to Respondents: $2,484.00.

The only cost burdens respondents will incur are costs related to travel to and from the research location. The costs are minimal and are expected to be offset by the honorarium that will be provided to all research participants. NHTSA estimates that each of the focus group participants will travel less than 30-miles one-way to the focus group location. Using the IRS standard mileage rate of $0.575 per mile,[5] each respondent is expected to incur no more than $34.50 in transportation costs. Therefore, NHTSA estimates that the total costs to all respondents will be $2,484.00.

Public Comments Invited: The results of this research will be used to inform communications for the New Car Assessment Program, also known as the Government 5-Star Safety Ratings program. Comments are invited on (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29)

Issued on: April 22, 2020.

James Kenneth Schulte,

Acting Associate Administrator, Office of Communications and Consumer Information.

[FR Doc. 2020–08949 Filed 4–27–20; 8:45 am]

BILLING CODE 4910–59–P

[5] From Internal Revenue Services' 2020 Standard Mileage Rate for business miles driven. *https://www.irs.gov/pub/irs-drop/n-20-05.pdf,* last accessed March 26, 2020.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Residence of Trusts and Estates—7701.

DATES: Written comments should be received on or before June 29, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Residence of Trusts and Estates—7701.

OMB Number: 1545–1600.

Regulation Project Number: TD 8813.

Abstract: This regulation provides the procedures and requirements for making the election to remain a domestic trust in accordance with section 1161 of the Taxpayer Relief Act of 1997. The information submitted by taxpayers will be used by the IRS to determine if a trust is a domestic trust or a foreign trust.

Current Actions: There are no changes being made to this regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 222.

Estimated Time per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 114.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2020.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2020–08983 Filed 4–27–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8874–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Notice of Recapture Event for New Markets Credit.

DATES: Written comments should be received on or before June 29, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Recapture Event for New Markets Credit.

OMB Number: 1545–2066.

Form Number: 8874–B.

Abstract: CDEs must provide notification to any taxpayer holder of a qualified equity investment (including prior holders) that a recapture event has occurred. This form is used to make the notification as required under Regulations section 1.45D–1(g)(2)(i)(B).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 5 hours; 30 minutes.

Estimated Total Annual Burden Hours: 2,755.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2020.

Martha Brinson,

Tax Analyst.

[FR Doc. 2020–08985 Filed 4–27–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for Nominations.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications from individuals to be considered for selection as members of the Internal Revenue Service Advisory Council (IRSAC). Applications are currently being accepted for approximately 14 appointments that will begin in January 2021. Nominations may be submitted by individuals or organizations. IRSAC members are drawn from substantially diverse backgrounds representing a cross-section of the taxpaying public with substantial, disparate experience in tax preparation for individuals, small businesses and/or large, multi-national corporations; information reporting, tax-exempt and government entities; digital services; and professional standards of tax professionals. They should describe and document the proposed member's qualifications for IRSAC. In particular, the IRSAC is seeking applicants with knowledge and background in some of the following areas:

- Large Business & International—International tax expertise, experience as a certified public accountant or tax attorney working in or for a large, sophisticated organization, and/or experience working in-house at a major firm dealing with complex organizations.
- Small Business & Self-Employed—Experience with online or digital businesses, experience with audit representation, experience educating on tax issues and topics, knowledge of passthrough entities, and/or knowledge of fiduciary tax.
- Tax Exempt & Government Entities—Experience in exempt organizations and/or experience with Indian tribal governments.
- Wage & Investment—Knowledge of tax law application/tax preparation experience, familiarity with IRS tax forms and publications, knowledge of the audit process, experience educating on tax issues and topics, knowledge of income tax issues related to refundable credits, tax software industry experience, Volunteer Income Tax Assistance and Tax Counseling for the Elderly experience, experience marketing/applying industry benchmarks to operations, and/or financial services information technology background with knowledge of technology innovations in public and private customer service sectors.

The IRSAC serves as an advisory body to the Commissioner of Internal Revenue and provides an organized public forum for discussion of relevant tax administration issues between IRS officials and representatives of the public. The IRSAC proposes enhancements to IRS operations, recommends administrative and policy changes to improve taxpayer service, compliance and tax administration, discusses relevant information reporting issues, addresses matters concerning tax-exempt and government entities, and conveys the public's perception of professional standards and best practices for tax professionals.

This is a volunteer position. Members are not paid for their services. IRSAC members gather in Washington, DC, for approximately four, two-day working sessions and one public meeting per year. All travel expenses within government guidelines are reimbursed. Appointed by the Commissioner of Internal Revenue with the concurrence of the Secretary of the Treasury, IRSAC members serve three-year terms to allow for a rotation in membership and ensure that different perspectives are represented. In accordance with the Department of Treasury Directive 21–03, a clearance process, including annual tax compliance checks and a practitioner check with the IRS Office of

Professional Responsibility, will be conducted. In addition, all applicants deemed ''Best Qualified'' shall undergo a Federal Bureau of Investigation fingerprint check.

DATES: Written nominations must be received on or before June 12, 2020.

ADDRESSES: Nominations should be submitted to: IRS National Public Liaison, ATTN: Anna Brown, via email to *publicliaison@irs.gov* or electronic fax to 855–811–8021. More information, including the application form, is available on the IRS website at *https://www.irs.gov/tax-professionals/open-season-for-membership-in-the-internal-revenue-service-advisory-council-irsac-1*.

FOR FURTHER INFORMATION CONTACT: Anna Brown at 202–317–6564 (not a toll-free number) or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRSAC is authorized under the Federal Advisory Committee Act, Public Law 92–463. The first Advisory Group to the Commissioner of Internal Revenue—or the Commissioner's Advisory Group (''CAG'')—was established in 1953 as a ''national policy and/or issue advisory committee.'' Renamed in 1998, the Internal Revenue Service Advisory Council (IRSAC) reflects the agency-wide scope of its focus as an advisory body to the entire agency.

All applicants will be sent an acknowledgment of receipt.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees. Therefore, the IRS encourages nominations from such appropriately qualified candidates.

Dated: April 22, 2020.

John A. Lipold,

Designated Federal Official, IRSAC.

[FR Doc. 2020–08919 Filed 4–27–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6524

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Chief Counsel Application—Honors/Summer.

DATES: Written comments should be received on or before June 29, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Chief Counsel Application—Honors/Summer.

OMB Number: 1545–0796.

Form Number: 6524.

Abstract: Form 6524 is used as a screening device to evaluate an applicant's qualifications for employment as an attorney with the Office of Chief Counsel. It provides data deemed critical for evaluating an applicant's qualifications such as Law School Admission Test (LSAT) score, bar admission status, type of work preference, law school, and class standing.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2020.

Martha Brinson,

Tax Analyst.

[FR Doc. 2020–08984 Filed 4–27–20; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a virtual public hearing in Washington, DC on May 7, 2020 on ''China's Evolving Healthcare Ecosystem: Challenges and Opportunities.''

DATES: The hearing is scheduled for Thursday, May 7, 2020, at 9:30 a.m.

ADDRESSES: This hearing will be held online, with panelists and Commissioners participating via videoconference. Members of the public will be able to view a live webcast via the Commission's website at *www.uscc.gov.* Please check the Commission's website for possible

changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham at 202–624–1496, or via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This hearing will examine new developments in China's healthcare system, the challenges these pose to continued U.S. leadership in the medical sciences, as well as the opportunities they potentially create for U.S. researchers and companies. The first panel reviews China's domestic healthcare infrastructure, Beijing's ambitions for digital healthcare technologies, and China's public health emergency preparedness both before and after the emergence of the COVID–19 pandemic. The second panel will investigate linkages between the United States and Chinese healthcare ecosystems, with a particular emphasis on market access and data sharing, technological competition, and the benefits and risks of research cooperation.

The hearing will be co-chaired by Chairman Robin Cleveland and Commissioner Thea Lee. Any interested party may file a written statement by May 7, 2020 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: April 23, 2020.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2020–09002 Filed 4–27–20; 8:45 am]

BILLING CODE 1137–00–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a virtual public hearing in Washington, DC on May 8, 2020 on ''China's Strategic Aims in Africa.''

DATES: The hearing is scheduled for Friday, May 8, 2020, at 9:30 a.m.

ADDRESSES: This hearing will be held online, with panelists and Commissioners participating via videoconference. Members of the public will be able to view a live webcast via the Commission's website at *www.uscc.gov.* Please check the Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham at 202–624–1496, or via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This hearing will focus on China's activity and engagement with Africa and the implications of this on the United States. The first panel will assess Beijing's strategy towards Africa and its political influence on the continent, as well as analyze the implications of Chinese surveillance technology on the continent. The second panel will then examine China's economic engagement in Africa, including its desire for key commodities and investment in critical infrastructure, as well as China's growing role in Africa's digital economy. The third panel will look at Beijing's security presence on the continent, analyzing how China's military and security relationships in Africa further its geopolitical goals on the continent, Beijing's desire to become a preferred partner to African militaries, and China's efforts to use its security presence to protect its economic investments on the continent.

The hearing will be co-chaired by Vice Chairman Carolyn Bartholomew and Commissioner Andreas Borgeas. Any interested party may file a written statement by May 8, 2020 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: April 23, 2020.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2020–09001 Filed 4–27–20; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0648]

Agency Information Collection Activity: Foreign Medical Program (FMP) Registration Form and Claim Cover Sheet

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 29, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0648'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 615–9241.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Foreign Medical Program (FMP) Registration Form and Claim Cover Sheet, VA Forms 10–7959f–1, 10–7959f–2.

OMB Control Number: 2900–0648.

Type of Review: Extension of a currently approved collection.

Abstract: The Foreign Medical Program (FMP) is a federal health benefits program for Veterans, which is administered by the Department of Veterans Affairs (VA) Veterans Health Administration (VHA). The FMP is a Fee for Service (indemnity plan) program and provides reimbursement for VA adjudicated service-connected conditions. Title 38 CFR 17.35 states that VA will provide coverage for the Veteran's service-connected disability when the Veteran is residing or traveling overseas. Title 38 CFR 17.125(c) states that requests for consideration of claim reimbursement from approved health care providers and Veterans are to be mailed to VHA Health Administration Center. VA currently collects information for FMP reimbursement through an OMB approved collection under 2900–0648, using VA Form 10–7959f–1, Foreign Medical Program (FMP) Registration Form, and VA Form 10–7959f–2, Foreign Medical Program Claim Cover Sheet. This collection of information is necessary to continue to reimburse Veterans or providers under the FMP.

a. VA Form 10–7959f–1 will collect information used to register into the FMP those Veterans with service-connected disabilities who are living or traveling overseas.

b. VA Form 10–7959f–2 will collect information to streamline the FMP claims submission process for claimants or providers, while also reducing the time spent by VA on processing FMP claims. The cover sheet will explain to foreign providers and Veterans the basic information required for the processing and payment of claims.

VA Form 10–7959f–1

Affected Public: Individuals and households.

Estimated Annual Burden: 111 hours.

Estimated Average Burden Per Respondent: 4 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 1,660.

VA Form 10–7959f–2

Affected Public: Individuals or households; private sector.

Estimated Annual Burden: 3,652 hours.

Estimated Average Burden Per Respondent: 11 minutes.

Frequency of Response: 12 times annually.

Estimated Number of Respondents: 1,660.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020–08909 Filed 4–27–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0020]

Agency Information Collection Activity Under OMB Review: Designation of Beneficiary Government Life Insurance, and Supplemental Designation of Beneficiary Government Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0020.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Designation of Beneficiary Government Life Insurance (VA Form 29–336) and Supplemental Designation of Beneficiary Government Life Insurance (VA Form 29–336a)

OMB Control Number: 2900–0020.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by the insured to designate beneficiaries and select an optional settlement to be used when the insurance matures by death. The information is required to determine the claimant's eligibility to receive the proceeds. The information on the form is required by law, 38 U.S.C. Sections 1917, 1949 and 1952.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 29 on February 12, 2020, pages 8097 and 8098.

Affected Public: Individuals and households.

Estimated Annual Burden: 13,917 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 83,500.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance, and Risk, Department of Veterans Affairs.

[FR Doc. 2020–08928 Filed 4–27–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Tuesday,

No. 82 April 28, 2020

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northern Mexican Gartersnake and Narrow-Headed Gartersnake; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2020–0011; FF09E21000 FXES11110900000 201]

RIN 1018–BD96

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northern Mexican Gartersnake and Narrow-Headed Gartersnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising our proposed designation of critical habitat for the northern Mexican gartersnake (*Thamnophis eques megalops*) and narrow-headed gartersnake (*Thamnophis rufipunctatus*) under the Endangered Species Act, as amended (Act). In total, approximately 27,784 acres (11,244 hectares) in La Paz, Mohave, Yavapai, Gila, Cochise, Santa Cruz, and Pima Counties in Arizona, and in Grant County in New Mexico, fall within the boundaries of the revised proposed critical habitat designation for the northern Mexican gartersnake; and 18,701 acres (7,568 hectares) in Greenlee, Graham, Apache, Yavapai, Gila, and Coconino Counties in Arizona, as well as in Grant, Hidalgo, and Catron Counties in New Mexico, fall within the boundaries of the revised proposed critical habitat designation for the narrow-headed gartersnake. We also announce the availability of a draft economic analysis of the revised proposed designation of critical habitat for northern Mexican and narrow-headed gartersnakes. We request comments from all interested parties on this revised proposed rule and the associated draft economic analysis. Comments submitted on our July 10, 2013, proposed rule need not be resubmitted as they will be fully considered in the preparation of the final rule. If we finalize this rule as proposed, it would extend the Act's protections to these species' critical habitat.

DATES: We will accept comments on this revised proposed rule or the draft economic analysis that are received or postmarked on or before June 29, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by June 12, 2020.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal:

http://www.regulations.gov. In the Search box, enter FWS–R2–ES–2020–0011, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2020–0011, U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested, below, for more information).

Availability of supporting materials: The draft economic analysis is available at *http://www.fws.gov/southwest/es/arizona/,* at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0011, and at the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the administrative record and are available at *http://www.fws.gov/southwest/es/arizona,* at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2020–0011 and at the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service website and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Humphry, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, Fish and Wildlife Office, 9828 North 31st Ave #C3, Phoenix, AZ 85051–2517; telephone 602–242–0210. Persons who use a telecommunications device for the deaf (TDD), may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Both gartersnakes are listed as threatened under the Act (79 FR 38678; July 8, 2014). Designations and revisions of critical habitat can only be completed by issuing a rule.

What this document does. This is a revised proposed rule to designate critical habitat for northern Mexican gartersnake and narrow-headed gartersnake under the Act.

For reasons described later in this document, this revised proposed rule reduces the proposed critical habitat designation from what we proposed on July 10, 2013, as follows:

- For the northern Mexican gartersnake, the proposed designation is reduced from approximately 421,423 acres (170,544 hectares) to approximately 27,784 acres (11,244 hectares); and
- For the narrow-headed gartersnake, the proposed designation is reduced from approximately 210,189 acres (85,060 hectares) to approximately 18,701 acres (7,568 hectares).

The basis for our action. Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying

the role of peer review of listing actions under the Act, we sought the expert opinions of eight independent specialists on the July 10, 2013, proposed rule to ensure that our critical habitat proposal was based on scientifically sound data, assumptions, and analyses. We received responses from three of the peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for the two gartersnakes. Peer reviewers substantive comments have been addressed or incorporated into this revised proposed rule. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Such final decisions would be a logical outgrowth of this proposal, as long as we: (1) Base the decisions on the best scientific and commercial data available after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion.

Information Requested

We intend that any final action resulting from this revised proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this revised proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking, collecting, or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(2) Specific information on:

(a) The amount and distribution of northern Mexican or narrow-headed gartersnake habitat;

(b) Which areas, that were occupied at the time of listing (2013) and that contain the physical or biological features essential to the conservation of these species, should be included in the designation and why;

(c) What period of time should be used to ascertain occupancy at time of listing (2013) and why, and whether or not data from 1998 to the present should be used in this determination;

(d) Whether it is appropriate to use information from a long-term dispersal study on neonate, juvenile, and adult age classes of the Oregon gartersnake (*Thamnophis atratus hydrophilus*) in a free-flowing stream environment in northern California (Welsh *et al.* 2010, entire) as a surrogate for juvenile northern Mexican gartersnake and narrow-headed gartersnake dispersal;

(e) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(f) What areas not occupied at the time of listing are essential for the conservation of these species and why. We particularly seek comments regarding:

(i) Whether occupied areas are inadequate for the conservation of the species; and

(ii) Specific information that informs the determination of whether unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the northern Mexican or narrow-headed gartersnake and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act, in particular for those lands discussed in each critical habitat unit and in tables 3a and 3b, below.

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES**, above). Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Previous Federal Actions

On July 10, 2013, we published in the **Federal Register** (78 FR 41550) a proposed rule to designate critical habitat for northern Mexican gartersnake and narrow-headed gartersnake. In that proposed rule, we proposed to designate approximately 421,423 acres (ac) (170,544 hectares (ha)) as critical habitat in 14 units for the northern Mexican gartersnake and 210,189 ac (85,060 ha) as critical habitat in 6 units for the narrow-headed gartersnake. That proposal had a 60-day comment period, ending September 9, 2013. We received substantive comments during the comment period that have contributed to the current revised proposed rule.

Background

It is our intent to discuss in this document only those topics directly relevant to the designation of critical habitat for northern Mexican gartersnake and narrow-headed gartersnake. For more information on the two species, their corresponding habitats, and previous Federal actions concerning the two species, refer to the proposed designation of critical habitat published in the **Federal Register** on July 10, 2013 (78 FR 41550). The proposed rule is available online at *http://www.regulations.gov* (at Docket No. FWS–R2–ES–2020–0011) or from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary of the Interior (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the

species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts, if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed in the final listing rule published on July 8, 2014 (79 FR 38678), there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for these species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our proposed listing rule for the northern Mexican gartersnake and narrow-headed gartersnake (78 FR 41500; July 10, 2013), we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to these species and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) has been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for these species.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Mexican gartersnake and narrow-headed gartersnake is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of these species and habitat characteristics where these species are located. This and other information represent the best scientific and commercial data available and led us to conclude that the designation of critical habitat is determinable for the Mexican gartersnake and narrow-headed gartersnake.

Changes From Previously Proposed Critical Habitat

In this document, we are revising our proposed critical habitat designations for the northern Mexican gartersnake and narrow-headed gartersnake (78 FR 41550; July 10, 2013). We based these revisions on information we received during the comment period on the July 10, 2013, proposed rule, as well as on relevant scientific research conducted after the publication of that proposed rule. After the publication of the proposed rule, we found that there was

substantial scientific disagreement in the criteria we used to define what areas were occupied at the time of listing for each species, and the criteria we used to identify the lateral extent of critical habitat boundaries. We also received additional information including locations of each species at the time of listing, and the biological needs and corresponding habitat characteristics of each species. We also note that we no longer use primary constituent elements (PCEs) to identify areas as critical habitat. The Service eliminated primary constituent elements due to redundancy with the physical or biological features (PBFs). This change in terminology is in accordance with a February 11, 2016 (81 FR 7414), rule to implement changes to the regulations for designating critical habitat. We used the comments and additional information to revise: (1) The PBFs that are essential to the conservation of the species and which may require special management considerations or protection under the Act, (2) the criteria used to define the areas occupied at the time of listing for each species, and (3) the criteria used to identify critical habitat boundaries. We then apply the revised PBFs and identification criteria for each gartersnake species along with additional information we received regarding where these PBFs exist on the landscape to determine the geographic extent of each critical habitat unit. Finally, we provide clarification of some of the terms we used to define critical habitat for each species.

Primary Constituent Elements

Background

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Previous Proposed Rule's Primary Constituent Elements

As stated above, we now use only PBFs that are essential to the conservation of the species to describe critical habitat. We have modified the PCEs from the previous critical habitat rule, which are now PBFs in this rule. For your convenience, we are providing the PCEs from the previous proposed critical habitat rule for you to compare the changes.

The northern Mexican gartersnake's previous PCEs were:

(1) Aquatic or riparian habitat that includes:

a. Perennial or spatially intermittent streams of low to moderate gradient that possess appropriate amounts of in-channel pools, off-channel pools, or backwater habitat, and that possess a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of processing sediment loads; or

b. Lentic wetlands such as livestock tanks, springs, and cienegas; and

c. Shoreline habitat with adequate organic and natural inorganic structural complexity to allow for thermoregulation, gestation, shelter, protection from predators, and foraging opportunities (*e.g.,* boulders, rocks, organic debris such as downed trees or logs, debris jams, small mammal burrows, or leaf litter); and

d. Aquatic habitat with characteristics that support a native amphibian prey base, such as salinities less than 5 parts per thousand, pH greater than or equal to 5.6, and pollutants absent or minimally present at levels that do not affect survival of any age class of the northern Mexican gartersnake or the maintenance of prey populations.

(2) Adequate terrestrial space (600 feet (ft) (182.9 meter (m)) lateral extent to either side of bankfull stage) adjacent to designated stream systems with sufficient natural structural characteristics to support life-history functions such as gestation, immigration, emigration, and brumation (extended inactivity).

(3) A prey base consisting of viable populations of native amphibian and native fish species.

(4) An absence of nonnative fish species of the families Centrarchidae and Ictaluridae, bullfrogs (*Lithobates catesbeianus*), and/or crayfish (*Orconectes virilis, Procambarus clarki,* etc.), or occurrence of these nonnative species at low enough levels such that recruitment of northern Mexican gartersnakes and maintenance of viable native fish or soft-rayed, nonnative fish populations (prey) is still occurring.

The narrow-headed gartersnake's previous PCEs were:

(1) Stream habitat, which includes:

a. Perennial or spatially intermittent streams with sand, cobble, and boulder substrate and low or moderate amounts of fine sediment and substrate embeddedness, and that possess appropriate amounts of pool, riffle, and run habitat to sustain native fish populations;

b. A natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of processing sediment loads;

c. Shoreline habitat with adequate organic and natural inorganic structural complexity (*e.g.,* boulders, cobble bars, vegetation, and organic debris such as downed trees or logs, debris jams), with appropriate amounts of shrub- and sapling-sized plants to allow for

thermoregulation, gestation, shelter, protection from predators, and foraging opportunities; and

d. Aquatic habitat with no pollutants or, if pollutants are present, levels that do not affect survival of any age class of the narrow-headed gartersnake or the maintenance of prey populations.

(2) Adequate terrestrial space (600 ft (182.9 m) lateral extent to either side of bankfull stage) adjacent to designated stream systems with sufficient natural structural characteristics to support life-history functions such as gestation, immigration, emigration, and brumation.

(3) A prey base consisting of viable populations of native fish species or soft-rayed, nonnative fish species.

(4) An absence of nonnative fish species of the families Centrarchidae and Ictaluridae, bullfrogs (*Lithobates catesbeianus*), and/or crayfish (*Orconectes virilis, Procambarus clarki,* etc.), or occurrence of these nonnative species at low enough levels such that recruitment of narrow-headed gartersnakes and maintenance of viable native fish or soft-rayed, nonnative fish populations (prey) is still occurring.

Stream Flow

In the July 10, 2013, proposed rule (78 FR 41550) under PCE 1 for each species we use the terms ''perennial'' and ''spatially intermittent,'' but we did not include a definition of perennial or spatially intermittent flow.

In this revised proposed rule, we are defining the terms perennial, spatially intermittent, and ephemeral as related to stream flow in PBF 1 for each gartersnake species. We are clarifying the spectrum of stream flow regimes that provide stream habitat for each gartersnake species based on stream flow definitions in Levick *et al.* (2008, p. 6) and Stromberg *et al.* (2009, p. 330). A perennial stream or portion of a stream is defined as having surface flow continuously year round, except for infrequent periods of severe drought (Levick *et al.* 2008, p. 6). An intermittent stream is a stream where portions flow continuously only at certain time of the year (Levick *et al.* 2008, p. 6). An intermittent stream flows when it receives water from a spring, a ground-water source, or a surface source (such as melting snow [*i.e.,* seasonal]). During the dry seasons, frequently compounded by high evapotranspiration of watershed vegetation, the ground water table may drop below the elevation of the streambed, causing surface flow to cease or reduce to a series of separate pools or short areas of flow (Gordon *et al.* 2004, p. 51). An ephemeral stream is usually dry except for brief periods immediately following precipitation, and its channel is at all times above the groundwater table (Levick *et al.* 2008, p. 6). In the range of each gartersnake species, many streams have reaches with year-round water that are separated by intermittent or ephemeral reaches of flow, as a result of differences in geology along the stream. This variation of flow along a stream is common enough in the Southwest that hydrologists use the terms ''interrupted,'' ''perennial interrupted,'' or ''spatially intermittent'' to describe the spatial segmentation of a dryland stream into reaches that are perennial, intermittent, or ephemeral (Levick *et al.* 2008, p. 6; Stromberg *et al.* 2009, p. 330; Stromberg *et al.* 2013, p. 413). A stream that is interrupted, perennially interrupted, or spatially intermittent has perennial flow occurring in areas with shallow bedrock or high hydraulic connectivity to regional aquifers, and ephemeral to intermittent flow occurring in areas with deeper alluvial basins or greater distance from the headwaters (Stromberg *et al.* 2009, p. 330). The spatial patterning of wet and dry reaches on spatially intermittent streams changes through time in response to climatic fluctuations and to human modifications of the landscape (Stromberg *et al.* 2009, p. 331). In the remainder of this document, we use the terms ''perennial,'' ''spatially intermittent,'' and ''ephemeral'' in accordance with the above definitions.

For northern Mexican gartersnake, streams that have perennial or spatially intermittent flow can provide stream habitat for the species. Ephemeral reaches of streams can serve as habitat for northern Mexican gartersnakes, and are included in critical habitat as a separate PBF (#7) if such reaches are between perennial sections of a stream that were occupied at the time of listing. Streams that have ephemeral flow over their entire length do not usually provide habitat for the northern Mexican gartersnake, but are considered critical habitat when they may serve as corridors between perennial streams and lentic aquatic habitats including springs, cienegas, and natural or constructed ponds (livestock tanks) that were occupied at the time of listing.

For narrow-headed gartersnake, streams that have perennial flow or limited spatially intermittent flow that is primarily perennial provide stream habitat for the species. Narrow-headed gartersnakes have been documented in pools and shallow portions of an intermittent flow reach of the Blue River with wet areas separated by dry segments of 0.6 to 1.2 miles (1 to 2 kilometers (km)) in length (Cotten *et al.* 2017, p. 687). The wetted areas where gartersnakes were detected also had abundant native prey of the narrow-headed gartersnake, indicating that these areas may provide greater foraging opportunities during low flow periods (Cotten *et al.* 2017, p. 687). However, ephemeral reaches of streams do not provide habitat for narrow-headed gartersnakes. Within the range of the narrow-headed gartersnake, perennial streams become ephemeral as they approach their headwaters. However, narrow-headed gartersnakes have not been found in these ephemeral reaches because their fish prey base is likely absent and there is no upstream perennial habitat, so the ephemeral reaches do not provide connectivity.

Hydrologic Processes

In the previous proposed critical habitat rule, hydrologic processes of a stream were captured in PCE 1 as part of a component of aquatic habitat: ''[aquatic habitat that possesses] a natural, unregulated flow regime that allows for periodic flooding or, if flows are modified or regulated, a flow regime that allows for adequate river functions, such as flows capable of processing sediment loads.'' These processes are not the aquatic habitat or terrestrial habitat components themselves, but the flow regime and physical hydrologic and geomorphic connection that create and maintain a stream channel and continuously redefine the boundary between aquatic and riparian habitat used by both gartersnake species.

Both gartersnake species are dependent on terrestrial and aquatic habitat for all of their life-history functions, so it is important that hydrologic processes are present to maintain both the terrestrial and aquatic components of habitat for both gartersnake species. Therefore, we established a PBF (#2) for hydrological processes that is separate from the aquatic and terrestrial habitat PBF (#1).

Lentic Wetlands

For northern Mexican gartersnake, we removed lentic wetlands included in PCE 1 of the previous proposed rule and created a separate PBF (#6) that includes the aquatic and terrestrial components of these habitats.

Shoreline Habitat

In the previous proposed rule, shoreline habitat is included in PCE 1. For northern Mexican gartersnake, PCE 1 was ''aquatic or riparian habitat'' and for the narrow-headed gartersnake it was ''stream habitat.'' For both gartersnakes, we defined shoreline

habitat as areas having ''adequate organic and inorganic structural complexity'' with examples such as boulders, rocks, and organic debris for thermoregulation, gestation, shelter, protection from predators, and foraging opportunities.

In this revised proposed rule, we are no longer including the term ''shoreline habitat,'' because shorelines fluctuate and can include both terrestrial and aquatic habitat features used by either gartersnake species. Instead, a component of PBF 1 focuses on the organic and natural inorganic structural features important to each gartersnake species that fall within the stream channel that encompasses a fluctuating shoreline.

Water Quality

In the July 10, 2013, proposed rule, for the northern Mexican gartersnake under PCE 1, we state: ''Aquatic habitat with characteristics that support a native amphibian prey base, such as salinities less than 5 parts per thousand, pH greater than or equal to 5.6, and pollutants absent or minimally present at levels that do not affect survival of any age class of the northern Mexican gartersnake or the maintenance of prey populations'' (78 FR 41550, July 10, 2013, p. 78 FR 41584). In that proposed rule, for the narrow-headed gartersnake under PCE 1, we state: ''Aquatic habitat with no pollutants or, if pollutants are present, levels that do not affect survival of any age class of the narrow-headed gartersnake or the maintenance of prey populations'' (78 FR 41550, July 10, 2013, p. 78 FR 41601).

In this revised proposed rule, we are removing the specific salinity and pH requirement for habitat characteristics that support a native amphibian prey base for the northern Mexican gartersnake. As mentioned in the July 10, 2013, proposed rule, while native leopard frogs can be the primary prey base for adult northern Mexican gartersnakes in some areas, these gartersnakes feed on a variety of organisms that do not necessarily require the salinity and pH specified in the PCE (78 FR 41550, July 10, 2013, pp. 78 FR 41553–41554). Because we do not have salinity and pH values needed for the variety of aquatic organisms that the different age classes of northern Mexican gartersnakes eat, we are making this PBF more general. We did not make substantive changes to the relevant PBF component for narrow-headed gartersnake.

Prey Base

In the July 10, 2013, proposed rule, we described a wholly native prey base of amphibians and fish for the northern Mexican gartersnake in PCE 3, but in PCE 4, we state that nonnative fish are also prey for the species. In the discussion of PBFs, we noted that northern Mexican gartersnakes consume primarily amphibians and fishes, but that occasional invertebrates and other vertebrate taxa may be eaten opportunistically (78 FR 41550, July 10, 2013, p. 78 FR 41554) and that the success of northern Mexican gartersnake populations is, in some cases, tied to nonnative prey species consisting of larval and juvenile bullfrogs. We did not include these other taxa and bullfrogs in the PCEs because they are either relatively rare in the diet (in the case of invertebrates and other vertebrates) or in the case of bullfrogs, the adult frogs prey voraciously on gartersnake, and so despite the fact that the snakes eat the juveniles, the presence of bullfrogs indicates that the habitat is degraded.

We received additional information regarding the prey base of northern Mexican gartersnake. Additional research confirms that in some areas where native aquatic prey species are not available, viable populations of northern Mexican gartersnakes likely rely on bullfrogs and nonnative, soft-rayed and potentially spiny-rayed fish as a primary food source (Emmons *et al.* 2016, pp. 556–557; Emmons and Nowak 2016a, p. 44; Emmons and Nowak 2013, pp. 6, 15; Lashway 2012, p. 7). In other areas where native ranid frogs are no longer present, we have additional information to support that northern Mexican gartersnakes consume other anurans (frogs and toads), small mammals, lizards, and invertebrate species (Caldwell 2014, p. 1; d'Orgeix *et al.* 2013, p. 214; Emmons and Nowak 2016b, p. 9; Manjarriez *et al.* 2017, table 1).

In this revised proposed rule, for northern Mexican gartersnake, we are removing the requirement for a wholly native prey base and including the additional prey species described above in PBF 3. We also used ''anurans'' (frogs and toads) instead of ''amphibians'' to more accurately describe the gartersnake's primary prey. We do not make substantive changes to PBF 3 for narrow-headed gartersnake.

Primary Constituent Elements/Critical Habitat Boundaries

Terrestrial Space Along Streams

In the previous proposed rule, PCE 2 for both gartersnakes included ''[a]dequate terrestrial space (600 ft (182.9 m) lateral extent to either side of bankfull stage) adjacent to designated stream systems with sufficient structural characteristics to support life-history functions such as gestation, immigration, emigration, and brumation [extended inactivity]'' (78 FR 41550, July 10, 2013, pp. 78 FR 41584 and 78 FR 41601). In the discussion of the PBFs and PCEs, we stated that the northern Mexican gartersnake has been found up to 330 ft (100 m) away from permanent water (Rosen and Schwalbe 1988, p. 27), and the narrow-headed gartersnake has been found up to 650 ft (200 m) from water (Nowak 2006, pp. 19–21; 78 FR 41550, July 10, 2013, p. 78 FR 41557). We then state that ''[b]ased on the literature, we expect the majority of terrestrial activity for both species occurs within 600 ft (182.9 m) of permanent water in lotic habitat'' and that ''we believe a 600-ft (182.9-m) lateral extent to either side of bankfull stage will sufficiently protect the majority of important terrestrial habitat; provide brumation, gestation, and dispersal opportunities; and reduce the impacts of high flow events, thereby providing adequate protection to proposed critical habitat areas'' (78 FR 41550, July 10, 2013, p. 78 FR 41557). We go on to say that we determined 600-ft (182.9-m) lateral extent from bankfull width for four biological reasons, including maintaining the biological integrity and natural dynamics of the river system and associated riparian habitat, nutrient recharge, general aquatic habitat values, and providing adequate space for normal gartersnake behaviors.

We received numerous comments and additional scientific information regarding our definition of adequate terrestrial space for the two gartersnakes in two general categories. First, using a single distance of 600 ft (182.9 m) lateral extent from bankfull stage for both gartersnake species includes areas outside the area typically used by each gartersnake species and can include areas that do not have any of the PBFs essential to the conservation of each species, especially in higher order streams (Nowak 2006, pp. 19–20; Jennings and Christman 2012, pp. 8–12; Emmons and Nowak 2016a, p. 30; Myrand *et al.* 2017 p. 36). Second, using ''bankfull width'' as a measurement point for the lateral extent of critical habitat is difficult to determine on the ground as evidenced by our lack of mapping it as such in the July 10, 2013, proposed rule. Instead, we mapped critical habitat as a 1,200-ft (366-m) polygon surrounding the centerline of a stream (78 FR 41550, July 10, 2013, pp. 78 FR 41585, 78 FR 41601). We discuss both issues below.

At the time of the publication of the July 10, 2013, proposed rule, most of the

information we had on locations of both gartersnake species was from studies where traps were set within water to capture gartersnakes and then gartersnakes were subsequently released. This survey method does not provide information on how these species use terrestrial habitat. Nowak et al. (2006, entire), the study we referenced in our July 10, 2013, proposed rule, was the first study that used radio-telemetered narrow-headed gartersnakes to look at habitat use. This study only reported an individual narrow-headed gartersnake moving in a straight-line distance of 650 ft (200 m) from water location, which we used to inform lateral extent of critical habitat for both gartersnake species because this was the best available information. However, since the publication of the 2013 proposed rule, E. Nowak (2015) provided the Service a correct interpretation of her telemetry data for this individual and for the other narrow-headed gartersnakes recorded in this study. Nowak clarified that the narrow-headed gartersnake was found on a steep slope approximately 390 ft (150 m) above a stream in a narrow canyon in a brumation site (Nowak 2006, p. 17). Nowak further clarified that other narrow-headed gartersnakes were recorded using brumation sites on the steep slope, reporting horizontal distances from brumation sites to stream centerline between 276 and 328 ft (84 and 100 m). Nowak (2006, pp. 19–20) also reported at least five other individual narrow-headed gartersnakes overwintering at brumation sites not on steep slopes at 66 to 98 ft (20 to 30 m) from water. The important difference in the distance from the stream is dependent on the adjacent terrestrial topography. If the topography is steep slopes, then the gartersnake is found farther from the stream, but this additional distance is vertical, not horizontal, from the stream bank.

Since we published the 2013 proposed rule, researchers have completed additional telemetry studies for each gartersnake species that provide information on how each gartersnake species uses terrestrial habitat (Jennings and Christman 2012; Boyarski *et al.* 2015; Emmons and Nowak 2016a; Myrand *et al.* 2017; Sprague 2017; Nowak *et al.* 2019). For northern Mexican gartersnake, telemetry studies indicate home ranges of individuals ranging from 1.7 acres (0.7 ha) at a highly modified lentic site to 47.0 acres (19.04 ha) along a spatially intermittent stream (Boyarski *et al.* 2015, p. 12; Emmons and Nowak 2016a, pp. 27–28; Nowak *et al.* 2019, p. 31). Maximum longitudinal length within these home ranges varied from approximately 148 ft (45 m) at the lentic site to 2,736 ft (834 m) along the spatially intermittent stream (Boyarski *et al.* 2015, p. 12; Emmons and Nowak 2016a, pp. 27–28; Nowak *et al.* 2019, p. 31). Mean distance to water of northern Mexican gartersnake locations ranged from 3.87 to 312.5 ft (1.18 to 95.25 m) along Tonto Creek in north-central Arizona (Nowak *et al.* 2019, p. 40). These studies of northern Mexican gartersnake indicate that this species overwinters in rodent burrows, cavities below boulders and rock fields, and below debris piles located 1.6 ft (0.5 m) to approximately 558 ft (170 m) from the water's edge (Boyarski *et al.* 2015, p. 8; Emmons and Nowak 2016a, p. 30; Myrand *et al.* 2017, p. 21). Brumation sites were located an average of 129 ft (39.27 m) from the water's edge in two different areas along the Verde River in Arizona (Emmons and Nowak 2016a, p. 30). Nowak *et al.* (2019, p. 36) reported brumation sites for 14 northern Mexican gartersnakes that ranged from 2 to 1,257 ft (0.7 to 383 m) from the water's edge along the Tonto River in Arizona. Overwintering of seven gartersnakes at brumation sites was also recorded within 230 ft (70 m) of ponds, and one gartersnake overwintered at a site approximately 1,115 ft (350 m) from a pond (Boyarski *et al.* 2015, pp. 8, 11).

For narrow-headed gartersnake, telemetry studies in New Mexico on the Tularosa River, Gila River, and Whitewater Creek found individuals an average of 58.7 ft (17.9 m) from water, with a maximum distance of 285 ft (87 m) across four different sites on the three streams with a sample size of 69 individuals (Jennings and Chirstman 2012, pp. 9–10). Researchers found most snakes within 3.28 ft (1 m) of the water's edge (Jennings and Christman 2012, pp. 9–10). Narrow-headed gartersnakes were found with lowest average distance of 22.7 ft (6.9 m) during the dry season of 2010, and highest average distance of 88.3 ft (26.9 m) during the wet season in 2010 (Jennings and Chirstman 2012, pp. 9–10). Although, Nowak (2006, p. 19) reported that the maximum distance moved by one individual was 650 ft (200 m) from water on a steep hillside in a narrow canyon, she also reported that during the active season, she most often found individuals outside of water under boulders, small rocks, and broken concrete slabs located less than 328 ft (100 m) from the water's edge within the floodplain of Oak Creek and West Fork Oak Creek, Arizona.

Based on a review of this new information, clarification of Nowak's data, and comments we received, it is likely that 600 ft (182.9 m) does not accurately capture the lateral extent of terrestrial habitat used by either species. Consequently, we have modified the lateral extent boundary of critical habitat for both species. For northern Mexican gartersnake, we are defining the lateral extent to include the wetland or riparian zone adjacent to a stream or lentic water body, whichever is greater. Delineating based on riparian zone rather than delineating a set distance more accurately captures the foraging habitat used by the northern Mexican gartersnake. As described above in this section and under ''Hydrologic Processes,'' most northern Mexican gartersnake detections ranged from in water in the stream channel up to meadows or woodlands within the floodplain at the limit of the riparian zone. We are defining the riparian zone as the strip of vegetation along a stream that is of distinct composition and density from the surrounding uplands, or the area between the stream channel and the upland terrestrial ecosystem (Levick *et al.* 2008, pp. 6, 47). Although northern Mexican gartersnakes have been found in a variety of vegetation types within this riparian zone (*i.e.,* grasses, shrubs, and wetland plants), the underlying characteristic of this habitat needed by the gartersnake appears to be dense vegetation or other natural structural components that provide cover for the species. Size of the riparian zone and composition of plants within the riparian zone varies widely across the range of northern Mexican gartersnake. The width of critical habitat for northern Mexican gartersnake along streams varies from approximately 50 to 7,000 ft (15 to 2,134 m). Because the width of wetland and riparian zone varies along and among streams, and some streams have little to no riparian habitat but have wetland habitat that includes some terrestrial components, delineating these areas rather than delineating a set distance from the stream channel better captures the needed habitat for the northern Mexican gartersnake.

For narrow-headed gartersnake, we have modified the lateral extent boundary of critical habitat to include aquatic and terrestrial features within 89 ft (27 m) of the active channel of a stream. This distance captures the greatest average distance moved from the water during the wet season on the Tularosa River in New Mexico from a 3-year study with a sample size of 69 individuals at two different sites (Jennings and Christman 2012, p. 12). This is the largest study to date.

In addition, we have modified the delineation of where terrestrial habitat

begins. We chose to use the active channel instead of bankfull width because the active channel effectively defines a river or stream as a feature on the landscape (Mersel and Lichvar 2014, pp. 11–12). The active channel is established and maintained by flows that occur with some regularity (several times per year to several times per decade), but not by very rare and extremely high flood events. The outer limits of the active channel can generally be defined by three primary indicators that together form a discernable mark on the landscape: A topographic break in slope, change in vegetation characteristics, and change in sediment characteristics (Mersel and Lichvar 2014, pp. 13–14). The active channel is often a fairly obvious and easy feature to identify in the field, allowing for rapid and consistent identification (Mersel and Lichvar 2014, p. 14). Further, the active channel can be consistently recognized by the public.

These changes in determining lateral extent from streams have reduced the proposed critical habitat designation by 3,458 ac (1,399 ha), or less than 1 percent, of the area included in the July 10, 2013, proposed rule for critical habitat for northern Mexican gartersnake, and 41,927 ac (16,967 ha), or 20 percent, of the area included in that proposed rule for critical habitat for narrow-headed gartersnake (see tables 1a and 1b, below).

In addition, we are no longer including terrestrial space as a separate PBF, but are including both terrestrial and aquatic features that make up a stream in a single PBF (PBF 1) that more accurately captures the habitat requirements essential to each gartersnake species.

Overland Areas for Northern Mexican Gartersnake

In the July 10, 2013, proposed rule, for northern Mexican gartersnake, 5 of the 14 critical habitat units included additional terrestrial space beyond the 600-ft (182.9-m) lateral extent from bankfull stage of streams (overland areas or terrestrial space). In the discussion of space for individual and population growth for normal behavior under PBFs, we state that ''records for northern Mexican gartersnakes from semi-remote livestock tanks and spring sources suggest the species moves across the local landscape as part of its foraging ecology,'' (78 FR 41550, July 10, 2013, p. 78 FR 41554), and we cite observations by Drummond and Marcias-Garcia (1983, pp. 24, 35) of northern Mexican gartersnakes wandering hundreds of meters away from water, as well as Rosen and Schwalbe (1988, p. 27) observing a northern Mexican gartersnake 330 ft (100 m) away from permanent water. We described these areas as overland areas or terrestrial space between springs, seeps, streams, and stock tanks. We did not include these areas in a PCE, but we included them in the proposed designation of critical habitat. Upland areas that are distant from riparian habitat that the snakes use for foraging may be used while moving between habitats, but specific habitat attributes in these areas that are essential to the snakes have not been identified. In determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, the Act directs us to consider the physical or biological features (or PCEs under our previous regulations) that are essential to the conservation of the species and that may require special management considerations or protection. A common characteristic of these overland areas was the presence of natural or constructed livestock ponds within a grassland landscape in southern Arizona, although we did not define or discuss the scope of this grassland landscape in the July 10, 2013, proposed rule. We did not know how northern Mexican gartersnakes used the grassland landscape in between water features, so we used property and watershed boundaries to delineate large landscapes that encompassed the features that the species may use. We used a U.S. Geological Survey (USGS) Hydrological Unit Code (HUC) level 10 watershed boundary to delineate the Upper Santa Cruz River Subbasin Unit. We used property ownership boundaries to delineate the following units and subunits: Buenos Aires National Wildlife Refuge Unit, Las Cienegas National Conservation Area Subunit and Cienega Creek Natural Preserve Subunit in the Cienega Creek Subbasin Unit, Appleton-Whittell Research Ranch Subunit and Canelo Hills Cienega Preserve Subunit in the Babocomari River Subbasin Unit, and San Bernardino National Wildlife Refuge Unit. While property boundaries can delineate individual land management prescriptions and affect the likelihood for species persistence, property boundaries themselves are not linked to the PBFs that are essential to the conservation of northern Mexican gartersnake, where more accurate mapping methods are available, they should be used as an alternative to property boundaries. These overland areas encompassed 290,620 acres (47,441 ha) in the previous proposed rule, but only 12,745 acres (5,158 ha) had water bodies within them that contained PCE 1 and PCE 2, and were considered occupied at the time of listing. In other words, 96 percent of these lands included in critical habitat did not have PCEs for northern Mexican gartersnake as defined in the July 10, 2013, proposed rule.

Upon further inspection of all known locations of the species, no northern Mexican gartersnakes have been detected in the aforementioned overland areas in southern Arizona outside of stream floodplains. These eight lentic sites occupied at the time of listing, including natural and constructed ponds, all fall within a stream floodplain, although some of these streams are ephemeral. Data are still lacking to explain how the species moves through the overland areas between perennial or intermittent aquatic features, but we used our re-assessment of gartersnake locations in relation to stream floodplains, along with additional information obtained since the publication of the July 10, 2013, proposed rule, to refine the definition of terrestrial space used by the species. There is new information about how northern Mexican gartersnakes exploit seasonal amphibian prey species in ephemeral waters during the rainy season when prey is abundant within these grassland landscapes in southern Arizona (d'Orgeix *et al.* 2013, entire; Caldwell 2014, entire). After the first heavy rains of the monsoon season in 2012, northern Mexican gartersnakes were found foraging on seasonal amphibian prey (spadefood (*Spea multiplicata*)) and basking at the bases of Sacaton grass (*Sporobolus wrightii*) in and around a ponded area within an ephemeral section of the floodplain in O'Donnell Canyon. These northern Mexican gartersnakes were 0.75 miles (1.2 km) overland and 1.49 miles (2.3 km) along O'Donnell Canyon upstream of the closest known population of northern Mexican gartersnakes at Finley Tank (d'Orgeix 2013, p. 214). Caldwell (2014, p. 1) also found northern Mexican gartersnakes in wetted ephemeral habitat within the Cienega Creek floodplain: One in an off-channel marsh, and one in pool of water on a road that also contained spadefoot larva and metamorphs. We also have updated information on telemetered snakes moving in other terrestrial habitats along stream channels in northern Arizona (Emmons and Nowak 2013, entire; Emmons and Nowak 2016a, entire; Myrand *et al.* 2017, entire), as described earlier. This research has also

shown that when northern Mexican gartersnakes were surface active in habitats with perennial stream flow in northern Arizona, they were observed outside of water concealed under dense vegetative most of the time. While we do not have similar information for gartersnakes in grassland habitats, ephemeral channels in southern Arizona usually have more vegetative cover than the surrounding uplands, so we can deduce that it is more likely that gartersnakes are using these more densely vegetated areas that provide more cover to successfully move between aquatic sites in these grasslands. Based on this information, we are not including the overland terrestrial space between springs, seeps, streams, and stock tanks. In this revised proposed rule, we are including the springs, seeps, streams, and stock tanks and the ephemeral drainages that connect these wetlands to perennial streams. The resulting proposed critical habitat better represents our current understanding of the life history of the northern Mexican gartersnake and the habitat characteristics that facilitate its life-history functions. Consequently, no units or subunits include overland grassland areas, and all areas considered occupied under this revised proposed rule are adjusted in size to appropriately reflect the PBFs (see table 1a, below).

The removal of overland terrestrial space in these large grasslands has reduced the proposed critical habitat designation for northern Mexican gartersnake by 285,837 ac (115,674 ha), or 68 percent, of the area included in the July 10, 2013, proposed rule.

Elevation

In the July 10, 2013, proposed rule, we erroneously included some areas that are not within the elevation range of narrow-headed gartersnake, including portions of the West Fork Gila River, Black Canyon, Iron Creek, Diamond Creek, and Whitewater Creek.

In this revised proposed rule, we add the elevation range of each corresponding gartersnake species as a PBF to capture the range of where each species has been documented and exclude the areas that are outside the elevation ranges where the species occur. This reduces the proposed critical habitat designation by 2,320 ac (939 ha), or 1 percent, of the area included in the July 10, 2013, proposed rule for critical habitat for narrow-headed gartersnake (see table 1b, below).

Changes to Criteria Used To Identify Critical Habitat

Occupancy Records

On July 10, 2013, we published proposed rules to list both gartersnake species (78 FR 41500) and to designate critical habitat for both gartersnake species (78 FR 41550). On July 8, 2014, we published a final rule (79 FR 38678) listing both species.

In the proposed rule to designate critical habitat (78 FR 41550; July 10, 2013), we considered an entire stream as occupied at the time of listing for each corresponding gartersnake if it was within the historical range of the species, contained aquatic and terrestrial components of habitat defined by PCE 1 and PCE 2, had at least one record of the species dated 1980 or later, and had at least one native prey species present (78 FR 41550, July 10, 2013, p. 78 FR 41556). For the northern Mexican gartersnake, we also considered large overland areas (grasslands) within specific land ownership or watershed as occupied if they met the above criteria. We have reconsidered the use the criteria of one record of the species dated 1980 or later as a proxy for what was occupied at the time of listing. We received comments that using records dated 1980 or later to determine which streams are occupied at the time of listing is inconsistent with definitions we used to define the status of the northern Mexican gartersnake in prior Service status assessment documents, that our approach is not supported by the scientific literature, and that low gartersnake detection probabilities do not justify a broad historical approach to designate critical habitat. Thus, in this revised proposed rule, we take a more accurate approach (described below) to conclude what areas were likely occupied at the time of listing in 2014.

For northern Mexican gartersnake, the definition of occupancy we used to determine critical habitat in the July 10, 2013, proposed rule is significantly different from the criteria that we used to define what areas we considered the northern Mexican gartersnake extant or extirpated in other previous Service documents. In the 2006 and 2008 12-month findings (71 FR 56228, September 26, 2006; and 73 FR 71788, November 25, 2008, respectively), as well as in updates to the ''Species Assessment and Listing Priority Form'' described in our annual candidate notices of review (see 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011), ''extant'' was defined as areas where the species is expected to reliably occur in appropriate habitat as supported by museum records or recent, reliable observations. Based on this definition, only 42 percent of the total area considered occupied at the time of listing by the species in the July 10, 2013, proposed critical habitat designation was considered extant from 2006 to 2011. From 2006–2011, the Service defined ''extirpated'' as that there have been no individuals reported for a decade or longer at a site within the historical distribution of the species, despite survey efforts, and there is no expectation of natural recovery at the site due to the presence of known or strongly suspected causes of extirpation. Furthermore, the Service defined ''unknown'' as the species occurred based on museum records (mostly historically) but access is restricted, or survey data unavailable or insufficient, or where threats could preclude occupancy. Of the total area considered occupied by the species in the July 10, 2013, proposed critical habitat designation, 16 percent would have been considered extirpated, 23 percent would have been considered unknown, and 19 percent would have had no status based on the 2006–2011 definitions of status for northern Mexican gartersnake. In the July 10, 2013, proposed listing rule (78 FR 41500), we changed how we defined status to correspond with our definition of ''occupied'' in the July 10, 2013, proposed critical habitat rule (78 FR 41550). The most significant change in those 2013 publications was that we considered a gartersnake species extant in an area if it had been reported in an area in the past 33 years regardless of negative survey efforts or threats precluding occupancy. We justified using records of each species from the 1980s to determine that an area was occupied at the time of listing by stating that ''both species of gartersnake are cryptic, secretive, difficult to detect, quick to escape underwater, and capable of persisting in low or very low population densities that make positive detections nearly impossible in structurally complex habitat'' (78 FR 41550, July 10, 2013, p. 78 FR 41556). For narrow-headed gartersnake, we had no previous Service documents that addressed occupancy of the species.

For this revised proposed rule, we reassessed occupancy at the time of listing for each gartersnake by reviewing all records for each gartersnake that we used in the July 10, 2013, proposed critical habitat rule in conjunction with expected survivorship of each species, subsequent surveys in areas that had no

detection of the corresponding gartersnake species, and changes in threats that may have prevented occupancy at time of listing.

Understanding longevity of a species can inform how long we can reasonably expect a species is still extant in an area, regardless of detection probability. The oldest estimated northern Mexican gartersnake is between 14 and 16 years old, although growth rate calculations are still preliminary (M. Ryan 2020). The longest years between recaptures from these mark-recapture studies is 9 years (M. Ryan 2020, pers. comm.). Narrow-headed gartersnakes may live up to 10 years or longer in the wild (Rosen and Schwalbe 1988, p. 38). An individual narrow-headed gartersnake captured in the wild as an adult was kept in captivity for 11 years; and estimated to be 16 years old (M. Ryan 2020). Based on this information, we estimate maximum longevity for each gartersnake species is 15 years, so that it is reasonable to conclude that a gartersnake detected in 1998 or later represents a population that could still be present at the time of proposed listing in 2013, depending on the extent of threats in the area. Although it is possible that gartersnakes are still extant in areas where they were detected only during the 1980s, we have determined that the best available information reflecting occupancy at the time of listing supports a more recent date of records since 1998.

In the July 10, 2013, proposed critical habitat rule, 8 percent of the critical habitat designation for northern Mexican gartersnake and 17 percent of the designation for narrow-headed gartersnake was considered occupied at the time of listing, based solely on records of the corresponding species dated before 1998. For northern Mexican gartersnake, these areas included Mule Creek Unit, Upper Salt River Subbasin Unit, and Agua Fria River Subbasin Unit in their entirety, and Bear Canyon Creek Subunit in San Pedro River Subbasin Unit and Turkey Creek Subunit in Babocomari River Subbasin Unit. For narrow-headed gartersnake, areas included Turkey Creek Subunit in Upper Gila River Subbasin Unit; and Salt River, White River, Carrizo Creek, Cibecue Creek, and Diamond Creek subunits in Upper Salt River Subbasin Unit. We note that the San Bernardino National Wildlife Refuge Unit did not have a verified northern Mexican gartersnake record dated 1998 or later. This unit was not included in the revised proposed rule. In addition, Parker Canyon and Parker Canyon Lake were specifically mentioned as part of the occupied Upper Santa Cruz River Unit for northern Mexican gartersnake in the July 10, 2013, proposed rule, but the last detection of the species in this area was in 1979 (Holycross *et al.* 2006, appendix A). Redrock Canyon does not have a record of the northern Mexican gartersnake, and was also erroneously included in the July 10, 2013, proposed rule. Instead, the species was found in nearby Cott Tank Drainage and is included in this revised proposed rule (Jones 2009). For narrow-headed gartersnake, we note that the Gila River Subunit in the Middle Gila River Subbasin Unit had no records of the species and was erroneously included in the July 10, 2013, proposed rule. In addition, East Fork Gila River had no confirmed post-1980 records of the species and was erroneously included in the July 10, 2013, proposed rule (Propst 2015).

Based on our analyses in the rule listing the two garternakes (79 FR 38678; July 8, 2014), we conclude that there has been a significant decline in both species over the past 50 years. This decline appeared to accelerate during the two decades immediately before listing occurred. From this observation, we conclude that many areas that were occupied by the species in surveys during the 1980s are likely no longer occupied because those populations have disappeared. To determine where loss of populations was likely, we reviewed survey efforts after 1989 that did not detect gartersnakes in some of the areas mentioned above, and portions of other units and subunits included in the July 10, 2013, proposed critical habitat rule. We analyzed this to determine whether the cryptic nature of the species was a valid argument for considering areas that only have gartersnake records from the 1980s as still occupied at the time of listing in 2013. All of the surveys conducted since the 1980s included at least the same amount or more search effort than those surveys that detected each species in the 1980s. Since 1998, researchers have detected each gartersnake species in many areas where they were found in the 1980s. Areas where each gartersnake was found after 1997 are included in this revised proposed rule. This includes portions of 9 of the 13 units for northern Mexican gartersnake, and portions of 6 of the 7 units for narrow-headed gartersnake from the July 10, 2013, proposed rule. Resurveyed areas with no confirmed detection of northern Mexican gartersnakes since the 1980s include Mule Creek (Hotle *et al.* 2012, p. 1), Black River (Holycross *et al.* 2006, p. 30), Big Bonito Creek (Holycross *et al.* 2006, p. 64), Verde River downstream of Beasley Flat (Holycross *et al.* 2006, p. 26; Emmons and Nowak 2012, pp. 11–13), Agua Fria River (Holycross *et al.* 2006, pp. 15–18; Burger 2016, p. 3), Little Ash Creek (Holycross *et al.* 2006, p. 19; Emmons and Nowak 2012, p. 32; Burger 2016, p. 3), and Black Draw and lentic habitats on San Bernardino National Wildlife Refuge (Radke 2006).

Resurveyed areas with no confirmed detection of narrow-headed gartersnakes since the 1980s include the Gila River Subunit downstream of the Middle Box (Christman and Jennings 2017, pp. 4–12; Jennings *et al.* 2017, pp. 13–14; Jennings *et al.* 2018, pp. 10–13; Jennings and Christman 2019, p. 5); San Francisco River downstream of confluence with Whitewater Creek (Holycross *et al.* 2006, p. 66; Hellekson 2012), and Salt River (Holycross *et al.* 2006, pp. 38–39). It is reasonable to conclude that areas surveyed within 15 years of listing with no detection of the corresponding gartersnake species were not occupied at the time of listing. Survey efforts in these areas were comparable to or greater than surveys conducted in the 1980s that detected the species. Additionally, comparable surveys did detect gartersnakes in other areas where the species was present in the 1980s. Finally, we would expect that some populations would be lost during the decades preceding listing when numbers of both gartersnakes were declining. These declines are what eventually led to the need to list both species.

As explained extensively in the final listing rule for both gartersnake species (79 FR 38678, July 8, 2014, pp. 79 FR 38688–79 FR 38702), aquatic vertebrate survey efforts throughout the range of both species indicate that native prey species of both gartersnakes have decreased or are absent, while nonnative predators, including bullfrogs, crayfish, and spiny-rayed fish, continue to increase in many of the areas where both gartersnakes were present in the 1980s (Emmons and Nowak 2012, pp. 11–14; Gibson *et al.* 2015, pp. 360–364; Burger 2016, pp. 21–32; Emmons and Nowak 2016a, pp. 43–44; Christman and Jennings 2017, p. 14; Hall 2017, pp. 12–13; Jennings *et al.* 2018, p. 19). We acknowledge that both gartersnake species are extant in some areas that have abundant nonnative, aquatic predators, some of which also are prey for gartersnakes, so presence of nonnative aquatic predators is not always indicative of absence of these gartersnakes (Emmons and Nowak 2012, p. 31; Emmons and Nowak 2016a, p. 13; Emmons *et al.* 2016, entire; Nowak *et al.* 2016, pp. 5–6; Lashway 2015, p. 5). We

also acknowledge that we do not have a good understanding of why gartersnake populations are able to survive in some areas with aquatic predators and not in other areas (Burger 2016, pp. 13–15). However, we think it is reasonable to conclude that streams, stream reaches, and lentic water bodies were not occupied at the time of listing if they have only gartersnake records older than 1998 and have experienced a rapid decline in native prey species coupled with an increase in nonnative aquatic predators since gartersnakes were detected in these areas in the 1980s.

In summary, through this review of gartersnake occupancy, we determined that a stream, stream reach, or lentic water body was occupied at the time of listing for each gartersnake species if it is within the historical range of the species, contains all PBFs for the species, (although the PBFs concerning prey availability and presence of nonnative predators are often in degraded condition), and a last known record of occupancy in 1998 or later. As a result, six subunits in five units of critical habitat for northern Mexican gartersnake and nine subunits in four units of critical habitat for narrow-headed gartersnake included in the July 10, 2013, proposed rule are no longer included in this revised proposed critical habitat designation their entirety. This change reduced the proposed critical habitat designation by 35,426 ac (14,336 ha), or 9 percent, of the area included in the July 10, 2013, proposed rule for northern Mexican gartersnake, and 47,535 ac (19,237 ha), or 23 percent, of the area included in that proposed rule for narrow-headed gartersnake (see tables 1a and 1b, below). Other units and subunits are shortened in length due to our definition of occupancy as described below under *Stream Length.*

We included gartersnake detections of each gartersnake that occurred after the species was listed because these areas were likely occupied at the time of listing in 2014. Both of these species are cryptic in nature and may not be detected without intensive surveys. Because populations for these species are generally small, isolated, and in decline it is not likely that the species have colonized new areas since 2014; these areas were most likely occupied at the time of listing, but either had not been surveyed or the species were present but not detected during surveys. However, we did not include streams or lentic water bodies where gartersnakes were released for recovery purposes after the species was listed that had not been historically occupied by the species. This added one new unit and five subunits in four existing units of critical habitat for northern Mexican gartersnake (7,040 ac (2,848 ha)) and five subunits in two units of critical habitat for narrow-headed gartersnake (1,181 ac (478 ha)) in this revised proposed rule (see tables 1a and 1b, below).

Stream Length

In the July 10, 2013, proposed critical habitat rule, if a stream had at least one known record for the each gartersnake species and at least one record of a native prey species currently present, the entire stream length was included in proposed critical habitat. In the discussion, we stated, ''With respect to length (in proposed designations based on flowing streams), the proposed areas were designed to provide sufficient aquatic and terrestrial habitat for normal behaviors of northern Mexican and narrow-headed gartersnakes of all age classes'' (78 FR 41550, p. 78 FR 41556). We received numerous general comments and comments on specific stream reaches that are not habitat for the corresponding gartersnake.

In this revised proposed rule, for each gartersnake species, we used comments we received and reports on water availability, prey availability, and gartersnake surveys to re-evaluate all streams and determine which stream reaches contain PBFs and where PBFs are lacking. Stream reaches that lack PBFs include areas where water flow became completely ephemeral along an otherwise perennial or spatially intermittent stream, hydrologic processes needed to maintain streams could not be recovered, nonnative aquatic predators outnumbered native prey species, or streams were outside the elevation range. In addition, reaches with multiple negative surveys without a subsequent positive survey or reaches that have no records of the corresponding gartersnake species are not included, as described above under *Occupancy Records.* We do include stream reaches that lack survey data for the corresponding gartersnake, if they have positive observation records of the species dated 1998 or later both upstream and downstream of the stream reach and have all of the PBFs.

We also reviewed the best available information we have on home range size and potential dispersal distance for each gartersnake species to inform upstream and downstream boundaries of each unit and subunit of critical habitat. As explained earlier, the maximum longitudinal distance measured across home range areas of northern Mexican gartersnake tracked for at least one year was 4,852 ft (1,478.89 m) for one individual, and ranged from 587.9 to 2,580 ft (179.2 to 481.58 m) for eight other northern Mexican gartersnakes (Nowak *et al.* 2019, pp. 24–25). Maximum longitudinal distance measured across home range areas of narrow-headed gartersnakes ranged from 82 to 285 feet (25 to 87 m) (Jennings and Christman 2012, pp. 9–10). These longitudinal home range distances were all determined from adult gartersnakes, and did not inform how juvenile gartersnakes are dispersing along a stream. Juvenile dispersal is important because snakes of different age classes behave differently, and juvenile gartersnakes may move farther along a stream as they search for and establish suitable home ranges than do adults with established home ranges. Because we have no information on how juvenile northern Mexican gartersnakes and narrow-headed gartersnakes disperse, we used information from a long-term dispersal study on neonate, juvenile, and adult age classes of the Oregon gartersnake (*Thamnophis atratus hydrophilus*) in a free-flowing stream environment in northern California (Welsh *et al.* 2010, entire). This is the only dispersal study available for another aquatic *Thamnophis* species in the United States, so we used it as a surrogate for determining upstream and downstream movements of both northern Mexican and narrow-headed gartersnakes, which are also aquatic *Thamnophis* species. The greatest movement was made by a juvenile recaptured as an adult 2.2 mi (3.6 km) upstream from the initial capture location (Welsh *et al.* 2010, p. 79). Therefore, in this revised proposed rule, we delineate upstream and downstream critical habitat boundaries of a stream reach at 2.2 mi (3.6 km) from a known gartersnake observation record.

These changes in determining stream length reduced the proposed critical habitat designation by 72,955 ac (29,524 ha), or 17 percent, of the area included in the July 10, 2013, proposed rule for critical habitat for northern Mexican gartersnake, and 101,597 ac (41,115 ha), or 48 percent, of the area included in that proposed rule for critical habitat for narrow-headed gartersnake (see tables 1a and 1b, below).

TABLE 1a—CHANGES TO NORTHERN MEXICAN GARTERSNAKE PROPOSED CRITICAL HABITAT UNITS

Previous unit	Previous subunit	New unit	New subunit	Length miles (kilometers)		Area acres (hectares)	
				Previous	New	Previous	New
Upper Gila River.	.....	Upper Gila River Subbasin.	.....	148 (239)	13 (21)	21,135 (8,553)	1,132 (458)
	.....	.....	Gila River	148 (239)	9 (14)	21,135 (8,553)	1,028 (416)
	.....	.....	Duck Creek	0	4 (6)	0	104 (42)
Mule Creek	.....	*Removed**	.....	19 (30)	0	2,579 (1,044)	0
Upper Salt River.	.....	*Removed**	.....	156 (251)	0	22,218 (8,991)	0
	Black River	.....	*Removed**	114 (184)	0	16,392 (6,634)	0
	Big Bonito Creek.	.....	*Removed**	42 (67)	0	5,826 (2,358)	0
Tonto Creek	.....	Tonto Creek ...	.....	65 (105)	32 (52)	8,936 (3,616)	4,302 (1,741)
Verde River	.....	Verde River Subbasin.	.....	201 (323)	61 (99)	29,191 (11,813)	5,246 (2,123)
	Upper Verde River.	.....	Verde River	140 (225)	35 (56)	20,526 (8,307)	4,133 (1,672)
	Oak Creek	.....	Oak Creek	39 (62)	23 (37)	5,533 (2,239)	1,014 (410)
	Spring Creek ..	.....	Spring Creek ..	23 (36)	4 (6)	3,131 (1,267)	99 (40)
Agua Fria River	.....	*Removed**	.....	56 (91)	0	7,946 (3,215)	0
	Agua Fria River Mainstem.	.....	*Removed**	49 (80)	0	6,989 (2,828)	0
	Little Ash Creek.	.....	*Removed**	10 (11)	0	957 (387)	0
Bill Williams River.	.....	Bill Williams River Subbasin.	.....	36 (58)	29 (46)	5,412 (2,190)	4,049 (1,639)
	.....	.....	Bill Williams River.	36 (58)	15 (24)	5,412 (2,190)	1,805 (730)
	.....	.....	Big Sandy River.	0	8 (13)	0	932 (377)
	.....	.....	Santa Maria River.	0	5 (9)	0	1,312 (531)
	.....	Lower Colorado River.	.....	0	n/a	0	4,467 (1,808)
Buenos Aires NWR.	.....	Arivaca Cienega.	.....	n/a	3 (5)	117,313 (47,475)	211 (86)
Cienega Creek Subbasin.	.....	Cienega Creek Subbasin.	.....	n/a	46 (73)	50,393 (20,393)	2,030 (821)
	Cienega Creek	.....	Cienega Creek [1].	7+ (11+)	30 (48)	1,113 (450)	1,613 (653)
	Cienega Creek Natural Preserve.	.....	*Removed**	n/a	n/a	4,260 (1,724)	0
	Las Cienegas NCA [2].	.....	*Removed**	n/a	n/a	45,020 (18,219)	0
	.....	.....	Empire Gulch and Empire Wildlife Pond.	n/a	7 (11)	n/a	326 (132)
	.....	.....	Gardner Canyon and Maternity Wildlife Pond.	n/a	7 (11)	n/a	74 (30)
	.....	.....	Unnamed Drainage and Gaucho Tank.	n/a	2 (3)	n/a	15 (6)
Redrock Canyon.	.....	*Removed** [3] ...	.....	14 (23)	0	1,972 (798)	0
Upper Santa Cruz River Subbasin [4].	.....	Upper Santa Cruz River Subbasin.	.....	n/a	23 (36)	113,895 (46,092)	496 (201)
	.....	.....	Sonoita Creek	0	3 (5)	0	224 (91)
	.....	.....	Cott Tank Drainage.	n/a	2 (3)	0	13 (5)
	.....	.....	Santa Cruz River.	14 (22)	7 (11)	n/a	161 (65)

TABLE 1a—CHANGES TO NORTHERN MEXICAN GARTERSNAKE PROPOSED CRITICAL HABITAT UNITS—Continued

Previous unit	Previous subunit	New unit	New subunit	Length miles (kilometers)		Area acres (hectares)	
				Previous	New	Previous	New
	.....	.....	Unnamed Drainage and Pasture 9 Tank.	n/a	5 (7)	n/a	42 (17)
	.....	.....	Unnamed Drainage and Sheehy Spring.	n/a	2 (3)	n/a	25 (10)
	.....	.....	Scotia Canyon	n/a	4 (7)	n/a	31 (13)
	.....	.....	FS799 Tank ...	n/a	n/a	n/a	0.7 (0.3)
	.....	.....	Unnamed Wildlife Pond.	n/a	n/a	n/a	0.1 (<0.1)
	.....	.....	*Removed** (Parker Canyon).	6 (9)	0	n/a	0
San Pedro River Subbasin.	.....	Upper San Pedro River Subbasin.	.....	165 (266)	35 (57)	23,690 (9,587)	5,850 (2,367)
	San Pedro River.	.....	San Pedro River.	158 (255)	22 (35)	22,669 (9,174)	5,126 (2,074)
	Bear Canyon Creek.	.....	*Removed**	7 (11)	0	1,022 (414)	0
	.....	.....	House Pond ...	0	n/a	0	0.6 (0.2)
Babocomari River Subbasin.	.....	*Incorporated*[5]	.....	45 (72)	n/a	14,334 (5,801)	n/a
	Babocomari River.	.....	Babocomari River.	24 (24)	6 (10)	3,454 (1,398)	404 (164)
	Turkey Creek	.....	*Removed**	12 (19)	0	1,678 (679)	0
	Appleton-Whittell Research Ranch.	.....	*Removed**[6] ...	n/a	n/a	7,798 (3,156)	0
	Canelo Hills Cienega Preserve.	.....	*Removed**[6] ...	n/a	n/a	213 (86)	0
	Post Canyon ..	.....	Post Canyon ..	6+ (9+)	3 (5)	795 (322)	77 (31)
	O'Donnell Canyon.	.....	O'Donnell Canyon.	3+ (5+)	4 (7)	398 (161)	239 (97)
	.....	.....	Unnamed Drainage and Finley Tank.	n/a	0.5 (0.7)	n/a	3 (1)
San Bernardino NWR.	.....	*Removed**	.....	n/a	n/a	2,387 (966)	0
Totals	.....	.....	.....	932 (1,500)	241 (388)	421,423 (170,544)	27,784 (11,244)

Note: Numbers may not sum due to rounding.

* "*Removed*" means this unit or subunit, which was proposed as critical habitat for the northern Mexican gartersnake in the July 10, 2013, proposed rule (78 FR 41550), is not included in this revised proposed critical habitat designation.

[1] Portions of Cienega Creek in the Cienega Creek Natural Preserve and Las Cienegas National Conservation Area are now included in Cienega Creek subunit.

[2] All new named subunits in the Cienega Creek Subbasin unit were included in the July 10, 2013, proposed rule's Las Cienegas National Conservation Area (NCA) subunit.

[3] The gartersnake record was in Cott Tank Drainage not Redrock Canyon so is now captured in the Cott Tank Drainage subunit.

[4] All new named subunits except for Sonoita Creek were included in the July 10, 2013, proposed rule's Upper Santa Cruz River Subbasin unit.

[5] The named subunits of the Babocomari River Subbasin unit in the July 10, 2013, proposed rule (78 FR 41550) are now incorporated into the Upper San Pedro River Subbasin unit.

[6] Portions of these two subunits are now included in Post Canyon, O'Donnell Canyon, and Unnamed Drainage and Finley Tank subunits.

TABLE 1b—CHANGES TO NARROW-HEADED GARTERSNAKE PROPOSED CRITICAL HABITAT UNITS

Previous unit	Previous subunit	New unit	New subunit	Length miles (kilometers)		Area acres (hectares)	
				Previous	New	Previous	New
Upper Gila River Subbasin.	.....	Upper Gila River Subbasin.	.....	325 (526)	104 (167)	49,903 (20,195)	5,429 (2,197)
	Gila River	.....	Gila River	148 (239)	46 (74)	21,135 (8,553)	3,510 (1,420)
	Turkey Creek	.....	*Removed**	.....	0	2,338 (946)	0
	West Fork Gila River.	.....	West Fork Gila River.	37 (60)	12 (19)	5,169 (2,092)	562 (228)
	Little Creek	.....	Little Creek	.....	7 (11)	2,236 (905)	162 (65)
	Middle Fork Gila River.	.....	Middle Fork Gila River.	37 (60)	14 (23)	4,964 (2,009)	569 (230)
	Iron Creek	.....	Iron Creek	12 (20)	2 (3)	1,731 (701)	58 (23)
	Gillita Creek ...	.....	Gillita Creek ...	12 (20)	6 (10)	1,704 (690)	149 (60)
	East Fork Gila River.	.....	*Removed**	28 (44)	0	3,579 (1,148)	0
	Black Canyon	.....	Black Canyon	26 (42)	10 (16)	3,503 (1,418)	251 (102)
	Diamond Creek.	.....	Diamond Creek.	25 (41)	6 (10)	3,545 (1,435)	169 (68)
Middle Gila River Subbasin.	.....	*Removed**	.....	63 (101)	0	8,814 (3,567)	0
	Gila River	.....	*Removed**	3 (5)	0	432 (175)	0
	Eagle Creek ...	Eagle Creek [1]	.....	60 (97)	7 (11)	8,382 (3,392)	336 (136)
San Francisco River Subbasin.	.....	San Francisco River Subbasin.	.....	301 (476)	129 (207)	45,075 (18,241)	4,905 (1,985)
	San Francisco River.	.....	San Francisco River.	163 (263)	71 (115)	23,178 (9,380)	3,120 (1,263)
	Whitewater Creek.	.....	Whitewater Creek.	.....	9 (14)	2,289 (1,145)	208 (84)
	Saliz Creek	.....	Saliz Creek	8 (13)	8 (13)	1,099 (445)	218 (88)
	Tularosa River	.....	Tularosa River	35 (56)	20 (32)	4,728 (1,913)	829 (336)
	n/a	.....	Negrito Creek	0	13 (21)	0	337 (136)
	South Fork Negrito Creek.	.....	South Fork Negrito Creek.	11 (17)	8 (13)	1,483 (600)	192 (78)
	.....	Blue River Subbasin.	.....	n/a	64 (103)	n/a	2,971 (1,202)
	Blue River	.....	Blue River	53 (86)	52 (84)	7,432 (3,007)	2,504 (1,013)
	Campbell Blue Creek.	.....	Campbell Blue Creek.	22 (26)	7 (11)	3,008 (1,217)	361 (146)
	Dry Blue Creek.	.....	Dry Blue Creek.	9 (15)	4 (6)	1,320 (534)	106 (43)
Upper Salt River Subbasin.	.....	Black River Subbasin.	.....	352 (654)	51 (82)	58,014 (23,478)	1,607 (650)
	Salt River	.....	*Removed**	86 (139)	0	12,877 (5,211)	0
	White River	.....	*Removed**	18 (29)	0	2,588 (1,047)	0
	Carrizo Creek	.....	*Removed**	64 (104)	0	9,033 (1,229)	0
	Cibecue Creek	.....	*Removed**	48 (77)	.....	6,669 (2,699)	.....
	Diamond Creek.	.....	*Removed**	22 (36)	0	3,117 (1,261)	0
	Black River	.....	Black River	114 (184)	23 (37)	16,384 (6,630)	763 (309)
	n/a	.....	Bear Wallow Creek.	0	6 (10)	0	174 (71)
	n/a	.....	North Fork Bear Wallow Creek.	0	2 (3)	0	61 (25)
	n/a	.....	Reservation Creek.	0	5 (8)	0	132 (54)
	n/a	.....	Fish Creek	0	4 (6)	0	107 (43)
	n/a	.....	East Fork Black River.	0	12 (19)	0	370 (150)
	Canyon Creek	Canyon Creek [1].	.....	53 (85)	8 (13)	7,346 (2,973)	232 (94)
Tonto Creek	.....	Tonto Creek ...	.....	91 (146)	41 (66)	12,795 (5,178)	1,390 (562)
	Tonto Creek ...	.....	Tonto Creek ...	54 (87)	28 (45)	7,712 (3,121)	1,078 (436)
	Houston Creek	.....	Houston Creek	15 (24)	1 (2)	2,046 (828)	18 (7)
	Haigler Creek	.....	Haigler Creek	22 (35)	12 (19)	3,037 (1,229)	294 (119)

TABLE 1b—CHANGES TO NARROW-HEADED GARTERSNAKE PROPOSED CRITICAL HABITAT UNITS—Continued

Previous unit	Previous subunit	New unit	New subunit	Length miles (kilometers)		Area acres (hectares)	
				Previous	New	Previous	New
Verde River		Verde River Subbasin.		248 (400)	58 (93)	35,586 (14,401)	1,832 (741)
	Verde River		Verde River	128 (205)	27 (43)	18,721 (7,576)	923 (374)
	Oak Creek		Oak Creek	51 (83)	24 (39)	7,369 (2,982)	748 (303)
	West Fork Oak Creek.		West Fork Oak Creek.	16 (26)	7 (11)	2,137 (865)	161 (65)
	East Fork Verde River.		*Removed**	53 (86)	0	7,360 (2,978)	0
Totals				1,380 (2,221)	461 (742)	210,189 (85,060)	18,701 (7,568)

Note: Numbers may not sum due to rounding.

* "*Removed*" means this unit or subunit, which was proposed as critical habitat for the narrow-headed gartersnake in the July 10, 2013, proposed rule (78 FR 41550), is not included in this revised proposed critical habitat designation.

[1] Eagle Creek and Canyon Creek were proposed as a critical habitat subunits for the narrow-headed gartersnake in the July 10, 2013, proposed rule (78 FR 41550), but are their own units in this revised proposed critical habitat designation.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

We derive the specific PBFs essential to the conservation of northern Mexican and narrow-headed gartersnakes from studies of this species' habitat, ecology, and life history as described above. Additional information can be found in the final listing rule published in the **Federal Register** on July 8, 2014 (79 FR 38678); the previous proposed critical habitat rule (78 FR 41550; July 10, 2013), as well as comments we received on previous proposed critical habitat rule; and information in this rule under Changes from Previously Proposed Critical Habitat, above. We have determined that the following PBFs are essential to the conservation of northern Mexican and narrow-headed gartersnakes.

Northern Mexican Gartersnake

1. Perennial or spatially intermittent streams that provide both aquatic and terrestrial habitat that allows for immigration, emigration, and maintenance of population connectivity of northern Mexican gartersnakes and contain:

(A) Slow-moving water (walking speed) with in-stream pools, off-channel pools, and backwater habitat;

(B) Organic and natural inorganic structural features (*e.g.,* boulders, dense aquatic and wetland vegetation, leaf litter, logs, and debris jams) within the stream channel for thermoregulation, shelter, foraging opportunities, and protection from predators;

(C) Terrestrial habitat adjacent to the stream channel that includes riparian vegetation, small mammal burrows, boulder fields, rock crevices, and downed woody debris for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators; and

(D) Water quality that is absent of pollutants or, if pollutants are present, at levels low enough such that recruitment of northern Mexican gartersnakes is not inhibited.

2. Hydrologic processes that maintain aquatic and terrestrial habitat through:

(A) A natural flow regime that allows for periodic flooding, or if flows are modified or regulated, a flow regime that allows for the movement of water, sediment, nutrients, and debris through the stream network; and

(B) Physical hydrologic and geomorphic connection between a stream channel and its adjacent riparian areas.

3. Prey base of primarily native anurans, fishes, small mammals, lizards, and invertebrate species.

4. An absence of nonnative fish species of the families Centrarchidae and Ictaluridae, bullfrogs (*Lithobates catesbeianus*), and/or crayfish (*Orconectes virilis, Procambarus clarki,* etc.), or occurrence of these nonnative species at low enough levels such that recruitment of northern Mexican gartersnakes is not inhibited and maintenance of viable prey populations is still occurring.

5. Elevations from 130 to 8,500 ft (40 to 2,590 m).

6. Lentic wetlands including off-channel springs, cienegas, and natural and constructed ponds (small earthen impoundment) with:

(A) Organic and natural inorganic structural features (*e.g.,* boulders, dense aquatic and wetland vegetation, leaf litter, logs, and debris jams) within the ordinary high water mark for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators;

(B) Riparian habitat adjacent to ordinary high water mark that includes riparian vegetation, small mammal burrows, boulder fields, rock crevices, and downed woody debris for thermoregulation, shelter, foraging opportunities, and protection from predators; and

(C) Water quality that is absent of pollutants or, if pollutants are present, at levels low enough such that recruitment of northern Mexican gartersnakes is not inhibited.

7. Ephemeral channels that connect perennial or spatially intermittent perennial streams to lentic wetlands in southern Arizona where water resources are limited.

Narrow-Headed Gartersnake

1. Perennial streams or spatially intermittent streams that provide both aquatic and terrestrial habitat that allows for immigration, emigration, and maintenance of population connectivity of narrow-headed gartersnakes and contain:

(A) Pools, riffles, and cobble and boulder substrate, with low amount of fine sediment and substrate embeddedness;

(B) Organic and natural inorganic structural features (*e.g.,* cobble bars, rock piles, large boulders, logs or stumps, aquatic and wetland vegetation, logs, and debris jams) in the stream channel for basking, thermoregulation, shelter, prey base maintenance, and protection from predators;

(C) Water quality that is absent of pollutants or, if pollutants are present, at levels low enough such that recruitment of narrow-headed gartersnakes is not inhibited; and

(D) Terrestrial habitat within 89 ft (27 m) of the active stream channel that includes boulder fields, rocks, and rock structures containing cracks and crevices, small mammal burrows, downed woody debris, and vegetation for thermoregulation, shelter sites, and protection from predators.

2. Hydrologic processes that maintain aquatic and riparian habitat through:

(A) A natural flow regime that allows for periodic flooding, or if flows are modified or regulated, a flow regime that allows for the movement of water, sediment, nutrients, and debris through the stream network, as well as maintenance of native fish populations; and

(B) Physical hydrologic and geomorphic connection between the active stream channel and its adjacent terrestrial areas.

3. Prey base of native fishes, or soft-rayed, nonnative fish species.

4. An absence of nonnative predators, such as fish species of the families Centrarchidae and Ictaluridae, bullfrogs, and crayfish, or occurrence of nonnative predators at low enough densities such that recruitment of narrow-headed gartersnakes is not inhibited and maintenance of viable prey populations is still occurring.

5. Elevations of 2,300 to 8,200 ft (700 to 2,500 m).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. In this revised proposed critical habitat rule, we are not changing any of the special management considerations for either gartersnake species' proposed critical habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species that are essential for the species' conservation to be considered for designation as critical habitat. We are proposing to designate critical habitat for both gartersnake species in areas considered currently occupied. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat. We are not aware of any other areas within the historical range of the species that maintain perennial water, have suitable prey, and support an aquatic community that is not dominated by nonnative predators. Therefore, although there may be a future need to expand the area occupied by one or both gartersnake species to reach recovery, there are no unoccupied areas that are currently essential to the species conservation and that should be designated as critical habitat.

To identify areas proposed for critical habitat for the northern Mexican and narrow-headed gartersnakes, we used a variety of sources for species data including riparian species survey reports, museum records, heritage data from State wildlife agencies, peer-reviewed literature, agency reports, and interviews with species experts. Holycross *et al.* (in press, entire) was a key source of information for vouchered historical and current records of both gartersnake species across their respective ranges. Other sources for current records of the northern Mexican gartersnake included Cotten *et al.* (2014, entire), Holycross *et al.* (2006, entire), and Rosen *et al.* (2001, entire). Christman and Jennings (2017, entire), Hellekson (2012), Jennings *et al.* (2017, entire), Jennings and Christman (2019, entire), and Jennings *et al.* (2018) were important sources of information pertaining to narrow-headed gartersnake status in New Mexico. In addition to reviewing gartersnake-specific survey reports, we also focused on survey reports and heritage data from State wildlife agencies for fish and amphibians as they captured important data on the existing community ecology that affects the status of these gartersnakes within their ranges. In addition to species data sources, we used publicly available geospatial datasets depicting water bodies, stream flow, vegetation type, and elevation to identify areas proposed for critical habitat.

The maps define the critical habitat designation, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the proposed boundaries of the critical habitat designation in the preamble of this document. We will make the

coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0011, on our internet site at *http://www.fws.gov/southwest/es/arizona,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Areas Occupied at the Time of Listing

We are proposing for designation of critical habitat lands that we have determined were occupied at the time of listing and contain one or more of the physical or biological features to support life-history processes essential to the conservation of the species. As explained under *Occupancy Records,* above, this proposed critical habitat designation does not include all streams known to have been occupied by the species historically or the entire stream known to have been occupied by the species historically. Instead, it focuses on occupied streams or stream reaches within the historical range with positive survey records from 1998 to 2019 that have retained the necessary PBFs that will allow for the maintenance and expansion of existing populations. In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

Northern Mexican Gartersnake

1. We mapped records of observations of northern Mexican gartersnake from 1998 to 2019. We then examined these areas to determine if northern Mexican gartersnake could still occur in them, as described below.

2. We identified streams in which northern Mexican gartersnakes were found since 1980 (used flowline layer in the USGS National Hydrography Dataset to represent stream centerlines).

3. We identified and removed upstream and downstream ends of streams that were below 130 ft or above 8,500 ft elevation using USGS National Elevation Dataset.

4. We identified perennial, intermittent, and ephemeral reaches of streams. We removed end reaches of streams that are ephemeral based on FCode attribute of the flowline layer in the USGS National Hydrography Dataset or information from peer review and public comments. We identified native prey species along each stream using geospatial datasets, literature, peer review, and public comments.

5. We identified prey species along each stream using geospatial datasets, literature, peer review, and public comments. We removed stream reaches that were documented to not contain prey species.

6. We identified and removed stream reaches with an abundance of nonnative predators including fish, crayfish, or bullfrogs. (We used a combination of factors to determine nonnative presence and impact to the species. This evaluation included records from 1980 by looking at subsequent negative survey data for northern Mexican gartersnakes along with how the nonnative predator community had changed since those gartersnakes were found, in addition to the habitat condition and complexity. Most of the areas surveyed in the 1980s that had been re-surveyed with negative results for gartersnakes had significant changes to the nonnative predator community, which also decreased prey availability for the gartersnakes. These areas were removed from revised proposed critical habitat.)

7. We identified and removed stream reaches where stocking or management of predatory sportfish is a priority and is conducted on a regular basis.

8. We identified and included those stream reaches on private land without public access that lack survey data but that have positive survey records from 1998 forward both upstream and downstream of the private land and have stream reaches with PBFs 1 and 2.

9. We used a surrogate species to determine potential neonate dispersal along a stream, which is 2.2 miles (3.5 km). We then identified the most upstream and downstream records of northern Mexican gartersnake along each continuous stream reach determined by criteria 1 through 8, above, and extended the stream reach to include this dispersal distance.

10. After identifying the stream reaches that met the above parameters, we then connected those reaches between that have the PBFs. We consider these areas between survey records occupied because the species occurs upstream and downstream and multiple PBFs are present that allow the species to move through these stream reaches.

11. We identified the springs, cienegas, and natural or constructed ponds (livestock tanks) in which records of observations of the species from 1998 to 2019 were found and included them in this revised proposed critical habitat.

12. We identified ephemeral reaches of occupied perennial or intermittent streams that serve as corridors between springs, cienegas, and natural or constructed ponds (livestock tanks).

13. We identified and included the wetland and riparian area adjacent to streams, springs, cienegas, and ponds to capture the wetland and riparian habitat needed by the species for thermoregulation, foraging, and protection from predators. We used the wetland and riparian layers of the Service's National Wetlands Inventory dataset and aerial photography in Google Earth Pro to identify these areas.

Narrow-headed Gartersnake

1. We mapped records of narrow-headed gartersnake from 1998 to 2019. We then examined these areas to determine if narrow-headed gartersnake could still occur here, as described below.

2. We identified the streams in which narrow-headed gartersnakes were found since 1998 (used flowline layer in the USGS National Hydrography Dataset to represent stream centerlines).

3. We identified and removed upstream and downstream ends of streams that were below 2,300 ft or above 8,200 ft in elevation using USGS National Elevation Dataset.

4. We identified perennial, intermittent, and ephemeral reaches of streams. We removed end reaches of streams that are ephemeral or intermittent based on FCode attribute of the flowline layer in the USGS National Hydrography Dataset or information from peer review and public comments.

5. We identified native and nonnative prey species along each stream using geospatial datasets, literature, peer review, and public comments. We removed stream reaches that did not have prey species.

6. We identified and removed stream reaches with an abundance of nonnative predators including fish, crayfish, and bullfrogs. (We examined a combination of factors to determine nonnative presence and impact to the species. This included evaluating gartersnake records from 1998 by looking at subsequent negative survey data for narrow-headed gartersnakes along with how the nonnative predator community had changed since those gartersnakes were found, in addition to the habitat condition and complexity. Most of the areas surveyed in the 1980s that had been re-surveyed with negative results for gartersnakes had significant changes to the nonnative predator community, which also decreased prey availability for the gartersnakes. These areas were removed from revised proposed critical habitat.)

7. We identified and removed stream reaches where stocking or management of predatory sportfish is a priority and is conducted on a regular basis.

8. We identified and included those stream reaches on private land without

public access that lack survey data but that have positive narrow-headed gartersnake survey records from 1998 forward both upstream and downstream of the private land and have stream reaches with PBFs 1 and 2.

9. We used a surrogate species to determine potential neonate dispersal along a stream, which is 2.2 mi (3.5 km). We then identified the most upstream and downstream records of narrow-headed gartersnake along each continuous stream reach determined by criteria 1 through 8, above, and extended the reach to include this dispersal distance.

10. After identifying the stream reaches that met the above parameters, we then connected those reaches between that had the PBFs. We consider these areas between survey records occupied because the species occurs upstream and downstream and multiple PBFs are present that allow the species to move through these stream reaches.

11. We identified the average distance narrow-headed gartersnakes moved laterally from the water's edge in streams, which is 89 ft (27 m), to capture the wetland and terrestrial habitat needed by the species for thermoregulation and protection from predators. We used the wetland layer of the Service's National Wetlands Inventory dataset and aerial photography in Google Earth Pro to identify the water's edge in streams.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for northern Mexican and narrow-headed gartersnakes. However, constructed fish barriers in streams within the proposed designated critical habitat are part of the designation and are needed to manage the exclusion of nonnative species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined were occupied at the time of listing and contain one or more of the physical or biological features that are essential to support life-history processes of the species.

Proposed Critical Habitat Designation

Northern Mexican Gartersnake

We are proposing 241 stream mi (388 km) within the identified wetland and riparian habitat needed for basking, cover, and foraging, totaling 27,784 ac (11,244 ha) in nine units as the revised proposed critical habitat for northern Mexican gartersnake. Land ownership within proposed critical habitat for the northern Mexican gartersnake in acres is broken down as follows: Federal (62 percent), State (Arizona and New Mexico) (5 percent), Tribal (0.3 percent), and private (32 percent) (see table 2a, below). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for northern Mexican gartersnake. We consider all units occupied at the time of listing, and all units contain essential PBFs that may require special management considerations or protection.

TABLE 2a—LAND OWNERSHIP AND SIZE OF NORTHERN MEXICAN GARTERSNAKE PROPOSED CRITICAL HABITAT UNITS

[Area estimates reflect all land within critical habitat unit boundaries. County-owned lands are considered as private lands.]

Unit	Subunit	Land ownership by type acres (hectares)				Total size acres (hectares)
		Federal	State	Tribal	Private	
1. Upper Gila River Subbasin.	Gila River		22 (9)		1,006 (407)	1,028 (416)
	Duck Creek				104 (42)	104 (42)
Unit Total			22 (9)		1,110 (449)	1,132 (458)
2. Tonto Creek		3,337 (1,350)			966 (391)	4,302 (1,741)
Unit Total		3,337 (1,350)			966 (391)	4,302 (1,741)
3. Verde River Subbasin	Verde River	646 (261)	570 (231)	88 (36)	2,829 (1,145)	4,133 (1,672)
	Oak Creek	193 (78)	134 (54)		687 (278)	1,014 (410)
	Spring Creek	17 (7)	1 (<1)		80 (32)	99 (40)
Unit Total		856 (346)	705 (285)	88 (36)	3,597 (1,456)	5,246 (2,123)
4. Bill Williams River Subbasin.	Bill Williams River	1,002 (405)	202 (82)		601 (243)	1,805 (730)
	Big Sandy River	339 (137)			593 (240)	932 (377)
	Santa Maria River	780 (316)			532 (215)	1,312 (531)
Unit Total		2,121 (858)	202 (82)		1,727 (699)	4,049 (1,639)
5. Lower Colorado River		4,467 (1,808)				4,467 (1,808)
Unit Total		4,467 (1,808)				4,467 (1,808)
6. Arivaca Cienega		149 (60)	1 (<1)		62 (25)	211 (86)
Unit Total		149 (60)	1 (<1)		62 (25)	211 (86)
7. Cienega Creek Subbasin	Cienega Creek	755 (306)	308 (125)		550 (222)	1,613 (653)
	Empire Gulch and Empire Wildlife Pond.	268 (109)	57 (23)			326 (132)

TABLE 2a—LAND OWNERSHIP AND SIZE OF NORTHERN MEXICAN GARTERSNAKE PROPOSED CRITICAL HABITAT UNITS—Continued

[Area estimates reflect all land within critical habitat unit boundaries. County-owned lands are considered as private lands.]

Unit	Subunit	Land ownership by type acres (hectares)				Total size acres (hectares)
		Federal	State	Tribal	Private	
	Gardner Canyon and Maternity Wildlife Pond.	74 (30)				74 (30)
	Unnamed Drainage and Gaucho Tank.	15 (6)				15 (6)
Unit Total		1,112 (451)	366 (148)		550 (222)	2,030 (821)
8. Upper Santa Cruz River Subbasin.	Sonoita Creek				224 (91)	224 (91)
	Cott Tank Drainage	13 (5)				13 (5)
	Santa Cruz River		70 (28)		91 (37)	161 (65)
	Unnamed Drainage and Pasture 9 Tank.		36 (15)		5 (2)	42 (17)
	Unnamed Drainage and Sheehy Spring.		5 (2)		20 (8)	25 (10)
	Scotia Canyon	31 (13)				31 (13)
	FS799 Tank	0.7 (0.3)				0.7 (0.3)
	Unnamed Wildlife Pond				0.1 (<0.1)	0.1 (<0.1)
Unit Total		45 (18)	111 (45)		340 (138)	496 (201)
9. Upper San Pedro River Subbasin.	San Pedro River	4,911 (1,988)			215 (87)	5,126 (2,074)
	Babocomari River	197 (80)	8 (3)		199 (81)	404 (164)
	O'Donnell Canyon	58 (24)			181 (73)	239 (97)
	Post Canyon	30 (12)			47 (19)	77 (31)
	Unnamed Drainage and Finley Tank.				3 (1)	3 (1)
	House Pond	0.6 (0.2)				0.6 (0.2)
Unit Total		5,197 (2,103)	8 (3)		645 (261)	5,850 (2,367)
Grand Total		17,284 (6,995)	1,414 (572)	88 (36)	8,996 (3,640)	27,784 (11,244)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for northern Mexican gartersnake, below.

Upper Gila River Subbasin Unit

The Upper Gila River Subbasin Unit is located in southwestern New Mexico southeast of the towns of Cliff and Gila, in Grant County. This unit consists of 1,132 ac (458 ha) along 13 stream mi (21 km) in two subunits with 9 stream mi (14 km) along the Gila River and 4 stream mi (6 km) along Duck Creek. The New Mexico Department of Game and Fish, New Mexico State land department, and private entities manage lands within this unit. Several reaches of the Gila River have been adversely affected by channelization and diversions, which have reduced or eliminated base flow. As a whole, this unit contains PBFs 1, 2, and 5, but PBFs 3 and 4 are in degraded condition. PBFs 6 and 7 do not apply to this unit. The physical or biological features in this unit may require special management consideration due to competition with, and predation by, nonnative species that are present in this unit; water diversions; channelization; potential for high-intensity wildfires; and human development of areas adjacent to proposed critical habitat.

Lands owned by Freeport McMoRan in the Upper Gila River Subbasin Unit on the Gila River and Duck Creek are being considered for exclusion from the final rule for critical habitat under section 4(b)(2) of the Act. A total of 515 ac (208 ha), or 45 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below).

Tonto Creek Unit

The Tonto Creek Unit is generally located near the towns of Gisela and Punkin Center, Arizona, in Gila County. This unit consists of 4,302 ac (1,741 ha) of critical habitat along 32 stream mi (52 km) of Tonto Creek. The downstream end of critical habitat is the spillway elevation of Theodore Roosevelt Lake (2,120 ft (646 m)) near the confluence with Bumblebee Creek. The Tonto National Forest is the primary land manager in this unit, with additional lands privately owned. Some reaches along Tonto Creek experience seasonal drying because of regional groundwater pumping, while others are affected by diversions. Development along private reaches of Tonto Creek may also affect terrestrial characteristics of northern Mexican gartersnake habitat. Mercury has been detected in fish samples within Tonto Creek, and further research is necessary to determine if mercury is bioaccumulating in the resident food chain. Theodore Roosevelt Lake is a nonnative sport fishery and supports predators of the northern Mexican gartersnake, so that the northern Mexican gartersnake may be subject to higher mortality from predation by nonnative fish at the downstream end of this unit, especially when the lake level is at spillway elevation. In general, this unit contains PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. PBFs 6 and 7 do not apply to this unit. The physical or biological features in this unit may require special management consideration due to competition with, and predation by, nonnative species that are present in this unit; water diversions causing loss of base flow; flood-control

projects; and development of areas adjacent to or within proposed critical habitat.

Verde River Subbasin Unit

The Verde River Subbasin Unit is generally located near the towns of Cottonwood, Cornville, and Camp Verde, Arizona, in Yavapai County. This unit consists of 5,246 ac (2,123 ha) along 61 stream mi (98 km) in three subunits: 35 stream mi (56 km) of the Verde River, including Tavasci Marsh and Peck Lake; 23 stream mi (37 km) of Oak Creek; and 4 stream mi (6 km) of Spring Creek. The Verde River Subbasin Unit occurs on lands managed by the U.S. Forest Service on Coconino and Prescott National Forests; National Park Service (NPS) at Tuzigoot National Monument; Arizona Game and Fish Department at Bubbling Ponds and Page Springs fish hatcheries; Arizona State Parks at Deadhorse Ranch and Verde River Greenway State Natural Area; Arizona State Trust; Yavapai-Apache Nation; and private entities. Crayfish, bullfrogs, and nonnative, spiny-rayed fish are present in some of this unit. Proposed groundwater pumping of the Big Chino Aquifer may adversely affect future base flow in the Verde River. Development along the Verde River has eliminated habitat along portions of the Verde River through the Verde Valley. As a whole, this unit contains PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. The physical or biological features in this unit may require special management consideration due to competition with, and predation by, nonnative species that are present in this unit; water diversions; existing and proposed groundwater pumping potentially resulting in drying of habitat; potential for high-intensity wildfires; and human development of areas adjacent to proposed critical habitat.

Lands in the Verde River Subunit include The Nature Conservancy's Verde Springs Preserve, Verde Valley property, Yavapai-Apache Nation, and Salt River Project's Camp Verde Riparian Preserve. Lands owned by the Yavapai-Apache Nation, and lands within Salt River Project's Camp Verde Riparian Preserve are being considered for exclusion from the final rule for critical habitat under section 4(b)(2) of the Act. Lands in Oak Creek Subunit include Arizona Game and Fish Department's (AGFD) Bubbling Ponds and Page Springs fish hatcheries, which are also being considered for exclusion from the final rule for critical habitat. A total of 460 ac (186 ha), or 9 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below).

Bill Williams River Subbasin Unit

The Bill Williams River Subbbasin Unit is generally located in western Arizona, northeast of Parker, Arizona, in La Paz and Mohave Counties. This unit consists of 4,049 ac (1,639 ha) along 29 stream mi (46 km) in three subunits: 15 stream mi (24 km) of Bill Williams River; 8 stream mi (13 km) of Big Sandy River; and 5 stream mi (9 km) of Santa Maria River. The Bill Williams River Subbasin Unit occurs on lands managed by the Bureau of Land Management (BLM) within the Rawhide Mountains Wilderness, Swansea Wilderness, and Three Rivers Riparian Area of Critical Environmental Concern (ACEC); Arizona State Parks at Alamo Lake State Park; Arizona State Land Department; and private landowners. This unit contains lowland leopard frogs and native fish appear to be largely absent, although longfin dace have been detected in the Santa Maria River Subunit. As a whole, this unit contains PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. PBFs 6 and 7 do not apply to this unit. Crayfish and several species of nonnative, spiny-rayed fish maintain populations in reaches of the three rivers included in the Bill Williams River Subbasin Unit. The physical or biological features in this unit may require special management consideration due to competition with, and predation by, nonnative species that are present in this unit and flood-control projects.

Lands within the AGFD's Planet Ranch Conservation and Wildlife Area property in the Bill Williams River Subunit are being considered for exclusion from the final rule for critical habitat under section 4(b)(2) of the Act. A total of 329 ac (133 ha), or 8 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below).

Lower Colorado River Unit

The Colorado River Unit is generally located in western Arizona in Mojave County. This unit consist of 4,467 ac (1,808 ha) within the floodplain of the Colorado River but does not include the main channelized portion of the river. This unit falls completely within the Service's Havasu National Wildlife Refuge. Several species of nonnative, spiny-rayed fish maintain robust populations in this unit. In general, this unit contains PBFs 1, 2, and 5, but PBFs 3 and 4 are in degraded condition. PBFs 6 and 7 do not apply to this unit. The physical or biological features in this unit may require special management consideration due to competition with, and predation by, nonnative species that are present in this unit and flood-control projects. No areas within this unit are considered for exclusion.

Arivaca Cienega Unit

The Arivaca Cienega Unit is generally located in southern Arizona, in and around the town of Arivaca in Pima County, Arizona. This unit consists of 211 ac (86 ha), along 3 stream mi (5 km) of Arivaca Creek within Arivaca Cienega. This unit occurs on lands managed by the Service at Buenos Aires National Wildlife Refuge, Arizona State Land Department, and private landowners. Drought, bullfrogs, and crayfish are a concern in the Arivaca Cienega Unit. In general, this unit contains PBFs 2 and 5, but PBFs 1, 3, and 4 are in degraded condition. PBFs 6 and 7 do not apply to this unit. The physical or biological features in this unit may require special management consideration due to loss of perennial flow, as well as competition with, and predation by, nonnative species that are present in this unit. No areas within this unit are considered for exclusion.

Cienega Creek Subbasin Unit

The Cienega Creek Subbasin Unit is generally located in southern Arizona southeast of the city of Tucson and town of Vail, north of the town of Sonoita, west of the Rincon Mountains, and east of the Santa Rita Mountains in Pima County. This unit consists of 2,030 ac (821 ha) along 46 stream mi (73 km) in four subunits: 30 stream mi (48 km) of Cienega Creek; 7 stream mi (11 km) of Empire Gulch, including Empire Wildlife Pond; 2 stream mi (3 km) of an unnamed drainage to Gaucho Pond, including Gaucho Pond; and 7 stream mi (11 km) of Gardner Canyon, including Maternity Wildlife Pond. The unnamed drainage to Gaucho Pond is an ephemeral channel that may serve as a movement corridor for northern Mexican gartersnakes. The Cienega Creek Subbasin Unit occurs on lands managed by BLM on Las Cienegas National Conservation Area (NCA), Arizona State Land Department, Pima County on Cienega Creek Preserve, and private landowners. Recent, ongoing bullfrog eradication on and around Las Cienegas NCA has reduced the threat of bullfrogs in much of this unit. As a whole, this unit contains PBFs 1, 2, 3, 5, 6, and 7, but PBF 4 is in degraded condition. Special management may be required to maintain or develop the physical or biological features, including continuing to promote the recovery or expansion of native leopard frogs and fish, continuing bullfrog management, and eliminating or

reducing other predatory nonnative species.

Lands within Pima County's Cienega Creek Natural Preserve in the Cienega Creek Subunit are being considered for exclusion from the final rule for critical habitat under section 4(b)(2) of the Act. A total of 543 ac (220 ha), or 27 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below). However, Pima County has requested that these lands not be excluded from the final rule.

Upper Santa Cruz River Subbasin Unit

The Santa Cruz River Subbasin Unit is generally located in southern Arizona, south of the town of Sonoita and within the town of Patagonia, southeast of the Santa Rita Mountains, and west of the Patagonia Mountains in Santa Cruz and Cochise Counties. This unit consists of 496 ac (201 ha) along 23 stream mi (36 km) in eight subunits: FS 799 Tank; an unnamed wildlife pond; 3 stream mi (5 km) of Sonoita Creek; 4 stream mi (7 km) of Scotia Canyon; 2 stream mi (3 km) of Cott Tank Drainage; 7 stream mi (11 km) of Santa Cruz River; 5 stream mi (7 km) of an unnamed drainage to Pasture 9 Tank, including Pasture 9 Tank; and 2 stream mi (3 km) of an unnamed drainage to Sheehy Spring, including Sheehy Spring. The latter two unnamed drainages are ephemeral channels that may serve as movement corridors for northern Mexican gartersnakes. The Upper Santa Cruz River Subbasin Unit occurs on lands managed by Coronado National Forest, Arizona State Parks at San Rafael State Natural Area, Arizona State Land Department, and private landowners (including The Nature Conservancy at Patagonia-Sonoita Creek Preserve and San Rafael Cattle Company at San Rafael Ranch). Native fish, bullfrogs, Sonoran tiger salamanders, and Chiricahua leopard frogs provide prey for northern Mexican gartersnakes in the Santa Cruz River Subbasin Unit. Bullfrogs and nonnative spiny-ray fish remain an issue in this unit. As a whole, this unit contains PBFs 1, 2, 3, 5, 6, and 7, but PBF 4 is in degraded condition. Special management may be required to maintain or develop the physical or biological features, including continuing to promote the recovery or expansion of native leopard frogs and fish, and eliminating or reducing predatory nonnative species.

Lands within the San Rafael Cattle Company's San Rafael Ranch in the Santa Cruz River Subunit, Unnamed Drainage and Pasture 9 Tank Subunit, and Unnamed Drainage and Sheehy Spring Subunit are being considered for exclusion from the final rule for critical habitat under section 4(b)(2) of the Act. Lands within The Nature Conservancy's Patagonia-Sonoita Creek Preserve in the Sonoita Creek Subunit, as well as the Unnamed Wildlife Pond Subunit, which are both on private lands, are also being considered for exclusion. A total of 238 ac (96 ha), or 48 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below).

Upper San Pedro River Subbasin Unit

The Upper San Pedro River Subbasin Unit is generally located in southeastern Arizona, east and west of Sierra Vista and south of the town of Elgin, in Cochise and Santa Cruz Counties. This unit consists of 5,850 ac (2,367 ha) in six subunits along 35 stream mi (57 km): 22 stream mi (35 km) of the San Pedro River; 6 stream mi (10 km) of the Babocomari River; 4 stream mi (7 km) in O'Donnell Canyon; 3 stream mi (5 km) in Post Canyon; 0.5 stream mi (0.7 km) in an ephemeral drainage to Finley Tank, including Finley Tank; and House Pond. The Upper San Pedro River Subbasin Unit occurs primarily on lands managed by BLM on the San Pedro River Riparian and Las Cienegas NCAs, and also includes lands managed by the U.S. Forest Service on Coronado National Forest, Arizona State Land Department, and private entities. The unit includes portions of the Canelo Hills Preserve owned by The Nature Conservancy and portions of the Appleton-Whittell Research Ranch managed by several private and Federal landowners. Native fish and leopard frogs occur in House Pond and O'Donnell Canyon subunits and provide a prey base for northern Mexican gartersnakes. Crayfish, bullfrogs, and nonnative, spiny-rayed fish occur in the San Pedro River and Babocomari subunits and are an ongoing threat to northern Mexican gartersnakes. As a whole, this unit contains PBFs 1, 2, 5, 6, and 7, but PBFs 3 and 4 are in degraded condition. The physical or biological features in Upper San Pedro River Subbasin Unit may require special management consideration due to competition with, and predation by, predatory nonnative species that are present in this unit.

Lands owned by The Nature Conservancy at Canelo Hills Preserve and lands owned by the National Audubon Society at Appleton-Whittell Research Ranch in the O'Donnell Canyon Subunit are being considered for exclusion from the final rule for critical habitat. In addition, Fort Huachuca has requested the Service to consider for exclusion based on national security lands managed by BLM, Arizona State Land Department, and private entities within the San Pedro River and Babocomari River subunits. A total of 5,320 ac (2,152 ha), or 91 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below).

Narrow-Headed Gartersnake

We are proposing 461 stream mi (742 km) within a 89-ft (27-m) lateral extent of the active stream channel, totaling 18,701 ac (7,568 ha) comprising 8 units as critical habitat for the narrow-headed gartersnake in Greenlee, Graham, Apache, Yavapai, Gila, and Coconino Counties in Arizona, as well as in Grant, Hidalgo, and Catron Counties in New Mexico. Land ownership within proposed critical habitat for the narrow-headed gartersnake is broken down as follows: Federal (66 percent), State (Arizona and New Mexico) (2 percent), Tribal (3 percent), and private (29 percent) (see table 2b, below). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for narrow-headed gartersnake. We consider all units occupied at the time of listing, and all units contain essential PBFs that may require special management considerations or protection.

TABLE 2b—LAND OWNERSHIP AND SIZE OF NARROW-HEADED GARTERSNAKE PROPOSED CRITICAL HABITAT UNITS

[Area estimates reflect all land within critical habitat unit boundaries. County-owned lands are considered as private lands.]

Unit	Subunit	Land ownership by type acres (hectares)				Size of unit
		Federal	State	Tribal	Private	
1. Upper Gila River Subbasin.	Gila River	1,123 (455)	119 (48)		2,267 (917)	3,510 (1,420)

TABLE 2b—LAND OWNERSHIP AND SIZE OF NARROW-HEADED GARTERSNAKE PROPOSED CRITICAL HABITAT UNITS—Continued

[Area estimates reflect all land within critical habitat unit boundaries. County-owned lands are considered as private lands.]

Unit	Subunit	Land ownership by type acres (hectares)				Size of unit
		Federal	State	Tribal	Private	
	West Fork Gila River	358 (145)	154 (62)		51 (20)	562 (228)
	Little Creek	157 (64)	5 (2)			162 (65)
	Middle Fork Gila River	569 (230)				569 (230)
	Iron Creek	58 (23)				58 (23)
	Gilita Creek	149 (60)				149 (60)
	Black Canyon	245 (99)			6 (2)	251 (102)
	Diamond Creek	169 (68)				169 (68)
Unit Total		2,827 (1,144)	278 (113)		2,323 (940)	5,429 (2,197)
2. San Francisco River Subbasin.	San Francisco River	1,679 (680)			1,441 (583)	3,121 (1,263)
	Whitewater Creek	112 (45)			96 (39)	208 (84)
	Saliz Creek	182 (74)			36 (15)	218 (88)
	Tularosa River	338 (137)			492 (199)	829 (336)
	Negrito Creek	272 (110)			65 (26)	337 (136)
	South Fork Negrito Creek	171 (69)			21 (9)	192 (78)
Unit Total		2,753 (1,114)			2,152 (871)	4,905 (1,985)
3. Blue River Subbasin	Blue River	2,105 (852)			399 (162)	2,504 (1,013)
	Campbell Blue Creek	300 (121)			61 (25)	361 (146)
	Dry Blue Creek	106 (43)				106 (43)
Unit Total		2,510 (1,016)			460 (186)	2,971 (1,202)
4. Eagle Creek		99 (40)		236 (96)	1 (<1)	336 (136)
Unit Total		99 (40)		236 (96)	1 (<1)	336 (136)
5. Black River Subbasin	Black River	653 (264)		111 (45)		763 (309)
	Bear Wallow Creek	127 (51)		47 (19)		174 (71)
	North Fork Bear Wallow Creek.	61 (25)				61 (25)
	Reservation Creek	96 (39)		36 (14)		132 (54)
	Fish Creek	107 (43)				107 (43)
	East Fork Black River	370 (150)				370 (150)
Unit Total		1,414 (572)		194 (78)		1,607 (650)
6. Canyon Creek		155 (63)		77 (31)		232 (94)
Unit Total		155 (63)		77 (31)		232 (94)
7. Tonto Creek Subbasin	Tonto Creek	1,003 (406)			75 (30)	1,078 (436)
	Houston Creek	16 (6)			2 (1)	18 (7)
	Haigler Creek	266 (108)			28 (11)	294 (119)
Unit Total		1,285 (520)			105 (43)	1,390 (562)
8. Verde River Subbasin	Verde River	823 (333)			101 (41)	923 (374)
	Oak Creek	360 (146)	51 (21)		337 (136)	748 (303)
	West Fork Oak Creek	161 (65)				161 (65)
Unit Total		1,343 (544)	51 (21)		437 (177)	1,832 (741)
Total		12,386 (5,013)	329 (133)	507 (205)	5,479 (2,217)	18,701 (7,568)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for narrow-headed gartersnake, below.

Gila River Subbasin Unit

The Gila River Subbasin Unit is generally located in southwestern New Mexico, east of Glenwood, and west and north of Silver City in Grant and Hidalgo Counties, New Mexico. This unit consists of 5,429 ac (2,197 ha) in 8 subunits along 104 stream mi (167 km): 46 stream mi (74 km) of the Gila River, 12 stream mi (19 km) of West Fork Gila River, 14 stream mi (23 km) of Middle Fork Gila River, 10 stream mi (16 km) of Black Canyon, 6 stream mi (10 km) of Diamond Creek, 6 stream mi (10 km) of Gilita Creek, 2 stream mi (3 km) of Iron Creek, and 7 stream mi (11 km) of Little Creek. The Gila River Subbasin Unit consists of lands primarily managed by the U.S. Forest Service on the Gila National Forest; BLM within the Lower Box and Middle Gila Box ACECs and Gila Lower Box Wilderness Study Area; NPS on Gila Cliff Dwellings National Monument; New Mexico Department of Game and Fish on Heart Bar Wildlife Area, Redrock State Wildlife Experimental Area, and Gila Bird Area; State Trust lands; and private ownership, including lands owned by Freeport McMoRan Corporation.

Some reaches of the Gila River have been adversely affected by channelization and water diversions. In November 2014, the New Mexico Interstate Stream Commission provided notice to the Secretary of the Interior that the State of New Mexico intends to construct the New Mexico Unit of the Central Arizona Project as authorized by the Colorado River Basin Project Act of 1968 (Central Arizona Project 2015, p. 5–6). The New Mexico Unit of the Central Arizona Project will divert up to 14,000 ac-ft per year from the upper Gila River and its tributaries for consumptive use in New Mexico. However, the Secretary of the Interior denied an extension to divert additional funding, and no record of decision for a project design was issued by a December 31, 2019, deadline. Therefore, the future of the project is unknown. Historically, the West and Middle Forks Gila River maintained large populations of bullfrogs and nonnative, spiny-rayed fish. Wildfires have burned at both moderate and high severity within the unit and likely resulted in significant flooding with excessive ash and sediment loads. These sediment and ash-laden floods can reduce populations of both nonnative predatory species and native prey species for narrow-headed gartersnakes in affected streams for many years. The Gila River, West Fork Gila River, Little Creek, Iron Creek, Black Canyon, and Diamond Creek subunits have PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. The Middle Fork Gila River Subunit has PBF 1, 2, 4, and 5 but PBF 3 is in degraded condition. The physical or biological features in this unit may require special management consideration due to competition with, and predation by, nonnative species that are present in this unit; water diversions; channelization; potential for high-intensity wildfires; and human development of areas adjacent to proposed critical habitat.

Lands owned by Freeport McMoRan Corporation along the Gila River in the Gila River Subunit are being considered for exclusion from the final rule for critical habitat under section 4(b)(2) of the Act. A total of 563 ac (228 ha), or 10 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below).

San Francisco River Subbasin Unit

The San Francisco River Subbasin Unit is generally located in southwestern New Mexico near the towns of Glenwood and Reserve, and east of Luna, in Catron County. This unit consists of 4,905 ac (1,985 ha) in 6 subunits along 129 stream mi (207 km): 71 stream mi (115 km) of San Francisco River, 9 stream mi (14 km) of Whitewater Creek, 8 stream mi (13 km) of Saliz Creek, 20 stream mi (32 km) of Tularosa River, 13 stream mi (21 km) of Negrito Creek, and 8 stream mi (13 km) of South Fork Negrito Creek. The San Francisco River Subbasin Unit consists of lands managed primarily by the U.S. Forest Service on Gila National Forest and private landowners.

Water diversions have dewatered sections of the San Francisco River Subunit in the upper Alma Valley and at Pleasanton, New Mexico. The San Francisco River Subunit also has historically maintained populations of bullfrogs, crayfish, and nonnative, spiny-rayed fish at various densities along its course. Wildfires have burned at both moderate and high severity within the unit and likely resulted in significant flooding with excessive ash and sediment loads. These sediment and ash-laden floods can reduce populations of both nonnative predatory species and native prey species for narrow-headed gartersnakes in affected streams for many years. San Francisco River Subunit has PBFs 1, 2, and 5, but PBFs 3 and 4 are in degraded condition. Whitewater Creek Subunit has PBFs 1, 2, 4, and 5, but PBF 3 is in degraded condition. Tularosa River, Saliz Creek, Negrito Creek, and subunits have PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. South Fork Negrito Creek Subunit has adequate PBFs. The physical or biological features in this unit may require special management consideration due to competition with, and predation by, nonnative species that are present in this unit; water diversions that reduce base flow; potential for high-intensity wildfires; and human recreation and development of areas adjacent to proposed critical habitat. No areas within this unit are considered for exclusion.

Blue River Subbasin Unit

The Blue River Subbasin Unit is generally located near the east central border of Arizona northeast of Clifton in Greenlee County, and just into west-central New Mexico in Catron County. This unit consists of a total of 2,971 ac (1,202 ha) along 64 stream mi (103 km): 52 stream mi (84 km) of Blue River, 7 stream mi (11 km) of Campbell Blue Creek, and 4 stream mi (6 km) of Dry Blue Creek. Blue River Subbasin Unit consists of lands managed primarily by the U.S. Forest Service on Gila and Apache-Sitgreaves National Forests, and private landowners. The fish community of the Blue River is highly diverse and largely native, but nonnative fish are present. Native fish restoration is actively occurring in the Blue River, including construction of a fish barrier, mechanical removal of nonnative fish, and repatriation and monitoring of federally listed warm-water fishes (Robinson and Crowder 2015, p. 24; Robinson and Love-Chezem 2015, entire). Wildfires have burned at both moderate and high severity within the unit and likely resulted in significant flooding with excessive ash and sediment loads. These sediment and ash-laden floods can reduce populations of both nonnative predatory species and native prey species for narrow-headed gartersnakes in affected streams for many years. The Blue River and Dry Blue Creek subunits have PBFs 1, 2, 3, and 5, but PFB 4 is in degraded condition. Campbell Blue Creek Subunit has PBFS 1, 2, 4, and 5, but PBF 3 may be in degraded condition. The physical or biological features in this unit may require special management consideration to maintain or develop physical or biological features, including preventing reinvasion of nonnative species, and continuing to reestablish native prey species. No areas within this unit are considered for exclusion.

Eagle Creek Unit

The Eagle Creek Unit is generally located in eastern Arizona near Morenci and includes portions of Graham and Greenlee Counties. This unit consists of a total of 336 ac (136 ha) along 7 stream mi (11 km) of Eagle Creek. The majority of lands within this unit are managed by the San Carlos Apache Tribe and the U.S. Forest Service on the Gila National Forest. This unit has PBFs 1, 2, 3, and 5, but PBF 4 is deficient. Special management in this unit may be required to maintain or develop the physical or biological features, including the elimination or reduction of crayfish and nonnative, spiny-rayed fish, as well as maintenance of adequate base flow in Eagle Creek.

Lands owned by the San Carlos Apache Tribe in the Eagle Creek Unit are being considered for exclusion from the final rule for critical habitat under section 4(b)(2) of the Act. A total of 236 ac (96 ha), or 70 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below).

Black River Subbasin Unit

The Black River Subbasin Unit is generally located along the Mogollon Rim in east-central Arizona, east of Maverick and west of Hannigan Meadow, and includes portions of Apache, Graham, and Greenlee

Counties. This unit consists of a total of 1,607 ac (650 ha) in 6 subunits along 51 stream mi (82 km): 23 stream mi (37 km) of Black River, 6 stream mi (10 km) of Bear Wallow Creek, 2 stream mi (3 km) of North Fork Bear Wallow Creek, 5 stream mi (8 km) of Reservation Creek, 4 stream mi (6 km) of Fish Creek, and 12 stream mi (19 km) of East Fork Black River. The majority of lands within this unit are managed by the U.S. Forest Service on Apache-Sitgreaves National Forest, with additional lands managed by the White Mountain Apache and San Carlos Apache Tribes.

Water in the Black River Subbasin is diverted for use at the Morenci Mine, which may affect base flow. Wildfires have burned at both moderate and high severity within the unit and likely resulted in significant flooding with excessive ash and sediment loads. These sediment and ash-laden floods can reduce populations of both nonnative predatory species and native prey species for narrow-headed gartersnakes in affected streams for many years. In general, this unit has PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. The physical or biological features in this unit may require special management consideration due to competition with, and predation by, nonnative species that are present in this unit; water diversions; potential for high-intensity wildfires; and human development of areas adjacent to proposed critical habitat.

Lands owned by the White Mountain Apache and San Carlos Apache Tribes along the Black River, Bear Wallow Creek, and Reservation Creek of the Black River Subbasin Unit are being considered for exclusion from the final rule for critical habitat under section 4(b)(2) of the Act. A total of 195 ac (79 ha), or 12 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below).

Canyon Creek Unit

The Canyon Creek Unit is generally located along the Mogollon Rim in east-central Arizona, and falls within Gila County. This unit consists of 232 ac (94 ha) along 8 stream mi (13 km) of Canyon Creek. The Tonto National Forest manages the majority of lands within this unit; however, the White Mountain Apache Tribe also has land within this unit. This unit contains sufficient physical or biological features, but these features may require special management consideration including preventing invasion by nonnative predatory species as well as the potential for high-intensity wildfires.

Lands owned by the White Mountain Apache Tribe in the Canyon Creek Unit are being considered for exclusion from the final rule for critical habitat under section 4(b)(2) of the Act. A total of 77 ac (31 ha), or 33 percent, of this unit are being considered for exclusion (see *Application of Section 4(b)(2) of the Act,* below).

Tonto Creek Subbasin Unit

The Tonto Creek Subbasin Unit is generally located southeast of Payson, Arizona, and northeast of the Phoenix metropolitan area, in Gila County. This unit consists of a total of 1,390 ac (562 ha) in 3 subunits along 41 stream mi (66 km): 28 stream mi (45 km) of Tonto Creek, 1 stream mi (2 km) of Houston Creek, and 12 stream mi (19 km) of Haigler Creek. Land ownership or land management within this unit consists of lands managed by the U.S. Forest Service on Tonto National Forest in the Hellsgate Wilderness and privately owned lands.

Some reaches along Tonto Creek experience seasonal drying as a result of regional groundwater pumping, while others are or may be affected by diversions or existing or planned flood control projects. Development along private reaches of Tonto Creek may also affect terrestrial characteristics of narrow-headed gartersnake habitat. Mercury has been detected in fish samples within Tonto Creek, and further research is necessary to determine if mercury is bioaccumulating in the resident food chain. In general, this unit has PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. The physical or biological features in this unit may require special management consideration due to competition with, and predation by, nonnative species that are present in this unit; water diversions; flood-control projects; potential for high-intensity wildfires; and development of areas adjacent to or within proposed critical habitat. No areas within this unit are considered for exclusion.

Verde River Subbasin Unit

The Verde River Subbasin Unit is generally located near Perkinsville and Sedona, Arizona, west of Paulden, Arizona, in Coconino and Yavapai Counties. This unit consists of 1,832 ac (741 ha) in 3 subunits along 58 stream mi (93 km): 27 stream mi (43 km) of Verde River, 24 stream mi (39 km) of Oak Creek, and 7 stream mi (11 km) of West Fork Oak Creek. Verde River Subbasin Unit occurs on lands managed by the U.S. Forest Service on Prescott and Coconino National Forests, Arizona State Parks at Redrock State Park, and private entities. Proposed groundwater pumping of the Big Chino Aquifer may adversely affect future base flow in the Verde River. In general, the physical or biological features in this unit are sufficient, but may require special management consideration due to competition with, and predation by, nonnative species that are present; water diversions; groundwater pumping potentially resulting in drying of habitat; potential for high-intensity wildfires; and human development of areas adjacent to proposed critical habitat. No areas within this unit are considered for exclusion.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal

agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) of the Act is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would alter the amount, timing, or frequency of flow within a stream or the quantity of available water within wetland habitat such that the prey base for either gartersnake species, or the gartersnakes themselves, are appreciably diminished or threatened with extirpation. Such activities could include, but are not limited to: Water diversions; channelization; construction of any barriers or impediments within the active river channel; removal of flows in excess of those allotted under a given water right; construction of permanent or temporary diversion structures; groundwater pumping within aquifers associated with the river; or dewatering of isolated within-channel pools or stock tanks. These activities could result in the reduction of the distribution or abundance of important gartersnake prey species, as well as reduce the distribution and amount of suitable physical habitat on a regional landscape for the gartersnakes themselves.

(2) Actions that would significantly increase sediment deposition or scouring within the stream channel or pond that is habitat for the northern Mexican or narrow-headed gartersnake, or one or more of their prey species within the range of either gartersnake species. Such activities could include, but are not limited to: Poorly managed livestock grazing; road construction; commercial or urban development; channel alteration; timber harvest; prescribed fires or wildfire suppression; off-road vehicle or recreational use; and other alterations of watersheds and floodplains. These activities could adversely affect the potential for gartersnake prey species to survive or breed. They may also reduce the likelihood that their prey species, leopard frogs for northern Mexican gartersnake for example, could move among subpopulations in a functioning metapopulation. This would, in turn, decrease the viability of metapopulations and their component local populations of prey species.

(3) Actions that would alter water chemistry beyond the tolerance limits of a gartersnake prey base. Such activities could include, but are not limited to: Release of chemicals, biological pollutants, or effluents into the surface water or into connected groundwater at a point source or by dispersed release (non-point source); aerial deposition of known toxicants, such as mercury, that are positively correlated to regional exceedances of water quality standards for these toxicants; livestock grazing that results in waters heavily polluted by feces; runoff from agricultural fields; roadside use of salts; aerial pesticide overspray; runoff from mine tailings or other mining activities; and ash flow and fire retardants from fires and fire suppression. These actions could adversely affect the ability of the habitat to support survival and reproduction of gartersnake prey species.

(4) Actions that would remove, diminish, or significantly alter the structural complexity of key natural structural habitat features in and adjacent to aquatic habitat. These features may be organic or inorganic, may be natural or constructed, and include (but are not limited to) boulders and boulder piles, rocks such as river cobble, downed trees or logs, debris jams, small mammal burrows, or leaf litter. Such activities could include, but are not limited to: Construction projects; flood control projects; vegetation management projects; or any project that requires a 404 permit from the U.S. Army Corps of Engineers. These activities could result in a reduction of the amount or distribution of these key habitat features that are important for gartersnake thermoregulation, shelter, protection from predators, and foraging opportunities.

(5) Actions and structures that would physically block movement of gartersnakes or their prey species within or between regionally proximal populations or suitable habitat. Such actions and structures include, but are not limited to: Urban, industrial, or agricultural development; reservoirs stocked with predatory fishes, bullfrogs, or crayfish; highways that do not include reptile and amphibian fencing and culverts; and walls, dams, fences, canals, or other structures that could physically block movement of gartersnakes. These actions and structures could reduce or eliminate immigration and emigration among gartersnake populations, or that of their prey species, reducing the long-term viability of populations.

(6) Actions that would directly or indirectly result in the introduction, spread, or augmentation of predatory nonnative species in gartersnake habitat, or in habitat that is hydrologically connected, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on either gartersnake species or their prey base, or introduce pathogens such as *Batrachochytrium dendrobatidis,* which is a serious threat to the amphibian prey base of northern Mexican gartersnakes. Possible actions could include, but are not limited to: Introducing or stocking nonnative, spiny-rayed fishes, bullfrogs, crayfish, tiger salamanders, or other predators of the prey base of northern Mexican or narrow-headed gartersnakes; creating or sustaining a sport fishery that encourages use of nonnative live fish, crayfish, tiger salamanders, or frogs as bait; maintaining or operating reservoirs that act as source populations for predatory nonnative species within a watershed; constructing water diversions, canals, or other water conveyances that move water from one place to another and through which inadvertent transport of predatory nonnative species into northern Mexican or narrow-headed gartersnake habitat may occur; and moving water, mud, wet equipment, or vehicles from one aquatic site to another, through which inadvertent transport of pathogens may occur. These activities directly or indirectly cause unnatural competition with and predation from nonnative predators on these gartersnake species, leading to significantly reduced recruitment within gartersnake populations and diminishment or extirpation of their prey base.

(7) Actions that would deliberately remove, diminish, or significantly alter the native or nonnative, soft-rayed fish component of the narrow-headed gartersnake prey base within occupied habitat for a period of 7 days or longer. In general, these actions typically occur in association with fisheries management, such as the application of piscicides in conjunction with fish barrier construction. These activities are designed to completely remove target fish species from a treatment area and, if the area is fishless for an extended period of time, could result in starvation of a resident narrow-headed gartersnake population.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

The first sentence in section 4(b)(2) of the Act requires that we take into consideration the economic, national security or other relevant impacts of designating any particular area as critical habitat. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed

designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the northern Mexican gartersnake and the narrow-headed gartersnake (Industrial Economics 2019, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation for the species which may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for the northern Mexican gartersnake and the narrow-headed gartersnake. The DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the northern Mexican gartersnake and the narrow-headed gartersnake, first we identified, in the IEM dated October 10, 2019, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (National Park Service, U.S. Forest Service, Bureau of Land Management, Service, Department of Defense); (2) grazing (U.S. Forest Service, Bureau of Indian Affairs, Bureau of Land Management); (3) groundwater pumping (U.S. Forest Service, Bureau of Land Management, Department of Defense); (4) in-stream dams and diversions (Bureau of Land Management, Bureau of Reclamation, Service, Department of Defense); (5) dredging (Army Corps of Engineers, U.S. Forest Service, Bureau of Land Management, Natural Resources Conservation Service, National Park Service, Bureau of Indian Affairs); (6) water supply (Bureau of Reclamation, Army Corps of Engineers, Service, Bureau of Indian Affairs); (7) conservation and restoration (Natural Resources Conservation Service, Service, U.S. Forest Service, Department of Defense, Bureau of Land Management, National Park Service); (8) mining (U.S. Forest Service, Bureau of Land Management); (9) fire management (National Park Service, U.S. Forest Service, Bureau of Land Management, Bureau of Indian Affairs, Department of Defense); (10) vegetation and forest management (National Park Service, U.S. Forest Service, Bureau of Land Management); (11) transportation, including road and bridge construction and maintenance (Department of Transportation, Department of Defense, Bureau of Land Management, National Park Service, U.S. Forest Service, Customs and Border Protection, Bureau of Indian Affairs, Army Corps of Engineers); (12) recreation, including, but not limited to, sport fishing, sport-fish stocking, and off-highway vehicle use (National Park Service, U.S. Forest Service, Bureau of Land Management); (13) border protection and national security (U.S. Customs and Border Protection, Department of Defense); (14) renewable energy (Bureau of Indian Affairs, Department of Transportation, Bureau of Land Management); and (15) commercial or residential development (Army Corps of Engineers). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the northern Mexican gartersnake or the narrow-headed gartersnake is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this revised proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the northern Mexican gartersnake's and the narrow-headed gartersnake's critical habitat. The following specific circumstances help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the northern Mexican gartersnake and the narrow-headed gartersnake would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the northern Mexican gartersnake 27,784 ac (11,244 ha) comprising 9 units. Land ownership within proposed critical habitat for the northern Mexican gartersnake in acres is broken down as follows: Federal (62 percent), State (Arizona and New Mexico) (5 percent), Tribal (0.3 percent), and private (32 percent) (see table 2a, above). All units are considered occupied.

The proposed critical habitat designation for the narrow-headed gartersnake 18,701 ac (7,568 ha)

comprising 8 units. Land ownership within proposed critical habitat for the narrow-headed gartersnake in acres is broken down as follows: Federal (66 percent), State (Arizona and New Mexico) (2 percent), Tribal (3 percent), and private (29 percent) (see table 2b, above). All units are considered occupied.

In these areas, any actions that may affect the species would also affect designated critical habitat because the species is so dependent on habitat to fulfill its life-history functions. Therefore, any conservation measures to address impacts to the species would be the same as those to address impacts to critical habitat. Consequently, it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the both gartersnakes. Further, every unit of proposed critical habitat overlaps with the ranges of a number of currently listed species and designated critical habitats. Therefore, the actual number of section 7 consultations is not expected to increase at all. The consultation would simply have to consider an additional species or critical habitat unit. While this additional analysis will require time and resources by the Federal action agency, the Service, and third parties, the probable incremental economic impacts of the critical habitat designation are expected to be limited to additional administrative costs and would not be significant (Industrial Economics 2019, entire). This is due to all units being occupied by either the northern Mexican gartersnake or the narrow-headed gartersnake.

Based on consultation history for the gartersnakes, the number of future consultations, including technical assistances, is likely to be no more than 21 per year. The additional administrative cost of addressing adverse modification in these consultations is likely to be less than $61,000 in a given year, including costs to the Service, the Federal action agency, and third parties (Industrial Economics 2019 p. 14), with approximately $28,000 for formal consultations, $32,000 for informal consultations, and $1,100 for technical assistances. This is based on an individual technical assistance costing $410, informal consultation costing $2,500, and formal consultation costing $9,600. Therefore, the incremental costs associated with critical habitat are unlikely to exceed $100 million in any single year and, therefore, would not be significant.

To predict which units of proposed critical habitat are likely to experience the highest estimated incremental costs, we consider both the geographic distribution of historical formal consultations as well as the geographic distribution of land area. The units with the most historical formal consultations as well as the most acres of proposed critical habitat—and therefore the highest probability of intersecting with projects or activities with a Federal nexus that require consultation—are most likely to result in the highest incremental costs. Based on these criteria, Units 3 and 9 for the northern Mexican gartersnake are likely to result in the highest costs, with 30 percent and 15 percent of the 5.4 annual formal consultations occurring respectively in these units (Industrial Economics 2019, p. 16). In Unit 3, this would result in a cost of approximately $15,500; of this, the third-party cost is estimated to be less than 20 percent, or approximately $3,100. In Unit 9, this would result in a cost of approximately $7,700; of this, the third-party cost is estimated to be less than 20 percent, or approximately $1,500.

For the narrow-headed gartersnake, Units 1 and 2 are likely to result in the highest costs, with 6 percent and 11 percent of the 5.4 annual formal consultations occurring respectively in these units (Industrial Economics 2019, p. 17). In Unit 1, this would result in a cost of approximately $3,100; of this, the third-party cost is estimated to be less than 20 percent, or approximately $600. In Unit 2, this would result in a cost of approximately $5,700; of this, the third-party cost is estimated to be less than 20 percent, or approximately $1,100. Therefore, impacts that are concentrated in any geographic area or sector would not be likely because of this critical habitat designation.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of this revised proposed rule and our required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

During the development of a final designation, we will consider any additional economic impact information we receive through the public comment period, and as such areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on Economic Impacts

The first sentence of section 4(b)(2) of the Act requires the Service to consider the economic impacts (as well as the impacts on national security and any other relevant impacts) of designating critical habitat. In addition, economic impacts may, for some particular areas, play an important role in the discretionary 4(b)(2) exclusion analysis under the second sentence of section 4(b)(2). In both contexts, the Service will consider the probable incremental economic impacts of the designation. When the Service undertakes a discretionary 4(b)(2) exclusion analysis with respect to a particular area, we will weigh the economic benefits of exclusion (and any other benefits of exclusion) against any benefits of inclusion (primarily the conservation value of designating the area). The conservation value may be influenced by the level of effort needed to manage degraded habitat to the point where it could support the listed species. The Service will use its discretion in determining how to weigh probable incremental economic impacts against conservation value. The nature of the probable incremental economic impacts and not necessarily a particular threshold level triggers considerations of exclusions based on probable incremental economic impacts. For example, if an economic analysis indicates high probable incremental impacts of designating a particular critical habitat unit of low conservation value (relative to the remainder of the designation), the Services may consider exclusion of that particular unit.

Considerations Based on National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all Department of Defense (DoD) lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section

4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns.

We cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If the agency provides a reasonably specific justification, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out the Department's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that he determines are necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA. On May 15, 2019, the Secretary of Homeland Security issued waivers for legal requirements covering border barrier activities directly in the vicinity of the garternsnakes' known range and proposed critical habitat (84 FR 21798).

Exclusions Based on National Security Impacts

We received comments from the U.S. Army installation at Fort Huachuca requesting that we exclude from the final designation of critical habitat the San Pedro River and Babocomari River subunits within the San Pedro River Subbasin Unit that fall within the San Pedro Riparian National Conservation Area (SPRNCA) managed by the BLM, as well as the lands owned by the Arizona State Land Department and private landowners. This includes 92 percent of the San Pedro River Subunit and all of the Babocomari River Subunit.

San Pedro River Subunit and Babocomari River Subunit

The area being requested for exclusion is part of the SPRNCA and is managed by the BLM and comprised of Federal, State, and private lands. The Army's rationale for the exclusion was that any additional restrictions to ground-water pumping and water usage could affect their ability to increase staffing when needed, or carry out missions critical to national security. The Army also stated that designation of lands within the SPRNCA would increase its regulatory burden and disrupt its operations related to national security. The Army pointed to its continued land stewardship actions and its commitment to protecting natural resources on the base. We are considering this area for exclusion based on impacts to national security.

Considerations of Other Relevant Impacts

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction of adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation, or in the continuation, strengthening, or encouragement of partnerships.

In the case of northern Mexican and narrow-headed gartersnakes, the benefits of critical habitat include public awareness of the presence of northern Mexican and narrow-headed gartersnakes and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for northern Mexican and narrow-headed gartersnakes due to protection from destruction or adverse modification of critical habitat. Additionally, continued implementation of an ongoing management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including

whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether any lands in the proposed critical habitat areas are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

(i) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;

(ii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;

(iii) The demonstrated implementation and success of the chosen conservation measures;

(iv) The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(v) The extent of public participation in the development of the conservation plan;

(vi) The degree to which there has been agency review and required determinations (*e.g.,* State regulatory requirements), as necessary and appropriate;

(vii) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required; and

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

We are considering exclusions related to the following non-permitted (*e.g.,* no safe harbor agreement or habitat conservation plan under the Act) voluntary plans that afford some protections to one or both gartersnakes species: The AGFD management plans for Bubbling Ponds and Page Springs State Fish Hatcheries and for Planet Ranch Conservation and Wildlife Area, and Freeport McMoRan Corporation management plans for spikedace and loach minnow. We also recognize our strong conservation partner in The Nature Conservancy, who manages exclusively for native aquatic species on their properties but do not have conservation management plans in place, per se.

AGFD Management Plans

The AGFD owns lands included in proposed critical habitat for northern Mexican gartersnake within the Oak Creek Subunit (142 ac (57 ha)) in the Verde River Subbasin Unit, and within the Bill Williams River Subunit (329 ac (133 ha)) in the Bill Williams River Subbasin Unit. The AGFD has implemented management actions at its Bubbling Ponds and Page Springs State Fish Hatcheries that benefit northern Mexican gartersnakes, including research on home range and habitat use of the species, maintaining fallow ponds as habitat for the species, and creating new gartersnake ponds as funds become available (Jones 2019). The AGFD also has an operational management plan for the Planet Ranch Conservation and Wildlife Area that they acquired in 2015 (AGFD 2018, entire). This property is along the Bill Williams River and within the Bill Williams River subunit of proposed critical habitat for northern Mexican gartersnake. The operational management plan includes habitat improvements that will be implemented and funded by the Lower Colorado River Multi-Species Conservation Program described above that could benefit the northern Mexican gartersnake (AGFD 2018, pp. 12–18). In addition, AGFD has a fully funded gartersnake biologist and has drafted a ''Gartersnake Research and Management Strategy'' for Arizona (Cotten *et al.* 2014, entire).

Freeport McMoRan Corporation (FMC) Management Plans

The FMC currently has a management plan that focuses on conservation for listed spikedace and loach minnow on the middle section of the upper Gila River that confers benefits to northern Mexican and narrow-headed gartersnakes (FMC 2011, p. 7). Freeport McMoRan owns 515 ac (208 ha) of proposed critical habitat for northern Mexican gartersnake on the Gila River and Duck Creek in the Upper Gila River Subbasin Unit, and 563 ac (228 ha) of proposed critical habitat for narrow-headed gartersnakes on the Gila River in the Gila River Subbasin Unit that are included in this management plan. Here, FMC manages more than 7.2 mi (11.6 km) along this section of the Gila River, much of which is owned by the Pacific Western Land Company (PWLC), a subsidiary of FMC, and is included in the U-Bar Ranch. FMC's land and water rights in the Gila/Cliff Valley support operations at the Tyrone Mine in addition to its agricultural operations along the Gila River. Under FMC's existing management system, the riparian zone adjacent to the Gila River has expanded in width, benefitting the endangered southwestern willow flycatcher and other riparian species including the two gartersnakes. Surveys show that there are low levels of nonnative fishes in the Gila/Cliff Valley segment of the Gila River stream reach as well. Specific conservation measures in the Gila River Subbasin Unit of critical habitat that confer protections to both gartersnakes include a voluntary water conservation program in which FMC has enrolled 1,450 cubic feet per second (cfs) (2,876 ac-ft) of its annual average diversion rights through 2018, and maintenance of a minimum of 25

cfs (18,099 ac-ft per year) flow levels in the Gila River during periods of drought (FMC 2011, p. 10)

The Nature Conservancy

The Nature Conservancy owns three properties that include 597 ac (242 ha) of proposed critical habitat for northern Mexican gartersnake in Arizona. These properties include the Verde Valley Preserve with 16 ac (6 ha) of proposed critical habitat for northern Mexican gartersnake in the Verde River subunit, Canelo Hills Cienega Preserve with 1.8 ac (0.7 ha) of the O'Donnell Canyon Subunit, and the Patagonia-Sonoita Creek Preserve with 123 ac (50 ha) of the Sonoita Creek Subunit. The Nature Conservancy manages these properties for the benefit of aquatic and riparian species, although not all of them have management plans.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

Candidate conservation agreements with assurances (CCAAs) and safe harbor agreements (SHAs) are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. The Service also provides enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary 4(b)(2) exclusion analysis, we will always consider areas covered by an approved CCAA/SHA/HCP, and generally exclude such areas from a designation of critical habitat if three conditions are met:

1. The permittee is properly implementing the CCAA/SHA/HCP, and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is, and has been, fully implementing the commitments and provisions in the CCAA/SHA/HCP, implementing agreement, and permit.

2. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

3. The CCAA/SHA/HCP specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area.

We are aware of the following plans related to permits under section 10 of the Act that fulfill the above criteria, and are considering the exclusion of non-Federal lands covered by these plans that provide for the conservation of northern Mexican or narrow-headed gartersnakes from the final designation: AGFD's SHA for topminnow and desert pupfish in Arizona (AGFD and USFWS 2007), AGFD's SHA for Chiricahua leopard frog in Arizona (AGFD and USFWS 2006), Lower Colorado River Multi-Species HCP (Lower Colorado Multi-Species Conservation Program 2018), Pima County Multi-Species HCP (Pima County 2016), Salt River Project (SRP) Roosevelt HCP (SRP 2002) and Horseshoe-Bartlett HCP (SRP 2008), and San Rafael Ranch Low-effect HCP (Harlow 2015).

AGFD's SHA for Topminnow and Desert Pupfish in Arizona

Signed in 2007, the AGFD's SHA for topminnow and desert pupfish is an umbrella document under which individual landowners in the entire Arizona range of these native fish species on non-Federal and tribal lands may participate. Topminnow and desert pupfish are prey species of the northern Mexican gartersnake. Three private landowners within the range of the northern Mexican gartersnake hold certificates of inclusion in this SHA: San Rafael Cattle Company for the 18,365-acre (7,482-ha) San Rafael Ranch in the San Rafael Valley, a private rancher for a <1 acre (<2.5 ha) property in the San Rafael Valley, and National Audubon Society for <1 acre (<2.5 ha) of the Appleton-Whittell Research Ranch. The San Rafael Cattle Company maintains permanent water in 44 earthen stocktanks on the San Rafael Ranch that also serve as habitat for native aquatic species. The private rancher maintains permanent water in an earthen pond on his property that serves as habitat for native aquatic species. Appleton-Whittell Research Ranch is managed for the benefit of native species through a cooperative partnership among the National Audubon Society, U.S. Forest Service (USFS), BLM, The Nature Conservancy, Swift Current Land & Cattle Co., LLC, and the Research Ranch Foundation.

There are 116 ac (47 ha) of private lands on the San Rafael Ranch and 0.1 ac (<0.1 ha) of private lands on the second private ranch included in proposed critical habitat for the northern Mexican gartersnake within the Upper Santa Cruz River Subbasin Unit. There are 214 ac (87 ha) of private lands within Appleton-Whittell Research Ranch that are proposed as critical habitat for northern Mexican gartersnake within the Upper San Pedro River Subbasin Unit. Details of subunit breakdown are in table 2a, above. San Rafael Cattle Company, the second private rancher, and Audubon Research Ranch must maintain aquatic habitats free of nonnative predators, including bullfrogs and warmwater sportfish, in accordance with each certificate of inclusion. To date, Gila topminnow have been released into two stock tanks on the San Rafael Ranch, and desert pupfish have been released into a wildlife pond on the Appleton-Whittell Research Ranch. All of these sites also provide habitat for northern Mexican gartersnake.

AGFD's SHA for Chiricahua Leopard Frog in Arizona

Signed in 2006, the AGFD SHA for Chiricahua leopard frog is an umbrella document under which individual landowners in the entire Arizona range of this species on non-Federal and tribal lands may participate. Chiricahua leopard frogs are a primary prey species of the northern Mexican gartersnake. Four private landowners within the range of the northern Mexican gartersnake hold certificates of inclusion in this SHA: San Rafael Cattle Company, The Nature Conservancy, National Audubon Society, and an additional private ranch. Under each certificate of inclusion in the SHA, the four landowners must maintain aquatic habitats free of nonnative predators, including bullfrogs and warmwater sportfish. The San Rafael Cattle

Company holds a certificate of inclusion for two pastures on 2,673 ac of the San Rafael Ranch in the San Rafael Valley. There are 5 ac (2 ha) within one of these pastures included in the unnamed drainage and Pasture 9 Tank subunit of proposed critical habitat for northern Mexican gartersnake in the Upper Santa Cruz River Subunit. This area is also covered by the San Rafael Ranch HCP, which is described below. To date, Chiricahua leopard frogs have been released into one stock tank on the San Rafael Ranch that also provides habitat for northern Mexican gartersnakes. This is in addition to the stock tank where Gila topminnows have been released on the ranch.

National Audubon Society holds a certificate of inclusion for 1,409 ac on the Appleton-Whittell Research Ranch. There are 191 ac (77 ha) on this property included in O'Donnell Canyon, Post Canyon, and Unnamed drainage & Finley Tank subunits of proposed critical habitat for northern Mexican gartersnake. To date, Chiricahua leopard frogs have been released into two locations on this property that also provide habitat for northern Mexican gartersnakes.

Another private rancher a holds a certificate of inclusion for 79 ac (32 ha) on lands adjacent to the Appleton-Whittell Research Ranch. There are 15 ac (6 ha) within this ranch included in the Post Canyon Subunit of proposed critical habitat for the northern Mexican gartersnake.

The Nature Conservancy holds a certificate of inclusion for its Ramsey Canyon Preserve in Ramsey Canyon, which is adjacent to proposed critical habitat for the gartersnake in the House Pond Subunit. Both Ramsey Canyon Preserve and House Pond are occupied by a Chiricahua leopard frog metapopulation that is likely prey for the northern Mexican gartersnake in this area. Although the gartersnake has yet to be detected in Ramsey Canyon, it is currently extant in House Pond Subunit in Brown Canyon, the canyon immediately north of Ramsey Canyon.

Lower Colorado River Multi-Species HCP

The Lower Colorado River Multi-species Conservation Program (LCR MSCP) is a joint effort by 6 Federal agencies, 3 States, 6 Tribes, 36 cities, and water and power authorities with management authority for storage, delivery, and diversion of water; hydropower generation, marketing, and delivery; and land management or Native American Trust responsibilities along 400 mi (644 km) of the Lower Colorado River. In 2005, the Service issued a 50-year incidental take permit to the Bureau of Reclamation to address take of 6 species listed under the Act and 21 other species from water delivery and power generation along the Lower Colorado River. At this time, the northern Mexican gartersnake was considered extirpated from the lower Colorado River and is not included in the LCR MSCP. In 2018, the Bureau of Reclamation amended the LCR MSCP to address effects to the northern Mexican gartersnake, which was subsequently found in 2015 at Beal Lake on Havasu National Wildlife Refuge (NWR), which is included in the permit area. The LCR MSCP includes conservation measures to avoid and minimize direct effects of implementing covered activities and the LCR MSCP on the northern Mexican gartersnake, and the potential effects of habitat loss expected to be minimized with the creation of 1,496 ac (605 ha) of replacement habitat. Lands within the Lower Colorado River Unit are covered by the LCR MSCP, but are all Federal lands and are not proposed for exclusion from critical habitat designation. However, conservation measures also include funding for habitat improvements on Planet Ranch within the Bill Williams River Subunit that could benefit the northern Mexican gartersnake.

Pima County Sonoran Desert Conservation Plan and Multi-Species HCP

Through its Sonoran Desert Conservation Plan (SDCP), Pima County, Arizona, has been implementing measures that benefit the northern Mexican gartersnake since 2001. In 2016, the Service issued a 30-year incidental take permit for the Pima County Multi-Species Habitat Conservation Plan (MSHCP) to address incidental take from residential and non-residential development, renewable energy projects, relocation of utilities, ranch-management activities, recreation, and conservation and mitigation activities. The MSHCP is part of the SDCP and addresses 44 species, including the northern Mexican gartersnake. Under the SDCP and MSCP, Pima County manages lands that fall within proposed critical habitat for the northern Mexican gartersnake. There are 12 mi (19 km) of Cienega Creek within 543 ac (220 ha) of proposed critical habitat for northern Mexican gartersnake within the Cienega Creek Subunit of the Cienega Creek Subbasin Unit. The 3,797-acre Cienega Creek Natural Preserve is owned by the Pima County Flood Control District and is protected as a ''unique riparian ecosystem'' by a declaration of restrictions, covenants, and conditions by the Pima County Board of Supervisors in 1987 (Pima County Flood Control District 1987, p. 1). Management objectives of this preserve include preservation and protection of the perennial stream flow and existing riparian vegetation of Cienega Creek and its associated floodplain (Pima County Department of Transportation and Flood Control District 1994, p. 2–1). Protections to northern Mexican gartersnakes on this property exists through chapter 30 of title 16 of the Pima County Floodplain Management Ordinance (Pima County Code Ordinance Number 2010–FC5). Chapter 30 of the Floodplain Management Ordnance effectively minimizes habitat loss for northern Mexican gartersnake by protecting riparian habitat from development and requiring mitigation for disturbances to riparian habitat that exceed one-third of an acre. Pima County requested that lands within the Cienega Creek Natural Preserve remain in critical habitat for the northern Mexican gartersnake.

Salt River Project Roosevelt and Horseshoe-Bartlett HCPs

In 2003, the Service issued an incidental take permit for the SRP Roosevelt HCP (SRP 2002) to address incidental take from operation of Roosevelt Dam and Lake for four riparian bird species, including southwestern willow flycatcher, bald eagle, Yuma clapper rail, and western yellow-billed cuckoo. As part of its mitigation measures for these bird species under the Roosevelt HCP, SRP has acquired and will manage in perpetuity 471 ac (191 ha) of riparian and adjacent upland habitat offsite along the Gila and Verde Rivers, some of which may also confer benefits to the two gartersnakes (SRP 2002, p. 143; SRP 2013, p. 17).

Subsequently in 2008, the Service issued another incidental take permit to SRP for the SRP Horseshoe-Bartlett HCP to address incidental take from the operation of Horseshoe and Bartlett reservoirs of listed species as well as both gartersnakes, which were not listed at the time of permit issuance. Mitigation measures in the Verde River watershed included in the Horseshoe-Bartlett HCP designed to benefit the two gartersnakes include reducing nonnative fish reproduction, recruitment, and movement at Horseshoe Reservoir; increasing native fish populations, distribution, and relative abundance in the Verde River; and working to maintain water flows in the Verde River above Horseshoe Reservoir through watershed management activities (SRP

2008, pp. 193–196). Mitigation also included acquisition and management in perpetuity of 50 ac (20 ha) of riparian habitat along the Verde River and 150 ac (61 ha) of riparian habitat offsite along the Gila River, some of which may benefit the two gartersnakes (SRP 2008, pp. 179–184). Private lands, as well as acquisitions or conservation easements made to date for both of SRP's HCPs that fall within proposed critical habitat for northern Mexican gartersnake, include 515 ac (208 ha) of private lands in the Gila River and Duck Creek subunits, and 96 ac (39 ha) of private lands in the Verde River Subunit (SRP 2014, pp. 27–30; SRP 2014a, p. 11). SRP-owned lands that fall within proposed critical habitat for narrow-headed gartersnake include 563 ac (228 ha) of the Gila River Subunit. Management actions on the Camp Verde Riparian Preserve property on the Verde River that may benefit the two gartersnakes include acquiring water rights; creating conservation easements; maintaining fencing around riparian areas, including log-jams that allow normal hydrologic processes to continue unimpeded while excluding livestock; planting native species above riparian areas to improve watershed conditions; and monitoring groundwater and stream flow levels.

San Rafael Ranch Low-Effect HCP

In 2016, the Service issued a 30-year incidental take permit for the San Rafael Ranch low-effect HCP (Harlow 2015) to address incidental take from cattle ranching operations of Sonoran tiger salamander, northern Mexican gartersnake, Gila chub, and Huachuca springsnail. Measures to minimize take emphasize the use of riparian pastures and dispersed grazing, maintaining existing and developing new livestock ponds that also serve as habitat for covered species including the northern Mexican gartersnake, and undertaking recovery actions for listed species in cooperation with the Service and AGFD. The incidental take permit boundary includes the 18,500-acre San Rafael Ranch. Portions of the Santa Cruz River, Unnamed drainage and Pasture 9 Tank, and Unnamed drainage and Sheehy Spring subunits (116 ac (47 ha)) of proposed critical habitat for northern Mexican gartersnake fall within the incidental take permit boundary. Implementation of winter grazing only in riparian pastures along the Santa Cruz River and managed grazing of upland pastures would maintain habitat for northern Mexican gartersnakes. Maintaining fencing and managing trespass cattle limits grazing of riparian pastures to the non-growing season and lessens impacts to proposed critical habitat. Maintenance of stock tanks will also help address nonnative predator populations in proposed critical habitat.

Tribal Lands

Several Executive Orders, Secretarial Orders, and policies relate to working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control tribal lands, emphasize the importance of developing partnerships with tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (NMFS), Secretarial Order 3206, *American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The Order also states, ''Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' In light of this instruction, when we undertake a discretionary 4(b)(2) exclusion analysis, we will always consider exclusions of tribal lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not preclude us from designating tribal lands or waters as critical habitat, nor does it state that tribal lands or waters cannot meet the Act's definition of ''critical habitat.'' We are directed by the Act to identify areas that meet the definition of ''critical habitat'' (*i.e.,* areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries' statutory authority.

Fort Apache Native Fish Management Plan

The White Mountain Apache Tribe's Fort Apache Indian Reservation (Fort Apache) encompasses approximately 1,680,000 ac (679,872 ha) in east-central Arizona. Fort Apache includes 6 percent of the Black River Subbasin Unit (92 ac (37 ha)) and 33 percent of Canyon Creek Unit (77 ac (31 ha)) of proposed critical habitat for narrow-headed gartersnake. The Salt River and Black River serve as the boundary between Fort Apache and the San Carlos Apache Reservations. In May 2014, the White Mountain Apache Tribe and the Service drafted a native fish's management plan for Fort Apache that includes the federally endangered loach minnow, federally threatened Apache trout, and four other native fish species currently extant on Fort Apache (White Mountain Apache Tribe and Service 2014, p. 2). This plan supersedes their 2000 Loach Minnow Management Plan (White Mountain Apache Tribe 2000, entire). The draft 2014 management plan identifies several Tribal regulation and management efforts they think are beneficial to loach minnow and would also confer benefits to the gartersnakes, including Resolution 89–149, which designates streams and riparian zones as Sensitive Fish and Wildlife areas, requiring that authorized programs ensure these zones remain productive for fish and wildlife. The White Mountain Apache Tribe additionally adopted a Water Quality Protection Ordinance in 1999 to ''promote the health of Tribal waters and the people, plants and wildlife that depend on them through holistic management and sustainable use.'' The draft 2014 management plan also includes an objective to identify Native Fish Management Units within each of the watersheds on Fort Apache and develop initial management recommendations for each Native Fish Management Unit, considering native fish and aquatic and riparian obligates, including, but not limited to, species such as leopard frogs and gartersnakes (White Mountain Apache Tribe and AFWCO 2014, p. 21).

San Carlos Apache Tribe Fishery Management Plan

The San Carlos Apache Reservation encompasses approximately 1,850,000 ac (748,668 ha) in east-central Arizona. This reservation includes 6 percent (102 ac (41 ha)) of the Black River Subbasin Unit and 70 percent (236 ac (96 ha)) of the Eagle Creek Unit of proposed critical habitat for narrow-headed gartersnake.

The Salt River and Black River serve as the boundary between the San Carlos Apache Reservation and Fort Apache. The San Carlos Apache Tribe Fishery Management Plan (FMP; San Carlos Apache Tribe 2005, entire) was adopted in 2005, via Tribal Resolution SEP–05–178. This management plan addresses both sportfish and native fish management on the San Carlos Apache Reservation. Although sportfish have not been intentionally stocked in streams on the reservation since 1975, sportfish continue to be stocked in lentic waters including lakes, ponds, and stocktanks throughout the San Carlos Apache Reservation. The FMP has several goals relevant to native fish management, which may confer benefits to the gartersnakes by supporting conservation of their prey species. These goals include development and implementation of integrated, watershed-based approaches to fishery resource management; conserving, enhancing, and maintaining existing native fish populations and their habitats as part of the natural diversity of the San Carlos Apache Reservation, and preventing, minimizing, or mitigating adverse impacts to all native fishes, especially threatened or endangered species, and their habitats when consistent with the Reservation as a permanent home and abiding place for San Carlos Apache Tribal members; restoring extirpated native fishes and degraded natural habitats when appropriate and economically feasible; increasing Tribal awareness of native fish conservation and values; and aggressively pursuing funding adequate to support all Tribal conservation and management activities for all native fishes and their habitats (San Carlos Apache Tribe 2005, pp. 63–71).

Yavapai-Apache Nation Tribal Resolution 46–2006

The Yavapai-Apache Nation includes 207 ac (84 ha) of proposed critical habitat for northern Mexican gartersnake in the Verde River Subunit. Yavapai-Apache Nation approved Tribal Resolution 46–2006, ''confirming and declaring a riparian conservation corridor and management plan for the Verde River'' that affords protections to both gartersnakes. This resolution requires the Yavapai-Apache Nation to ''preserve the physical and biological features found within the riparian corridor of the Verde River essential to native wildlife species, including species listed as endangered or threatened by the federal government under the Endangered Species Act'' (Yavapai-Apache Nation 2006, p. 1). The riparian corridor is defined as a 300-ft (91-m) buffer from centerline of the Verde River on their lands (Yavapai-Apache Nation 2006, p. 1). Within this corridor, the Yavapai-Apache resolves to coordinate with the Service on actions that may adversely impact habitat essential to the conservation and/or recovery of federally listed species (Yavapai-Apache Nation 2006, p. 2). In addition, stocking of nonnative fishes is specifically prohibited by the resolution (Yavapai-Apache Nation 2006, p. 2).

We scheduled a meeting with these tribes and other interested tribes prior to publication of this revised proposed rule to give them as much time as possible to comment.

Summary of Exclusion We Are Considering

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the proposed critical habitat are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation. The areas described above that we are considering excluding under section 4(b)(2) of the Act from the final critical habitat designation 7,405 ac (2,997 ha) for northern Mexican gartersnake and 1,072 ac (434 ha) for narrow-headed gartersnake, which represents 27 percent and 6 percent of the proposed designation for each gartersnake species, respectively. Tables 3a and 3b, below, provide approximate areas (ac, ha) of lands that meet the definition of critical habitat for each gartersnake species but are under our consideration for possible exclusion under section 4(b)(2) of the Act from the final critical habitat rule. Additionally, we will consider excluding any other areas where we determine that the benefits of exclusion outweigh the benefits of inclusion based upon the information we have when we finalize a critical habitat designation.

TABLE 3a—AREAS IDENTIFIED FOR POSSIBLE EXCLUSION FOR THE NORTHERN MEXICAN GARTERSNAKE BY CRITICAL HABITAT UNIT AND SUBUNIT

Unit subunit	Landowner, property name	Ownership type	Area in acres (hectares)	Portion of unit or subunit
Upper Gila River Subbasin Unit				
Gila River	Freeport McMoRan (Freeport McMoRan Corporation management plans).	Private	500 (202)	48%
Duck Creek	Freeport McMoRan (Freeport McMoRan Corporation management plans).	Private	15 (6)	14%
Unit total being considered for exclusion.			515 (208)	45%
Verde River Subbasin Unit				
Verde River	The Nature Conservancy, Verde Valley Preserve and Verde Valley property.	Private	16 (6)	0.4%
	Salt River Project, Camp Verde Riparian Preserve (Roosevelt and Horseshoe-Bartlett HCPs).	Private	96 (39)	2%
	Yavapai-Apache Nation	Tribal	207 (84)	5%
Oak Creek	Arizona Game and Fish Department, Bubbling Ponds Hatchery and Page Springs Hatchery (State Wildlife Action Plan).	State	142 (57)	14%

TABLE 3a—AREAS IDENTIFIED FOR POSSIBLE EXCLUSION FOR THE NORTHERN MEXICAN GARTERSNAKE BY CRITICAL HABITAT UNIT AND SUBUNIT—Continued

Unit subunit	Landowner, property name	Ownership type	Area in acres (hectares)	Portion of unit or subunit
Unit total being considered for exclusion.	.....	.....	460 (186)	9%
Bill Williams River Subbasin Unit				
Bill Williams River	Arizona Game and Fish Department, Planet Ranch Conservation and Wildlife Area (State Wildlife Action Plan).	State	329 (133)	18%
Unit total being considered for exclusion.	.....	.....	329 (133)	8%
Cienega Creek Subbasin Unit				
Cienega Creek	Pima County, Cienega Creek Natural Preserve (Pima County MSCP).	Private	543 (220)	34%
Unit total being considered for exclusion.	.....	.....	543 (220)	27%
Upper Santa Cruz River Subbasin Unit				
Sonoita Creek	The Nature Conservancy, Patagonia-Sonoita Creek Preserve.	Private	123 (50)	55%
Santa Cruz River	San Rafael Cattle Company, San Rafael Ranch (San Rafael Ranch Low-effect HCP).	Private	91 (37)	57%
Unnamed Drainage and Pasture 9 Tank.	San Rafael Cattle Company, San Rafael Ranch (AGFD's SHA, San Rafael Ranch Low Effect HCP).	Private	5 (2)	12%
Unnamed Drainage and Sheehy Spring.	San Rafael Cattle Company, San Rafael Ranch (AGFD's SHA, San Rafael Ranch Low Effect HCP).	Private	20 (8)	80%
Unnamed Wildlife Pond	Private Ranch (AGFD's SHA)	Private	0.07 (0.03)	100%
Unit total being considered for exclusion.	.....	.....	238 (96)	48%
Upper San Pedro River Subbasin Unit				
San Pedro River (Fort Huachuca requested exclusion).	Bureau of Land Management, San Pedro Riparian National Conservation Area (national security).	Federal	4,496 (1,820)	88%
	Private (national security)	Private	215 (87)	4%
Babocomari River (Fort Huachuca requested exclusion).	Bureau of Land Management, San Pedro Riparian National Conservation Area (national security).	Federal	195 (79)	49%
	Arizona State Land Department (national security).	State	8 (3)	2%
	Private (national security)	Private	199 (81)	49%
O'Donnell Canyon	National Audubon Society, Appleton-Whittell Research Ranch (AGFD's SHA).	Private	173 (70)	72%
	The Nature Conservancy, Canelo Hills Preserve.	Private	1.8 (0.7)	0.8
Post Canyon	National Audubon Society, Appleton-Whittell Research Ranch (AGFD's SHA).	Private	15 (6)	19%
	Private Ranch (AGFD's SHA)	Private	15 (6)	19%
Unnamed Drainage and Finley Tank.	National Audubon Society, Appleton-Whittell Research Ranch (AGFD's SHA).	Private	3 (1)	100%
Unit total being considered for exclusion.	.....	.....	5,320 (2,152)	91%
Grand Total	.....	.....	7,405 (2,997)	27%

TABLE 3b—AREAS CONSIDERED FOR EXCLUSION FOR THE NARROW-HEADED GARTERSNAKE BY CRITICAL HABITAT UNIT AND SUBUNIT

Unit subunit	Landowner, property name	Ownership type	Area in acres (hectares)	Portion of unit or subunit
Upper Gila River Subbasin Unit				
Gila River	Freeport McMoRan (Freeport McMoRan Corporation management plans).	Private	563 (228)	10%
Unit total being considered for exclusion.			563 (228)	10%
Eagle Creek Unit				
Eagle Creek	San Carlos Apache Tribe	Tribal	236 (96)	70%
Unit total being considered for exclusion.			236 (96)	70%
Black River Subbasin Unit				
Black River	*San Carlos Apache Tribe	Tribal	55 (22)	7%
Bear Wallow Creek	White Mountain Apache Tribe	Tribal	56 (23)	7%
	San Carlos Apache Tribe	Tribal	48 (19)	27%
	White Mountain Apache Tribe	Tribal	<.01 (<.01)	<.01%
Reservation Creek	White Mountain Apache Tribe	Tribal	36 (15)	27%
Unit total being considered for exclusion.			195 (79)	12%
Canyon Creek Unit				
Canyon Creek	White Mountain Apache Tribe	Tribal	77 (31)	33%
Unit total being considered for exclusion.			77 (31)	33%
Grand Total			1,072 (434)	6%

We specifically request comments on the inclusion or exclusion of such areas in our final designation of critical habitat for the northern Mexican gartersnake and narrow-headed gartersnake (see *Public Comments* under Request for Information, above).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

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

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact

on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt this revised proposed critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the revised proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether this revised proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the revised proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not an Executive Order (E.O.) 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the proposed critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not think that this rule would significantly or uniquely affect small governments. The lands being proposed for critical habitat designation are owned by Pima County, private landowners, Tribes, the States of New Mexico and Arizona, and the Federal Government (U.S. Forest Service, National Park Service, Bureau of Land Management, and U.S. Fish and

Wildlife Service). In addition, based in part on an analysis conducted for the previous proposed designation of critical habitat and extrapolated to this designation, we do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs or actions requiring or using Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Further, we do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for northern Mexican gartersnake and narrow-headed gartersnake in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for northern Mexican gartersnake and narrow-headed gartersnake, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed designated areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

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

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of northern Mexican and narrow-headed gartersnakes, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. We invite the public to comment on the extent to which this proposed critical habitat designation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive

Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

The tribal lands in Arizona included in this proposed designation of critical habitat are the lands of the White Mountain Apache Tribe, San Carlos Apache Tribe, and Yavapai Apache Nation. We used the criteria described above under Criteria Used To Identify Critical Habitat to identify tribal lands that are occupied by the northern Mexican and narrow-headed gartersnakes that contain the features essential for the conservation of these species. We began government-to-government consultation with these tribes on November 29, 2011, in a pre-notification letter informing the tribes that we had begun an evaluation of the northern Mexican and narrow-headed gartersnakes for listing purposes under the Act. We will consider these areas for exclusion from the final critical habitat designation to the extent consistent with the requirements of section 4(b)(2) of the Act. We sent notification letters on March 12, 2013, to each tribe that described the exclusion process under section 4(b)(2) of the Act and invited them to meet to discuss the listing process and engage in conversation with us about the proposal to the extent possible without disclosing pre-decisional information. During an April 2, 2019, coordination meeting with these tribes, we informed them that we were revising the proposed critical habitat designation for the two gartersnakes and would have meetings with them as early as legally possible regarding the revisions. We plan to meet with these tribes and any other interested tribes in early April 2020 so that we can provide ample time to comment. We will continue to work with tribal entities during the development of a final rule for the designation of critical habitat for the northern Mexican and narrow-headed gartersnakes

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rulemaking are the staff members of the Arizona Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for ''Gartersnake, narrow-headed'' and ''Gartersnake, northern Mexican'' under REPTILES in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * * * *				
REPTILES				
* * * * * * *				
Gartersnake, narrow-headed	*Thamnophis rufipunctatus*	Wherever found	T	79 FR 38677, 7/8/2014; 50 CFR 17.95(c).[CH]
Gartersnake, northern Mexican	*Thamnophis eques megalops*	Wherever found	T	79 FR 38677, 7/8/2014; 50 CFR 17.42(g);[4d] 50 CFR 17.95(c).[CH]
* * * * * * *				

■ 3. In § 17.95, amend paragraph (c) by adding, in the same alphabetical order that the species appear in the table at § 17.11(h), entries for ''Narrow-headed Gartersnake (*Thamnophis rufipunctatus*)'' and ''Northern Mexican Gartersnake (*Thamnophis eques megalops*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) *Reptiles.*

* * * * *

Narrow-Headed Gartersnake (*Thamnophis rufipunctatus*)

(1) Critical habitat units are depicted for Apache, Coconino, Gila, Graham, Greelee, and Yavapai Counties in Arizona, and Catron, Grant, and Hidalgo Counties in New Mexico, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of narrow-headed gartersnake consist of the following components:

(i) Perennial streams or spatially intermittent streams that provide both aquatic and terrestrial habitat that allows for immigration, emigration, and maintenance of population connectivity of narrow-headed gartersnakes and contain:

(A) Pools, riffles, and cobble and boulder substrate, with low amount of fine sediment and substrate embeddedness;

(B) Organic and natural inorganic structural features (*e.g.,* cobble bars, rock piles, large boulders, logs or

stumps, aquatic and wetland vegetation, logs, and debris jams) in the stream channel for basking, thermoregulation, shelter, prey base maintenance, and protection from predators;

(C) Water quality that is absent of pollutants or, if pollutants are present, at levels low enough such that recruitment of narrow-headed gartersnakes is not inhibited; and

(D) Terrestrial habitat within 89 feet (27 meters) of the active stream channel that includes boulder fields, rocks, and rock structures containing cracks and crevices, small mammal burrows, downed woody debris, and vegetation for thermoregulation, shelter sites, and protection from predators.

(ii) Hydrologic processes that maintain aquatic and riparian habitat through:

(A) A natural flow regime that allows for periodic flooding, or if flows are modified or regulated, a flow regime that allows for the movement of water, sediment, nutrients, and debris through the stream network, as well as maintenance of native fish populations; and

(B) Physical hydrologic and geomorphic connection between the active stream channel and its adjacent terrestrial areas.

(iii) Prey base of native fishes, or soft-rayed, nonnative fish species.

(iv) An absence of nonnative predators, such as fish species of the families Centrarchidae and Ictaluridae, bullfrogs, and crayfish, or occurrence of nonnative predators at low enough densities such that recruitment of narrow-headed gartersnakes is not inhibited and maintenance of viable prey populations is still occurring.

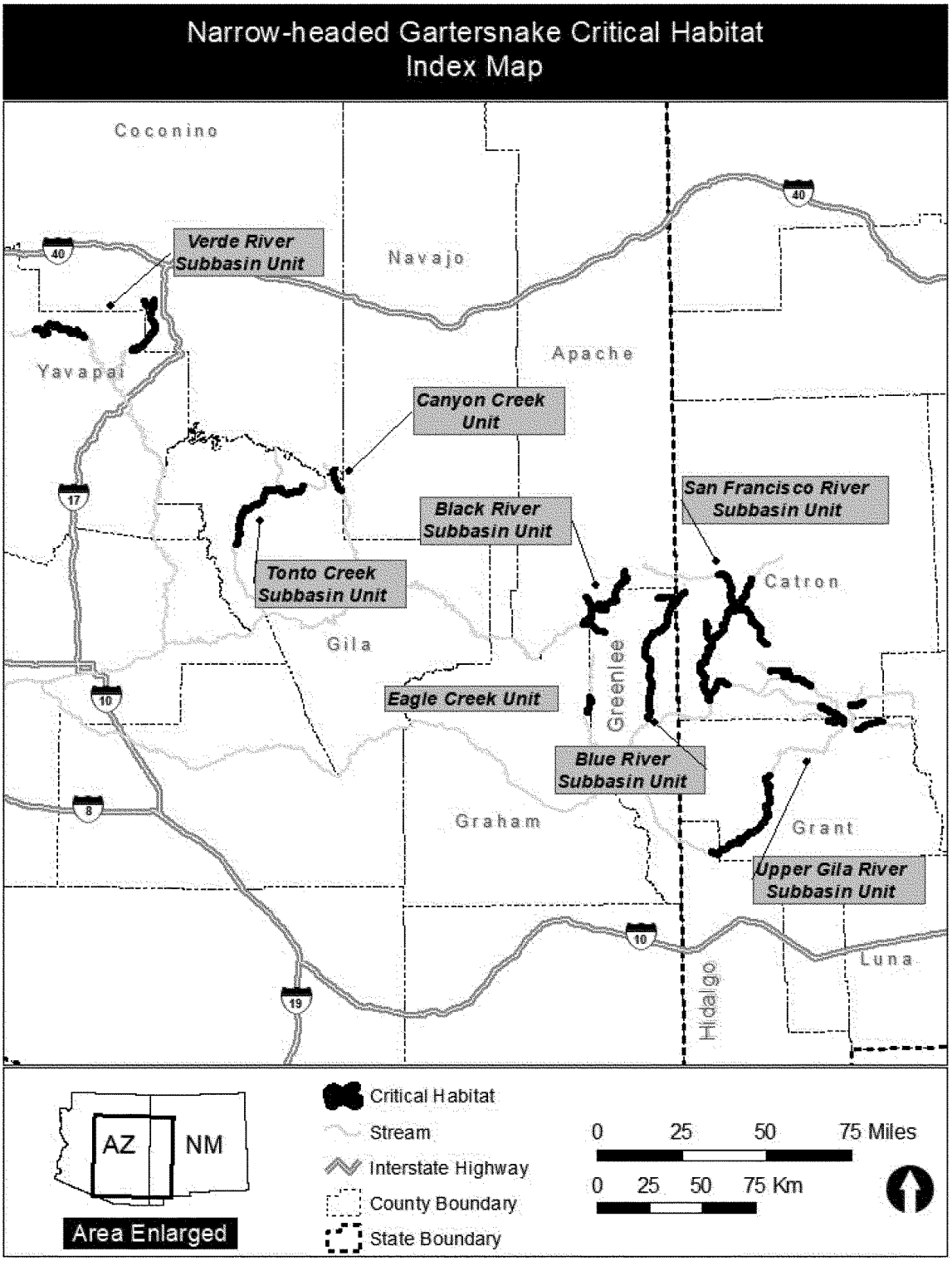
(v) Elevations of 2,300 to 8,200 feet (700 to 2,500 meters).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units included the U.S. Geological Survey's 7.5' quadrangles, National Hydrography Dataset and National Elevation Dataset; the Service's National Wetlands Inventory dataset; and aerial imagery from Google Earth Pro. Line locations for lotic streams (flowing water) and drainages are depicted as the ''Flowline'' feature class from the National Hydrography Dataset geodatabase. The active channel along a stream is depicted as the ''Wetlands'' feature class from the Service's National Wetlands Inventory dataset. Any discrepancies between the ''Flowline'' and ''Wetlands'' feature classes were resolved using aerial imagery from Google Earth Pro. Elevation range is masked using the ''Elev_Contour'' feature class of the National Elevation Dataset. The administrative boundaries for Arizona and New Mexico were obtained from the Arizona Land Resource Information Service and New Mexico Resource Geographic Information System, respectively. This includes the most current (as of the effective date of this rule) geospatial data available for land ownership, counties, States, and streets. Locations depicting critical habitat are expressed as decimal degree latitude and longitude in the World Geographic Coordinate System projection using the 1984 datum (WGS84). The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *http://www.fws.gov/southwest/es/arizona/,* at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0011, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

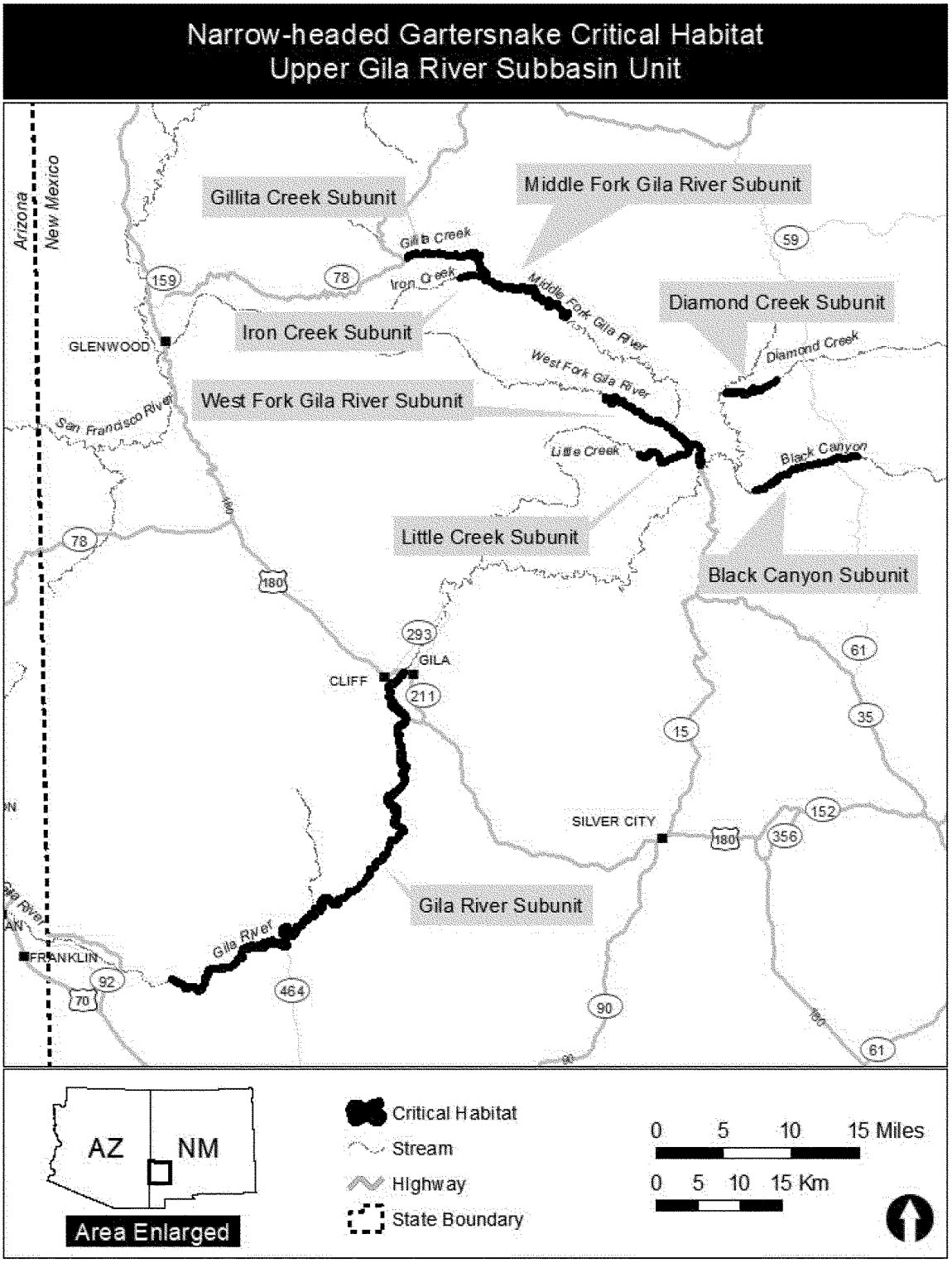
BILLING CODE P



(6) Unit 1: Upper Gila River Subbasin Unit, Grant and Hidalgo Counties, New Mexico.

(i) *General description:* Unit 1 consists of 5,429 ac (2,197 ha) in Grant and Hidalgo Counties, and is composed of lands in Federal (2,827 ac (1,144 ha)), State (278 ac (113 ha)), and private (2,323 ac (940 ha)) ownership in eight subunits west of the town of Glenwood, north of Silver City, and South of Gila and Cliff.

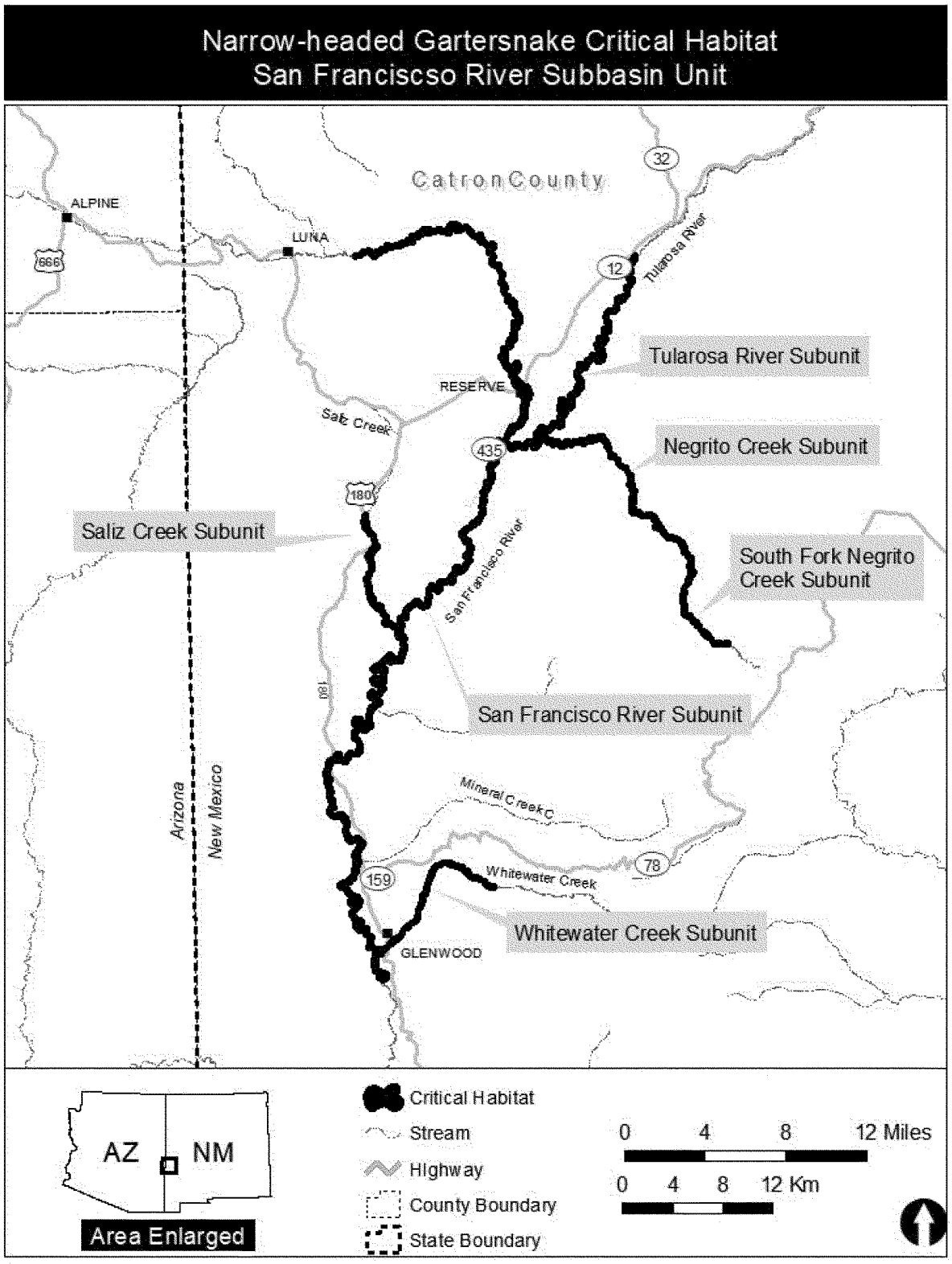
(ii) Map of Unit 1 follows:



(7) Unit 2: San Francisco River Subbasin Unit, Catron County, New Mexico.

(i) *General description:* Unit 2 consists of 4,905 ac (1,985 ha) in Catron County, and is composed of lands in Federal (2,753 ac (1,114 ha)) and private (2,152 ac (871 ha)) ownership in six subunits near the towns of Glenwood and Reserve.

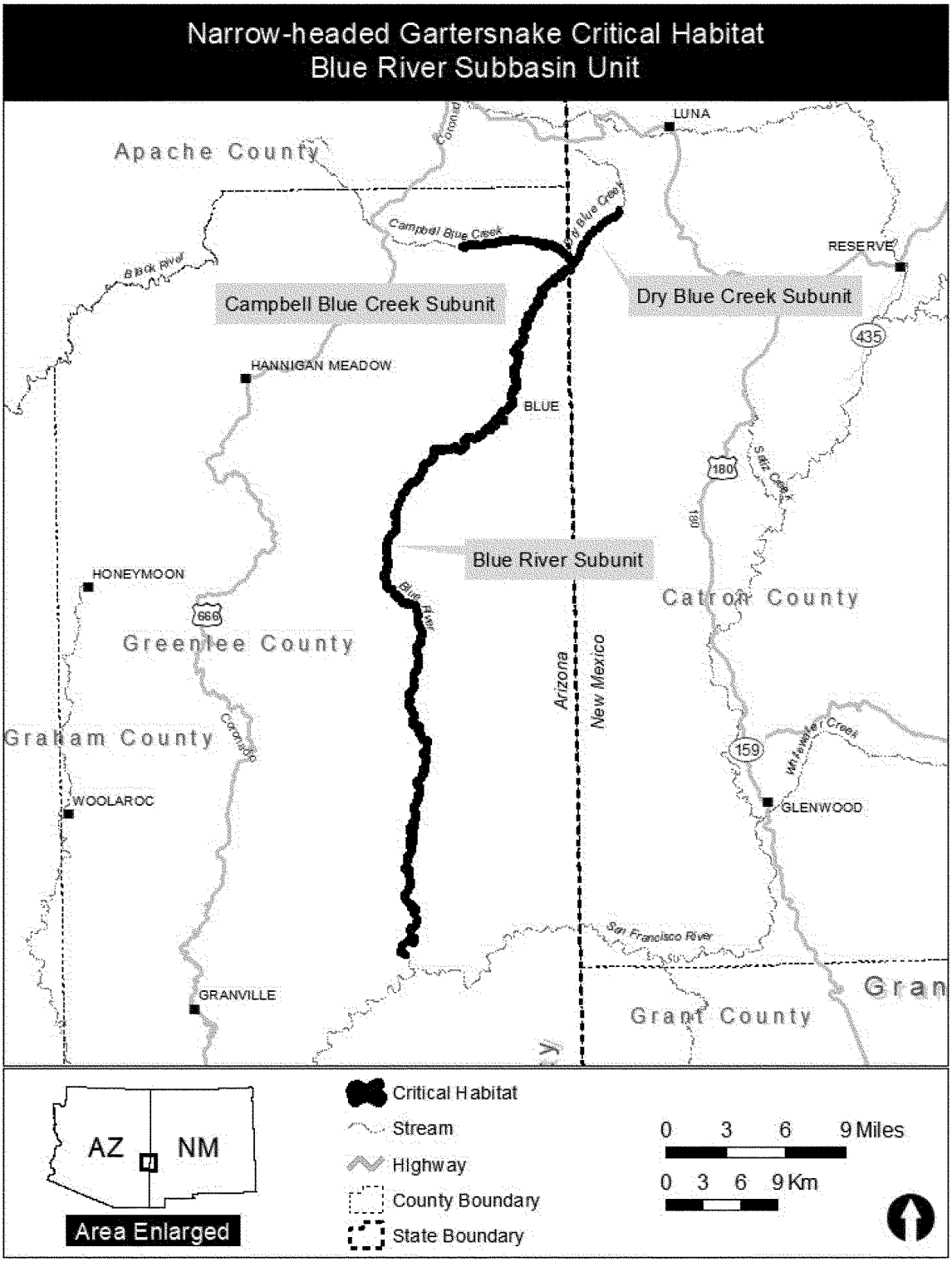
(ii) Map of Unit 2 follows:



(8) Unit 3: Blue River Subbasin Unit, Greenlee County, Arizona, and Catron County, New Mexico.

(i) *General description:* Unit 3 consists of 2,971 ac (1,202 ha) in Greenlee County, Arizona, and Catron County, New Mexico, and is composed of lands in Federal (2,510 ac (1,016 ha)) and private (460 ac (186 ha)) ownership in three subunits near the towns of Blue, Arizona, and Luna, New Mexico.

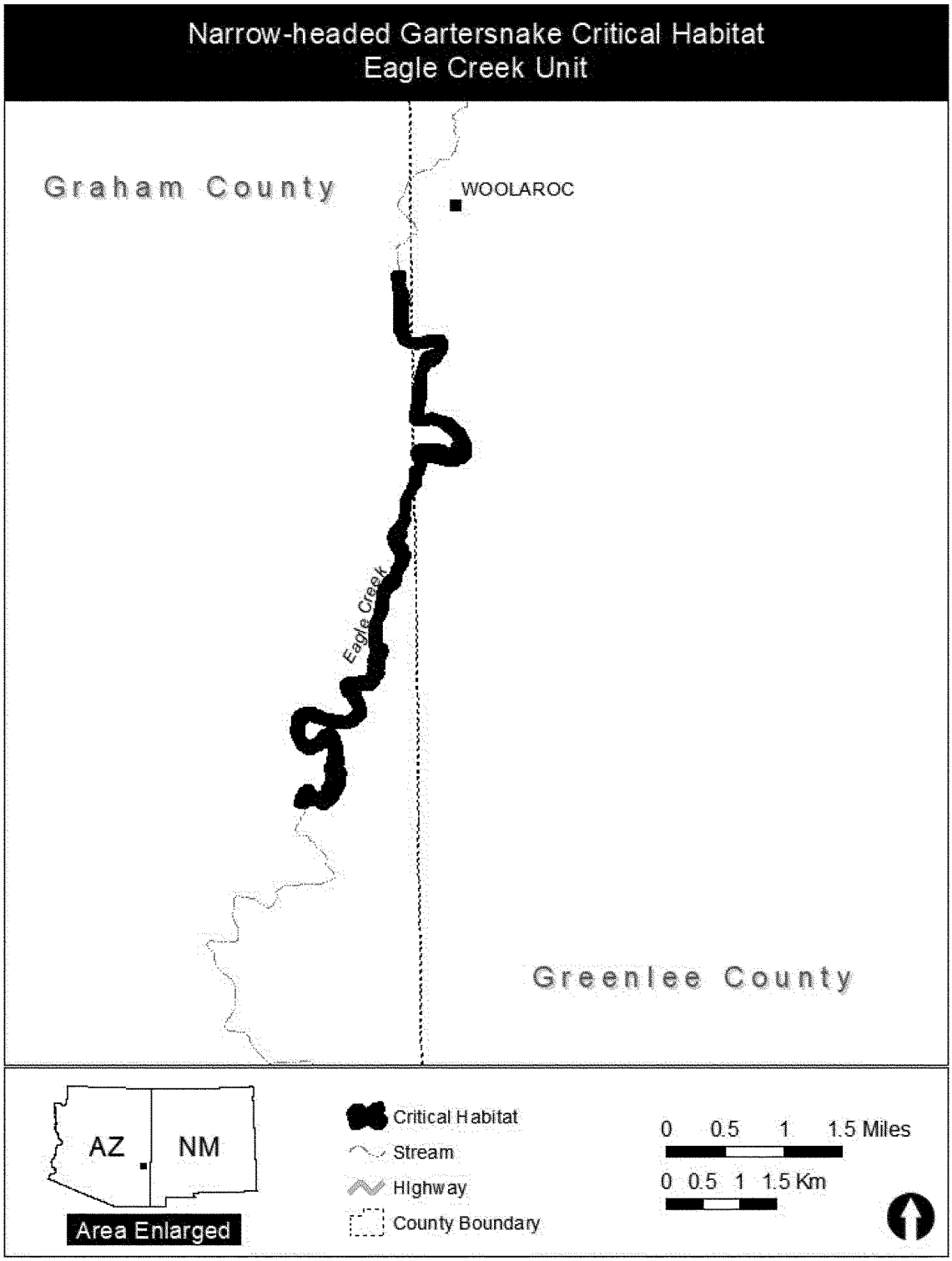
(ii) Map of Unit 3 follows:



(9) Unit 4: Eagle Creek Unit, Graham and Greenlee Counties, Arizona.

(i) *General description:* Unit 4 consists of 336 ac (136 ha) in Graham and Greenlee Counties, and is composed of lands in Federal (99 ac (40 ha)), Tribal (236 ac (96 ha)), and private (1 ac (<1 ha)) ownership near the town of Morenci.

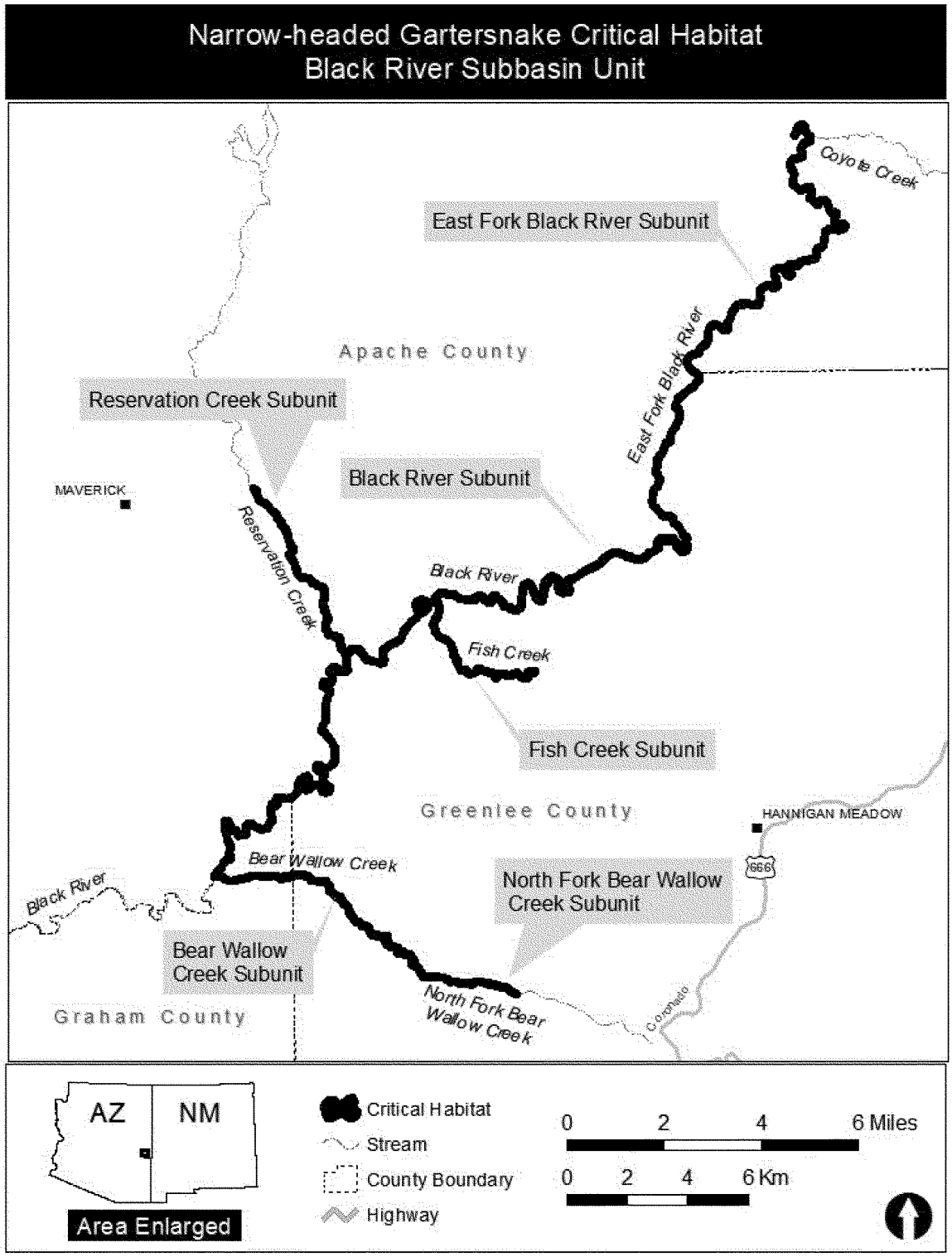
(ii) Map of Unit 4 follows:



(10) Unit 5: Black River Subbasin Unit, Apache, Graham, and Greenlee Counties, Arizona.

(i) *General description:* Unit 5 consists of 1,607 ac (650 ha) in Apache, Graham, and Greenlee Counties, and is composed of lands in Federal (1,414 ac (572 ha)) and Tribal (194 ac (78 ha)) ownership in six subunits near the towns of Maverick and Hannigan Meadow.

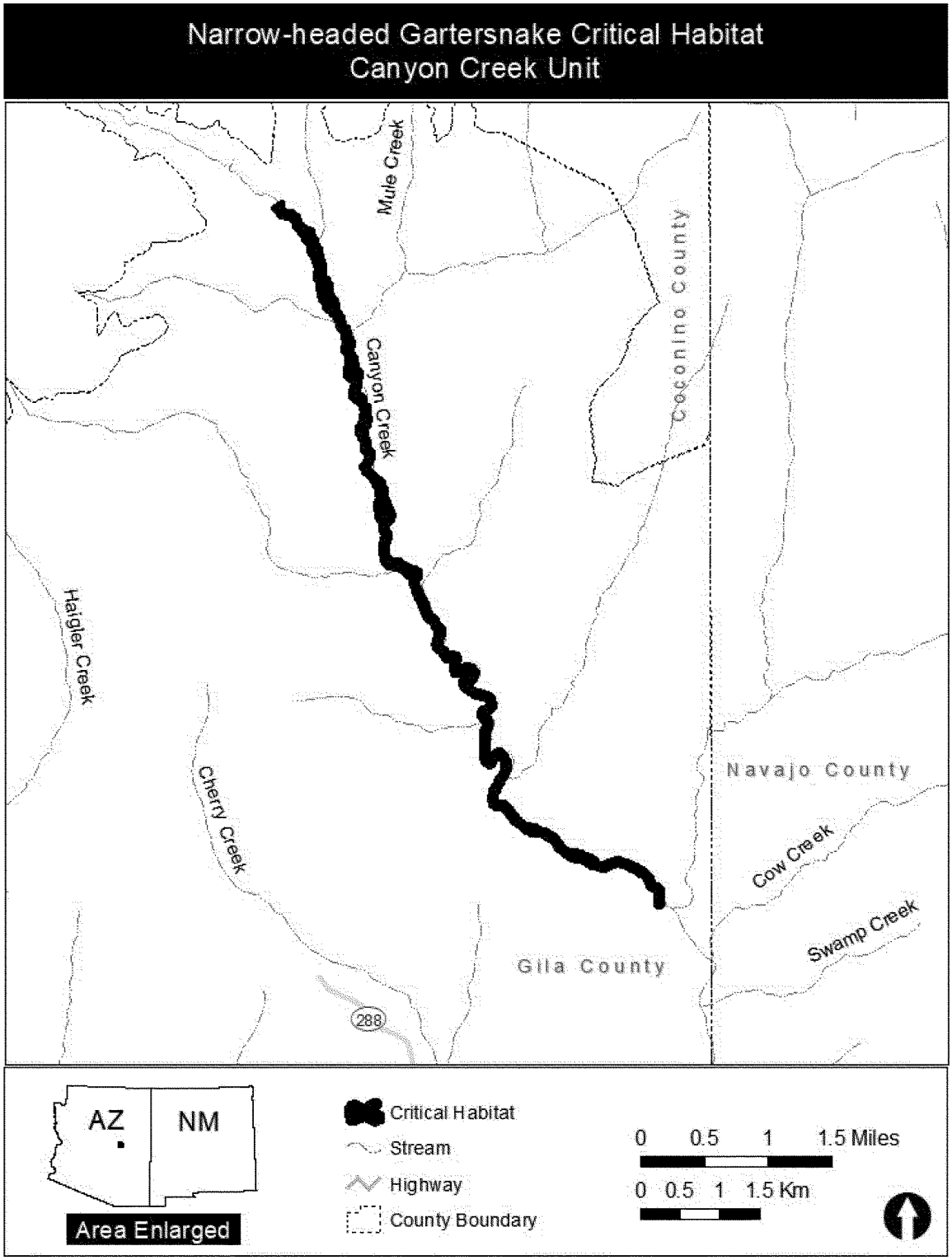
(ii) Map of Unit 5 follows:



(11) Unit 6: Canyon Creek Unit, Gila County, Arizona.

(i) *General description:* Unit 6 consists of 232 ac (94 ha) in Gila County, and is composed of lands in Federal (155 ac (63 ha)) and Tribal (77 ac (31 ha)) ownership southwest of the town of Heber.

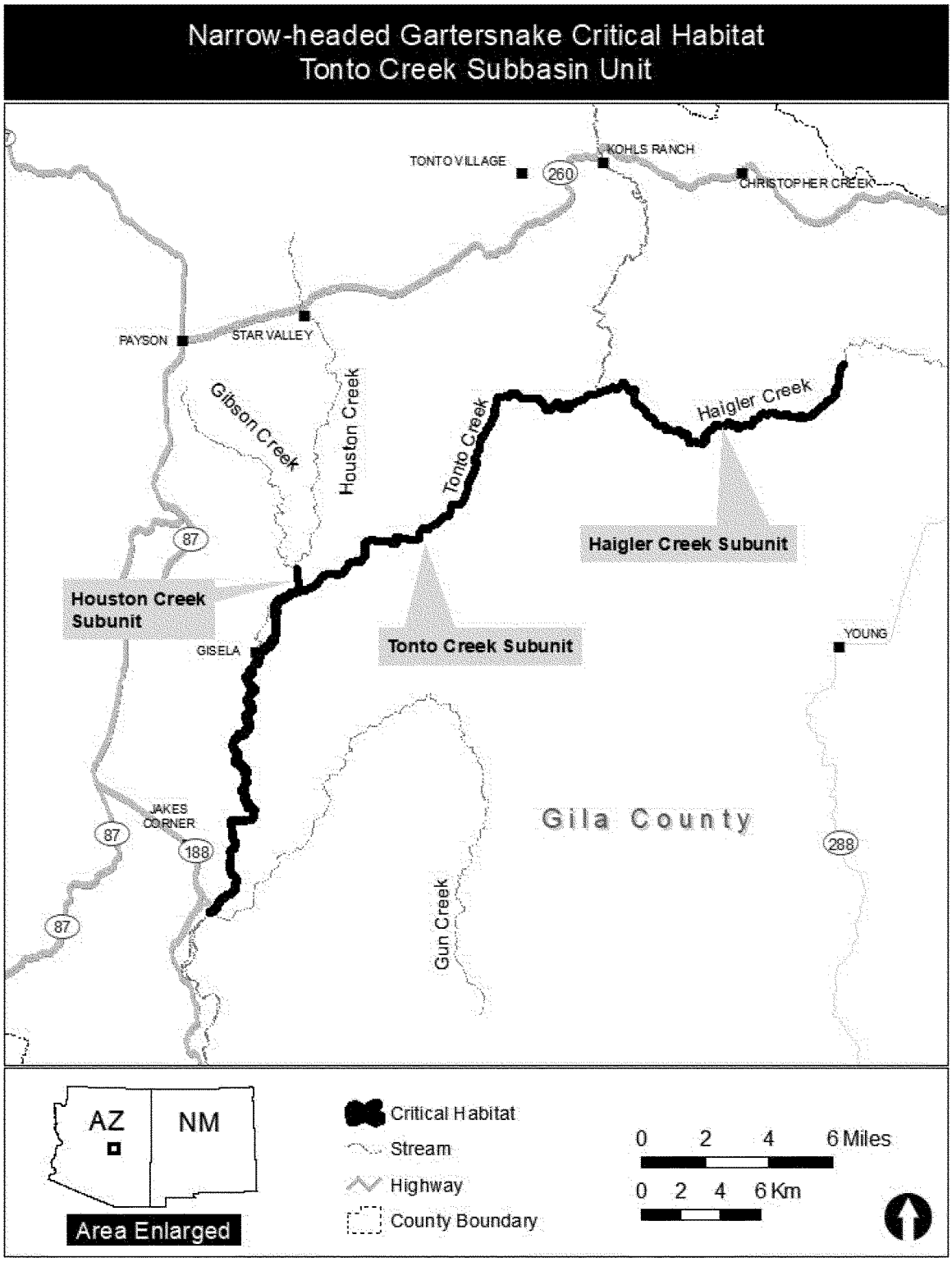
(ii) Map of Unit 6 follows:



(12) Unit 7: Tonto Creek Subbasin Unit, Gila County, Arizona.

(i) *General description:* Unit 7 consists of 1,390 ac (562 ha) in Gila County, and is composed of lands in Federal (1,285 ac (520 ha)) and private (105 ac (42 ha)) ownership in three subunits near the towns of Jakes Corner and Gisela.

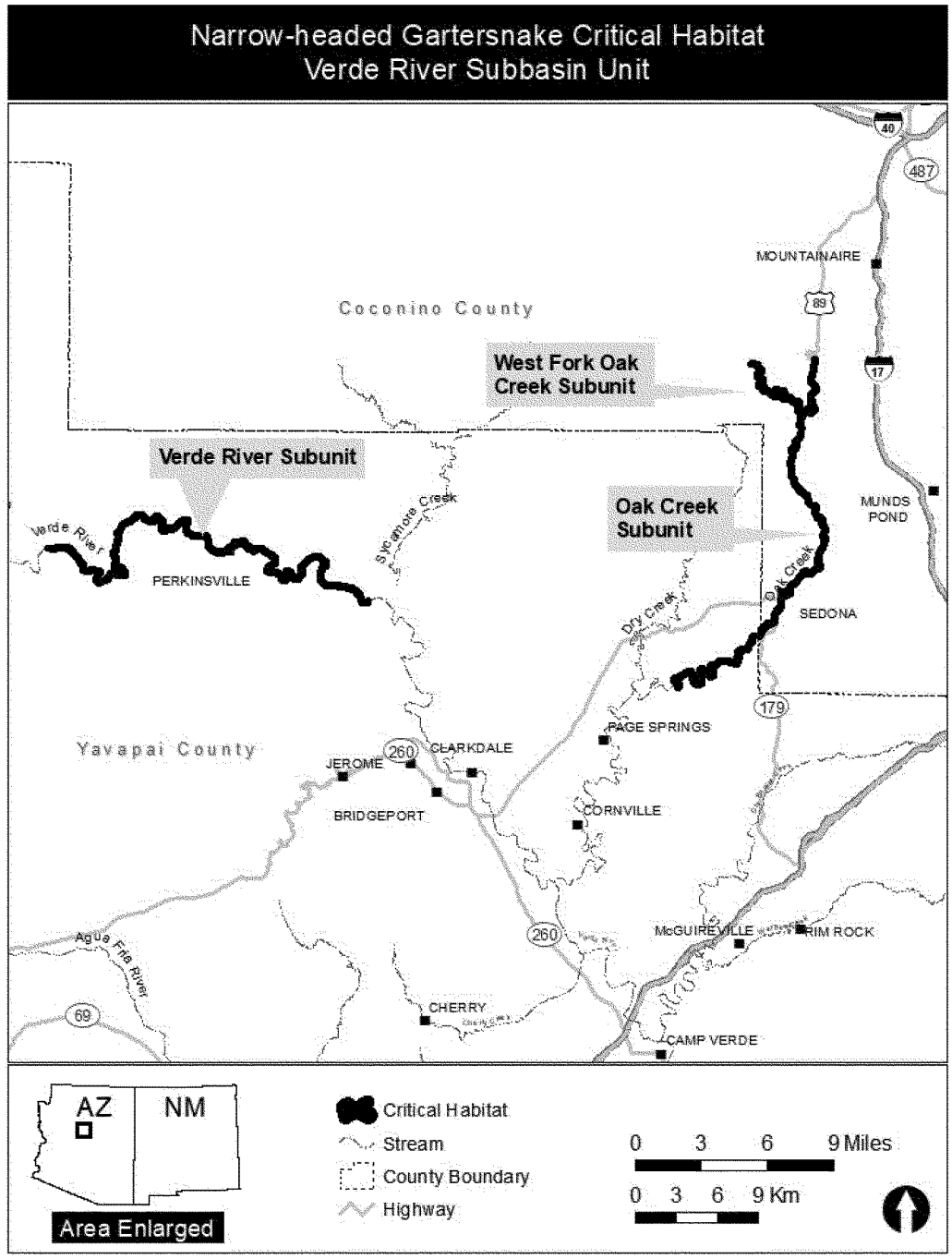
(ii) Map of Unit 7 follows:



(13) Unit 8: Verde River Subbasin Unit, Coconino and Yavapai Counties, Arizona.

(i) *General description:* Unit 8 consists of 1,832 ac (741 ha) in Coconino and Yavapai Counties, and is composed of lands in Federal (1,343 ac (544 ha)), State (51 ac (21 ha)), and private (437 ac (177 ha)) ownership in three subunits near the towns of Sedona and Perkinsville.

(ii) Map of Unit 8 follows:



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Northern Mexican Gartersnake (*Thamnophis eques megalops*)

(1) Critical habitat units are depicted for La Paz, Mohave, Yavapai, Gila, Cochise, Santa Cruz, and Pima Counties in Arizona, and Grant County in New Mexico, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of northern Mexican gartersnake consist of the following components:

(i) Perennial or spatially intermittent streams that provide both aquatic and terrestrial habitat that allows for immigration, emigration, and maintenance of population connectivity of northern Mexican gartersnakes and contain:

(A) Slow-moving water (walking speed) with in-stream pools, off-channel pools, and backwater habitat;

(B) Organic and natural inorganic structural features (*e.g.,* boulders, dense aquatic and wetland vegetation, leaf litter, logs, and debris jams) within the stream channel for thermoregulation, shelter, foraging opportunities, and protection from predators;

(C) Terrestrial habitat adjacent to the stream channel that includes riparian vegetation, small mammal burrows, boulder fields, rock crevices, and downed woody debris for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators; and

(D) Water quality that is absent of pollutants or, if pollutants are present, at levels low enough such that recruitment of northern Mexican gartersnakes is not inhibited.

(ii) Hydrologic processes that maintain aquatic and terrestrial habitat through:

(A) A natural flow regime that allows for periodic flooding, or if flows are modified or regulated, a flow regime that allows for the movement of water, sediment, nutrients, and debris through the stream network; and

(B) Physical hydrologic and geomorphic connection between a stream channel and its adjacent riparian areas.

(iii) Prey base of primarily native anurans, fishes, small mammals, lizards, and invertebrate species.

(iv) An absence of nonnative fish species of the families Centrarchidae and Ictaluridae, bullfrogs (*Lithobates catesbeianus*), and/or crayfish (*Orconectes virilis, Procambarus clarki,* etc.), or occurrence of these nonnative species at low enough levels such that recruitment of northern Mexican gartersnakes is not inhibited and maintenance of viable prey populations is still occurring.

(v) Elevations from 130 to 8,500 feet (40 to 2,590 meters).

(vi) Lentic wetlands including off-channel springs, cienegas, and natural and constructed ponds (small earthen impoundment) with:

(A) Organic and natural inorganic structural features (*e.g.,* boulders, dense aquatic and wetland vegetation, leaf litter, logs, and debris jams) within the ordinary high water mark for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators;

(B) Riparian habitat adjacent to ordinary high water mark that includes riparian vegetation, small mammal burrows, boulder fields, rock crevices, and downed woody debris for thermoregulation, shelter, foraging opportunities, and protection from predators; and

(C) Water quality that is absent of pollutants or, if pollutants are present, at levels low enough such that recruitment of northern Mexican gartersnakes is not inhibited.

(vii) Ephemeral channels that connect perennial or spatially interrupted perennial streams to lentic wetlands in southern Arizona where water resources are limited.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units included the U.S. Geological Survey's 7.5' quadrangles, National Hydrography Dataset, and National Elevation Dataset; the Service's National Wetlands Inventory dataset; and aerial imagery from Google Earth Pro. Line locations for lotic streams (flowing water) and drainages are depicted as the ''Flowline'' feature class from the National Hydrography Dataset geodatabase. Point locations for lentic sites (ponds) are depicted as ''NHDPoint'' feature class from the National Hydrography Dataset geodatabase. Extent of riparian habitat surrounding lotic streams and lentic sites is depicted by the greater of the ''Wetlands'' and ''Riparian'' features classes of the Service's national Wetlands Inventory dataset and further refined using aerial imagery from Google Earth Pro. Elevation range is masked using the ''Elev_Contour'' feature class of the National Elevation Dataset. Administrative boundaries for Arizona and New Mexico were obtained from the Arizona Land Resource Information Service and New Mexico Resource Geographic Information System, respectively. This includes the most current (as of the effective date of this rule) geospatial data available for land ownership, counties, States, and streets. Locations depicting critical habitat are expressed as decimal degree latitude and longitude in the World Geographic Coordinate System projection using the 1984 datum (WGS84). The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *http://www.fws.gov/southwest/es/arizona/,* at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0011, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

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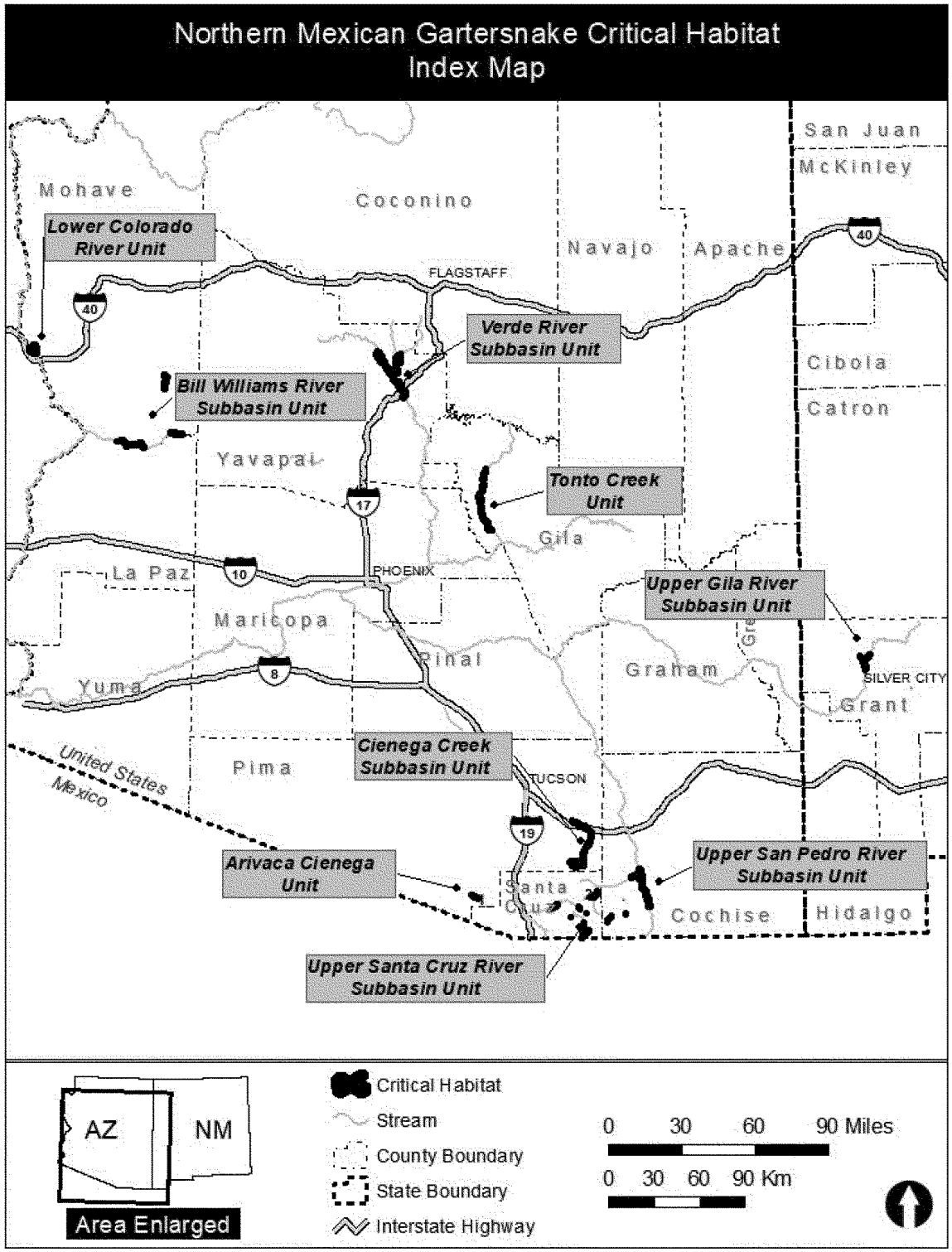
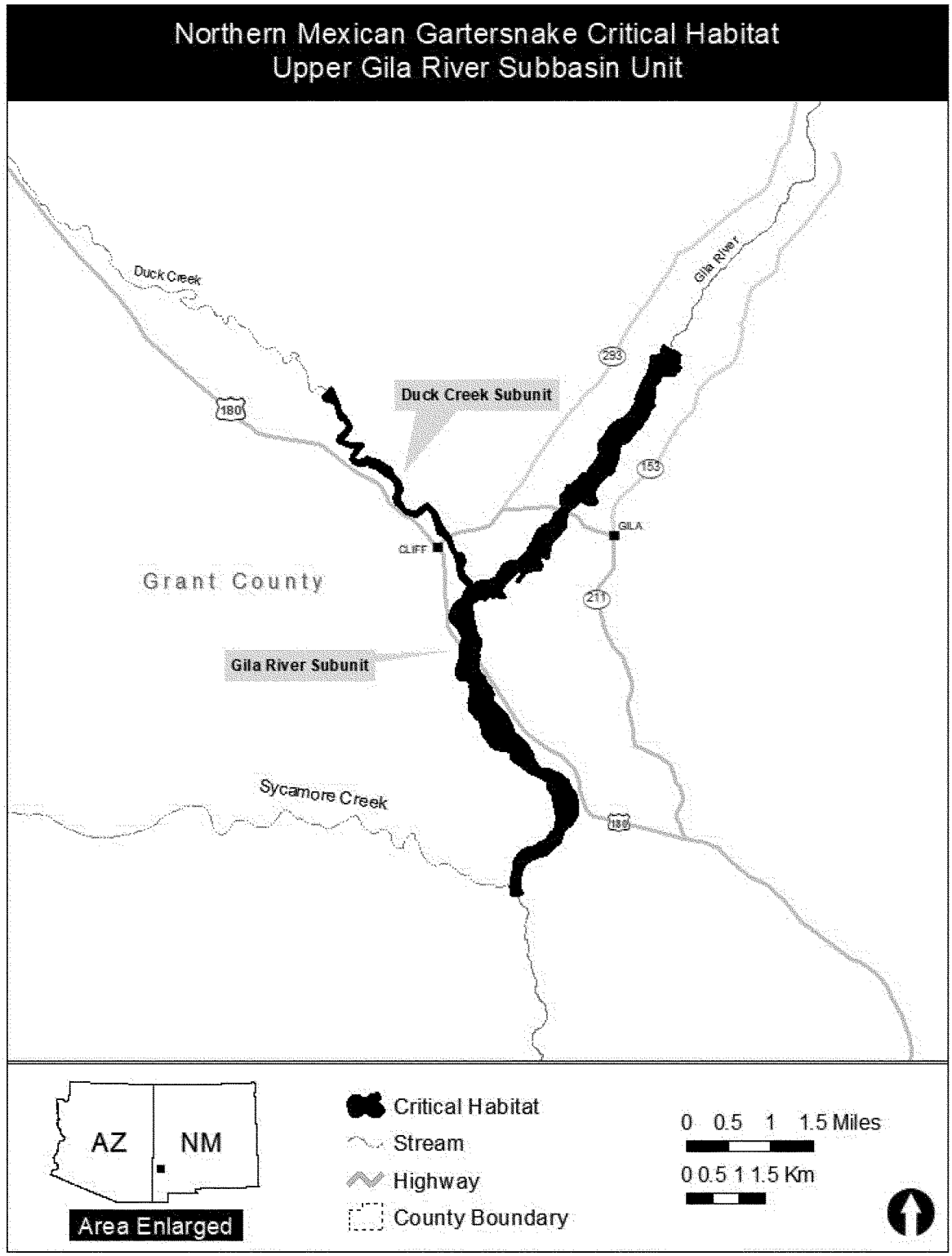


(6) Unit 1: Upper Gila River Subbasin Unit, Grant County, New Mexico.

(i) *General description:* Unit 1 consists of 1,132 ac (458 ha) in Grant County, and is composed of lands in State (22 ac (9 ha)), and private (1,110 ac (449 ha)) ownership in two subunits near the towns of Cliff and Gila.

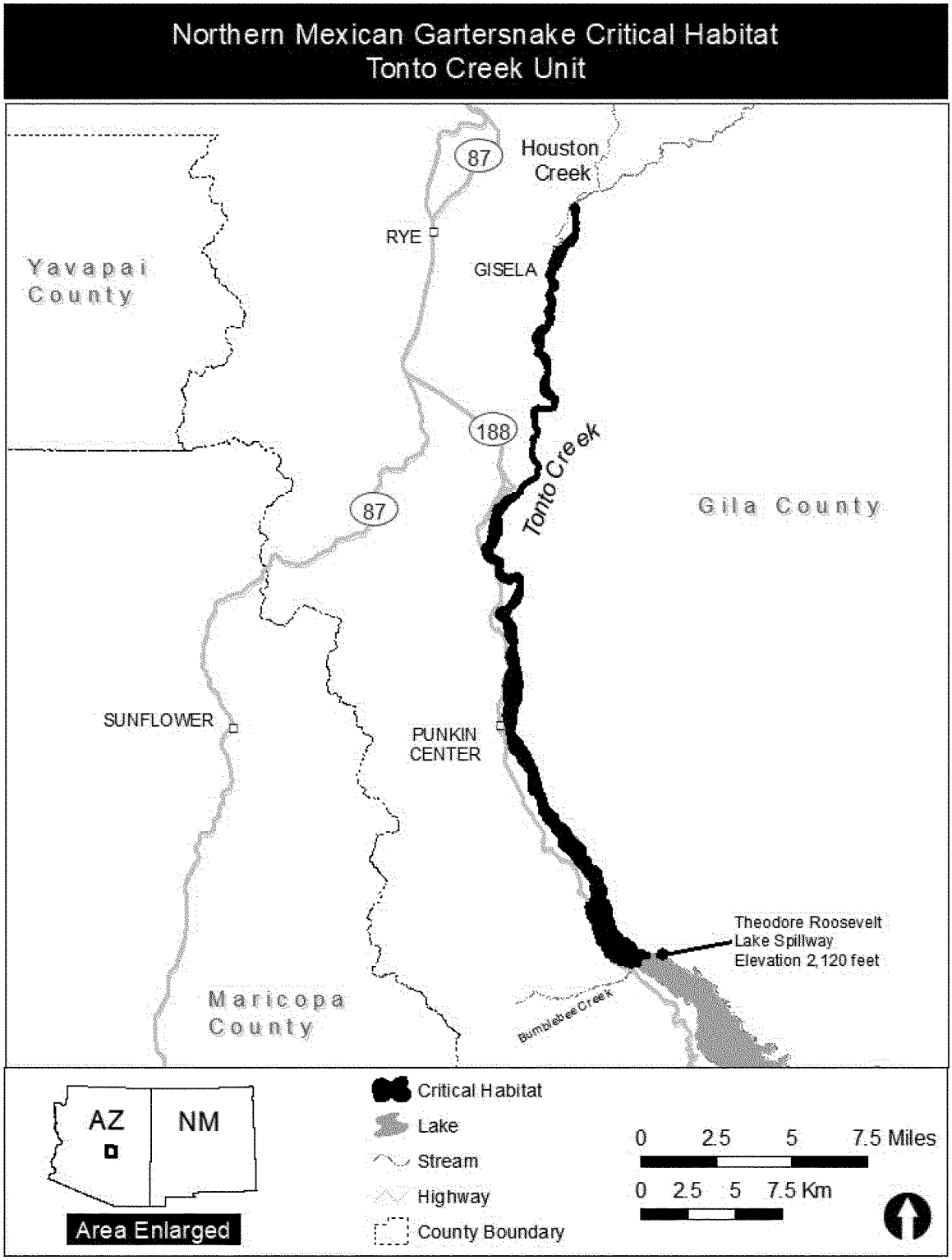
(ii) Map of Unit 1 follows:



(7) Unit 2: Tonto Creek Unit, Gila County, Arizona.

(i) *General description:* Unit 2 consists of 4,302 ac (1,741 ha) in Gila County, and is composed of lands in Federal (3,337 ac (1,350 ha)), and private (966 ac (391 ha)) ownership near the towns of Gisela and Punkin Center.

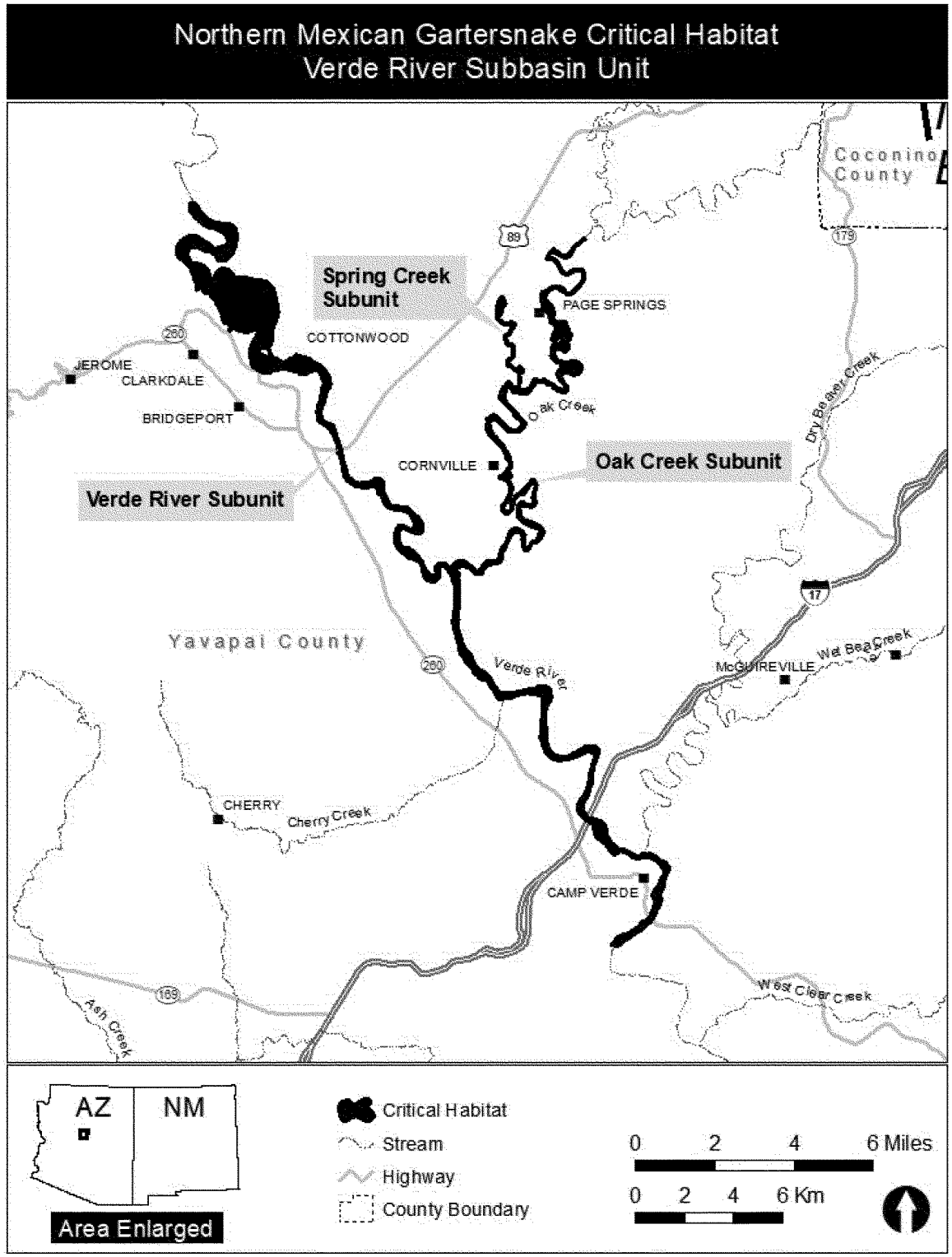
(ii) Map of Unit 2 follows:



(8) Unit 3: Verde River Subbasin Unit, Yavapai County, Arizona.

(i) *General description:* Unit 3 consists of 5,246 ac (2,123 ha) in Yavapai County, and is composed of lands in Federal (856 ac (346 ha)), State (705 ac (285 ha)), Tribal (88 ac (36 ha), and private (3,597 ac (1,456 ha)) ownership in three subunits near the towns of Cottonwood, Cornville, Page Springs, and Camp Verde.

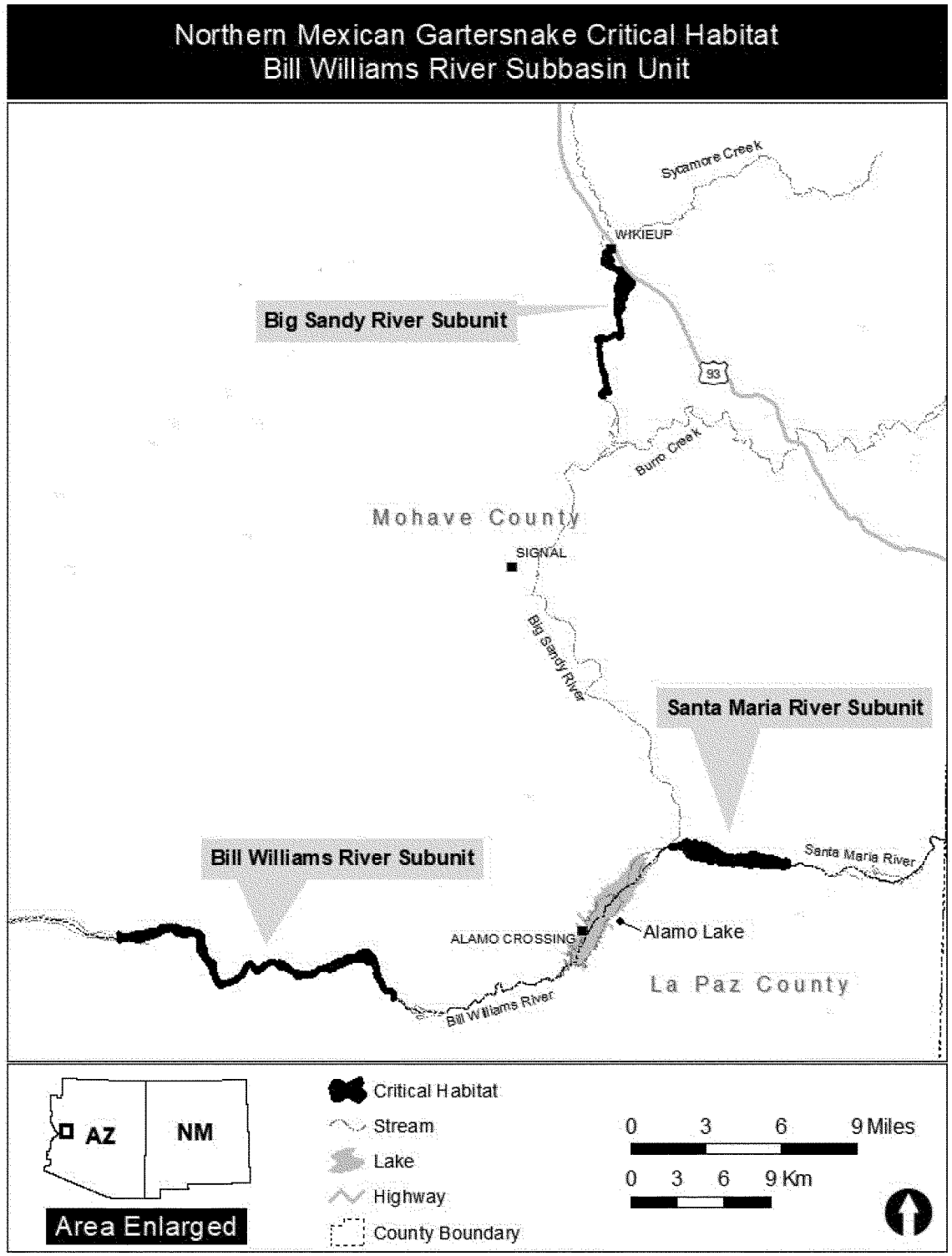
(ii) Map of Unit 3 follows:



(9) Unit 4: Bill Williams River Subbasin Unit, La Paz and Mohave Counties, Arizona.

(i) *General description:* Unit 4 consists of 4,049 ac (1,639 ha) in La Paz and Mohave Counties, and is composed of lands in Federal (2,121 ac (858 ha)), State (202 ac (82 ha)), and private (1,727 ac (699 ha)) ownership in three subunits near the towns of Parker and Signal.

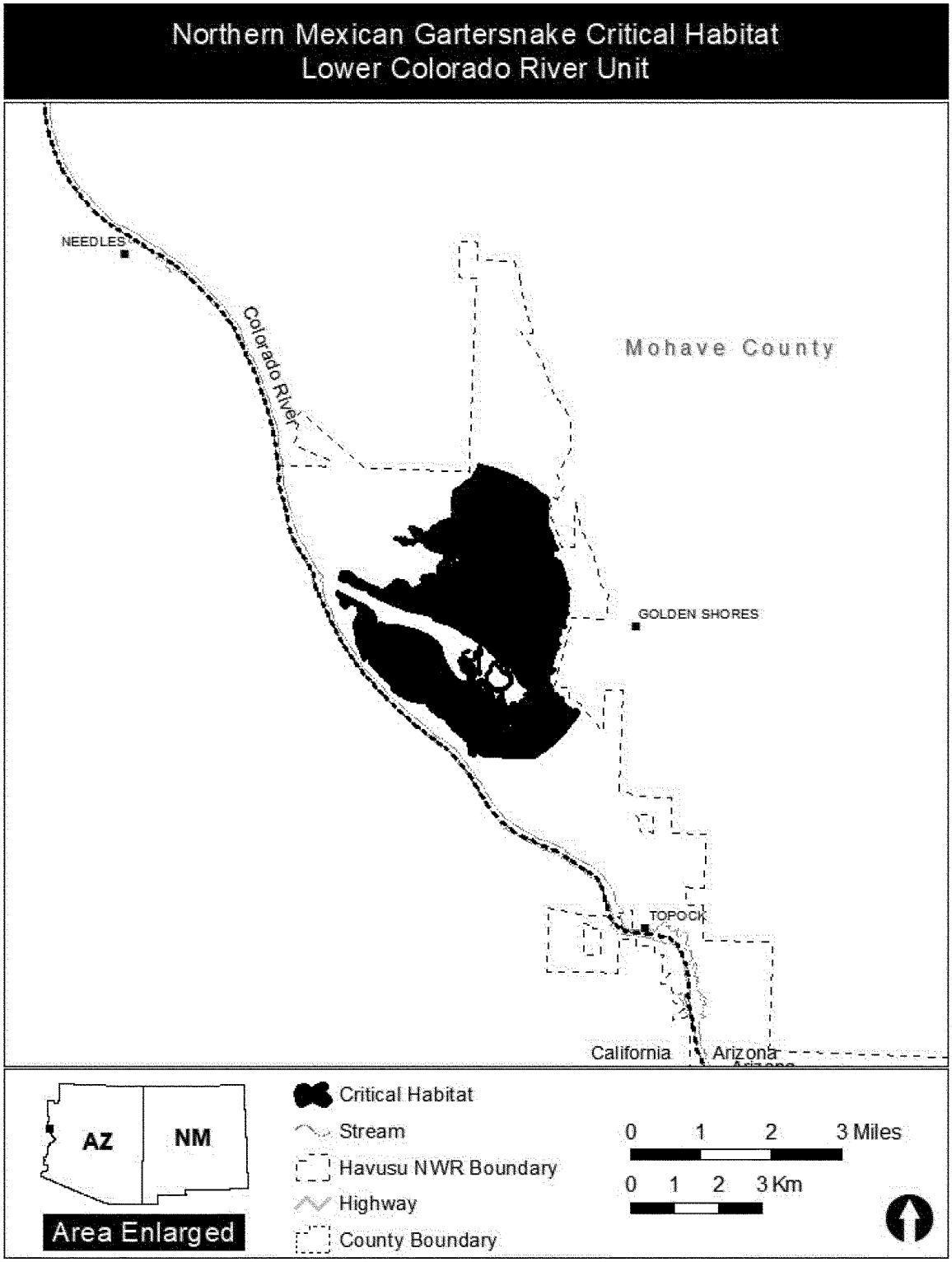
(ii) Map of Unit 4 follows:



(10) Unit 5: Lower Colorado River Unit, Mojave County, Arizona.

(i) *General description:* Unit 5 consists of 4,467 ac (1,808 ha) in Mojave County and is composed of lands in Federal ownership within the Havasu National Wildlife Refuge.

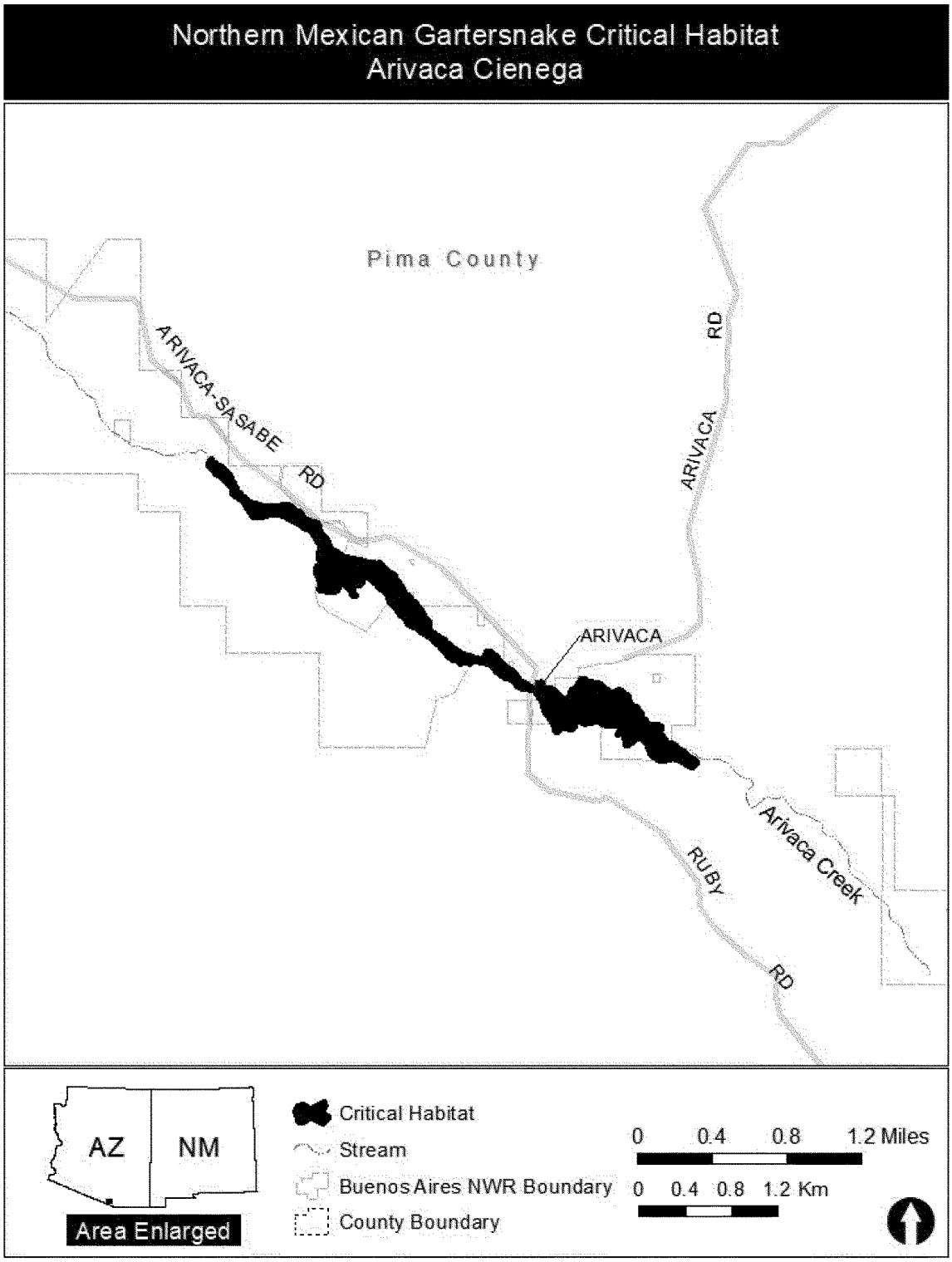
(ii) Map of Unit 5 follows:



(11) Unit 6: Arivaca Cienega Unit, Pima County, Arizona.

(i) *General description:* Unit 6 consists of 211 ac (86 ha) in Pima County and is composed of lands in Federal (149 ac (60 ha)), State (1 ac (<1 ha)), and private (62 ac (25 ha)) ownership near the town of Arivaca.

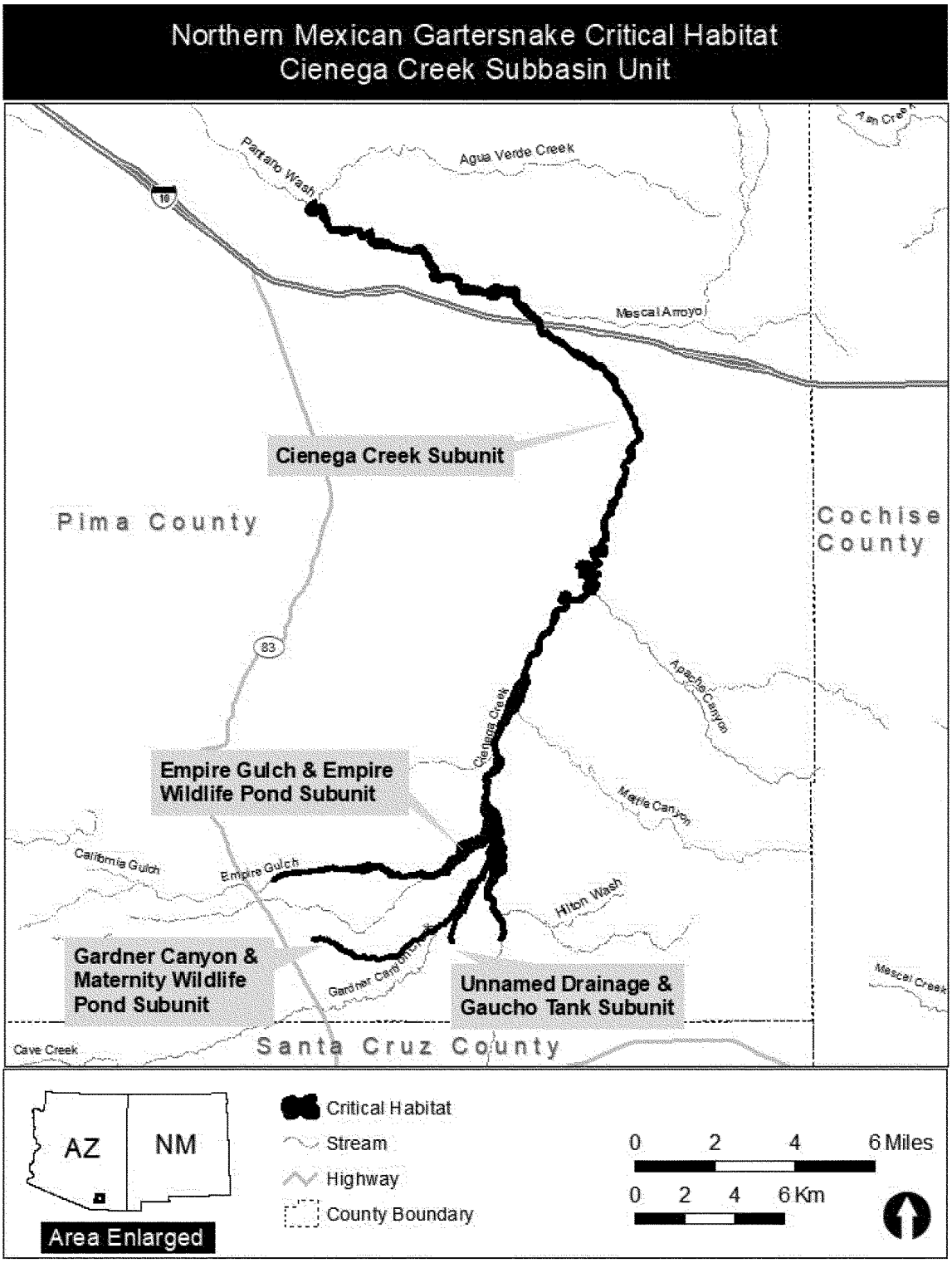
(ii) Map of Unit 6 follows:



(12) Unit 7: Cienega Creek Subbasin Unit, Pima County, Arizona.

(i) *General description:* Unit 7 consists of 2,030 ac (821 ha) in Pima County and is composed of lands in Federal (1,112 ac (451 ha)), State (366 ac (148 ha)), and private (550 ac (220 ha)) ownership in four subunits near the towns of Tucson, Vail, and Sonoita.

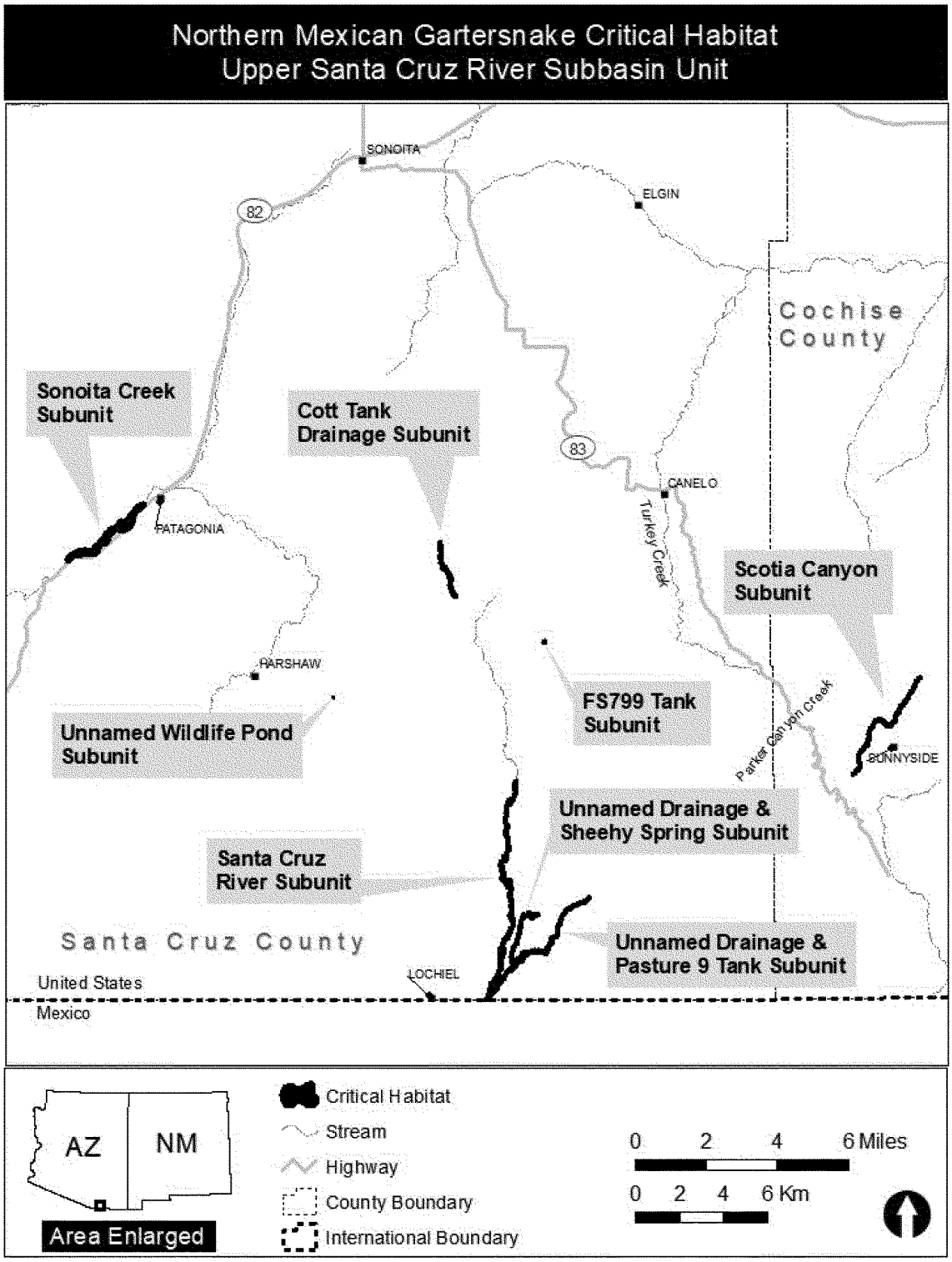
(ii) Map of Unit 7 follows:



(13) Unit 8: Upper Santa Cruz River Subbasin Unit, Santa Cruz and Cochise Counties, Arizona.

(i) *General description:* Unit 8 consists of 496 ac (201 ha) in Santa Cruz and Cochise Counties, and is composed of lands in Federal (45 ac (18 ha)), State (111 ac (45 ha)), and private (340 ac (138 ha)) ownership in eight subunits near the towns of Sonoita and Patagonia.

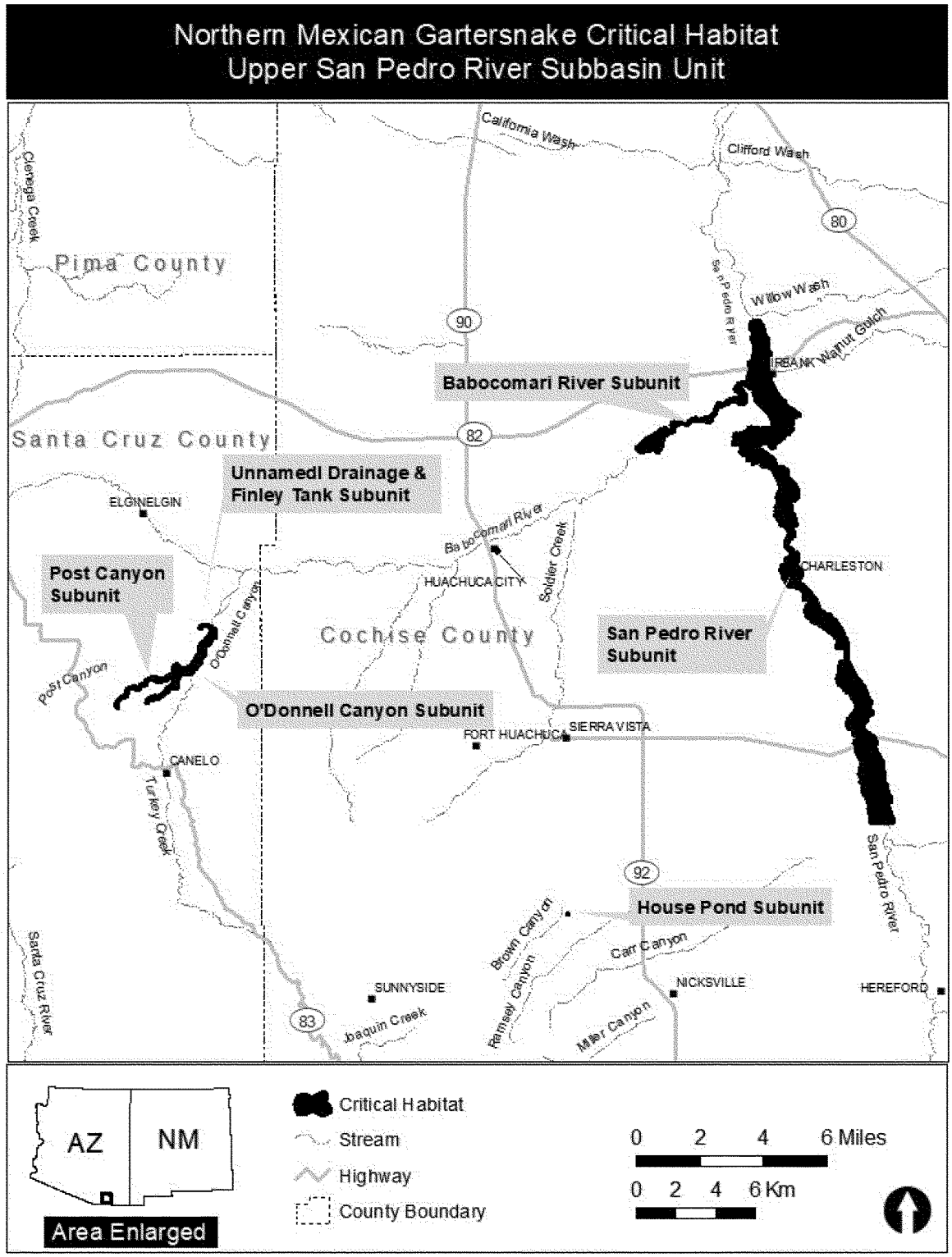
(ii) Map of Unit 8 follows:



(14) Unit 9: Upper San Pedro River Subbasin Unit, Cochise and Santa Cruz Counties, Arizona.

(i) *General description:* Unit 9 consists of 5,850 ac (2,367 ha) in Cochise and Santa Cruz Counties, and is composed of lands in Federal (5,197 ac (2,103 ha)), State (8 ac (3 ha)), and private (645 ac (261 ha)) ownership in six subunits near the towns of Sierra Vista and Elgin.

(ii) Map of Unit 9 follows:



BILLING CODE C

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Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–08069 Filed 4–27–20; 8:45 am]

BILLING CODE 4333–15–P

FEDERAL REGISTER

Vol. 85 Tuesday,

No. 82 April 28, 2020

Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 382, 383, 384, et al.

Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 382, 383, 384, 390, and 392

[Docket No. FMCSA–2017–0330]

RIN 2126–AC11

Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: FMCSA proposes to prohibit State Driver's Licensing Agencies (SDLAs) from issuing, renewing, upgrading, or transferring a commercial driver's license (CDL), or commercial learner's permit (CLP), for individuals prohibited under current regulations from driving a commercial motor vehicle (CMV) due to controlled substance (drug) and alcohol program violations. The CMV driving ban is intended to keep these drivers off the road until they comply with return-to-duty (RTD) requirements. FMCSA also seeks comment on alternate proposals establishing additional ways that SDLAs would use information, obtained through the Drug and Alcohol Clearinghouse (Clearinghouse), to increase compliance with the CMV driving prohibition. Further, the Agency proposes to revise how reports of actual knowledge violations, based on a citation for Driving Under the Influence (DUI) in a CMV, would be maintained in the Clearinghouse. These proposed changes would improve highway safety by increasing compliance with existing drug and alcohol program requirements.

DATES: Comments on this document must be received on or before June 29, 2020.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2017–0330 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Juan Moya, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by email at *fmcsadrugandalcohol@dot.gov,* or by telephone at 202–366–4844. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

This notice of proposed rulemaking (NPRM) is organized as follows:

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Waiver of Advance Notice of Proposed Rulemaking
II. Executive Summary
A. Purpose and Summary of the Proposal
B. Summary of Major Provisions
C. Costs and Benefits
III. Legal Basis for the Rulemaking
IV. Background
A. MAP–21 Mandates
B. AAMVA's Petition
V. Discussion of Proposed Rulemaking
A. The SDLAs' Role in the Clearinghouse
B. Impact of the NPRM on SDLAs
C. Compliance Date
D. Impact of MAP–21 and the NPRM on State Laws
E. Impact on CLP/CDL Holders
F. Roadside Enforcement of the CMV Driving Prohibition
G. Foreign-Licensed Drivers
H. Privacy Act Applicability
I. Fair Credit Reporting Act (FCRA) Applicability
J. Major Issues on Which the Agency Seeks Comment
VI. International Impacts
VII. Section-by-Section Analysis
VIII. Regulatory Analyses
A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations
B. E.O. 13771 Reducing Regulation and Controlling Costs
C. Congressional Review Act
D. Regulatory Flexibility Act (Small Entities)
E. Assistance for Small Entities
F. Unfunded Mandates Reform Act of 1995
G. Paperwork Reduction Act
H. E.O. 13132 (Federalism)
I. Privacy
J. E.O. 13783 (Promoting Energy Independence and Economic Growth)
K. E.O. 13175 (Indian Tribal Governments)
L. National Technology Transfer and Advancement Act (Technical Standards)
M. Environment (National Environmental Policy Act)

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2017–0330), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. The Agency specifically invites comment on the 13 issues identified below in section V.J, ''Major Issues on Which the Agency Seeks Comment.''

To submit your comment online, go to *http://www.regulations.gov,* enter the docket number, FMCSA–2017–0330, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain

commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket for this rulemaking. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Any comments FMCSA receives that are not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2017–0330, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

D. Waiver of Advance Notice of Proposed Rulemaking

Under the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or conduct a negotiated rulemaking ''if a proposed rule is likely to lead to the promulgation of a major rule'' (49 U.S.C. 31136(g)(1)). As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

II. Executive Summary

A. Purpose and Summary of the Proposal

The NPRM would assist enforcement and improve compliance with existing regulations prohibiting CMV drivers who violate FMCSA's drug and alcohol from operating a CMV or performing other safety-sensitive functions until completing RTD requirements set forth in part 40, subpart O. In effect, the CMV driving prohibition has been largely self-enforcing; FMCSA relies primarily on drivers themselves, and their employers, to comply (49 CFR 382.501(a) and (b)).[1] The reason is that, before the Clearinghouse was established, the Agency did not have real time access to drug and alcohol program violations of CDL holders. The Clearinghouse final rule addressed that information gap so that, based on violations reported to the Clearinghouse, FMCSA can now provide certain State enforcement personnel real-time notice of the driver's prohibited driving status. However, the information gap still exists with regard to the SDLAs. This NPRM would establish how, and when, SDLAs would access and use driver-specific information from the Clearinghouse to keep CMV drivers who violate drug and alcohol use testing rules off the road until they complete RTD requirements.

In the final rule titled ''Commercial Driver's License Drug and Alcohol Clearinghouse'' (Clearinghouse) (81 FR 87686 (Dec. 5, 2016)), FMCSA implemented the MAP–21 requirement to establish the Clearinghouse as a repository for drivers' drug and alcohol program violations. The final rule primarily addressed how motor carrier employers and their service agents will interact with the Clearinghouse by accessing and adding drug and alcohol testing information to a driver's record. While the final rule did incorporate the statutory requirement that SDLAs check the Clearinghouse prior to renewing or issuing a CDL, the rule did not otherwise address the SDLAs' use of Clearinghouse information for drivers licensed, or seeking to become licensed, in their State. This proposal responds to operational questions and legal issues identified by SDLAs, individually and through the American Association of Motor Vehicle Administrators[2] (AAMVA), following publication of the final rule.

B. Summary of Major Provisions

Non-Issuance

As noted above, the Clearinghouse regulations require that SDLAs check a driver's status by querying the Clearinghouse prior to issuing, renewing, upgrading or transferring a CDL.[3] When an SDLA's required query to the Clearinghouse indicates the driver is prohibited from operating a CMV, the NPRM would require the SDLA to deny the licensing transaction, resulting in non-issuance. A driver whose licensing transaction is denied would need to re-apply after completing RTD requirements. The manner in which SDLAs would electronically request (''pull'') and receive information from the Clearinghouse in connection with the required queries (*e.g.,* via CDLIS or other electronic means) is discussed below in section V.A., ''Impact on SDLAs.''

In addition to non-issuance, FMCSA proposes alternative ways in which SDLAs would use Clearinghouse information to further aid in the enforcement of the CMV driving prohibition.

Preferred Alternative—Mandatory Downgrade

This alternative would require that SDLAs remove the CLP or CDL privilege of any driver subject to the CMV driving prohibition (mandatory downgrade), after receiving a ''push'' notification from the Clearinghouse that the driver is prohibited from operating a CMV. Currently, most States are not aware when a CDL holder licensed in their State is prohibited from driving a CMV due to an alcohol or drug testing violation. Consequently, there is no Federal requirement that SDLAs take any action on the license of drivers subject to that prohibition. As a result,

[1] 49 CFR 382.501(a) prohibits a driver from performing safety-sensitive functions, including operating a CMV, if the driver has engaged in drug or alcohol-related conduct prohibited by part 382, subpart B, or violated the drug and alcohol rules of another DOT agency. Section 382.501(b) states that no employer may permit a driver to perform safety-sensitive functions, including driving a CMV, if the employer has determined that the driver violated this section. Section 382.503 prohibits any driver who violates drug and alcohol program rules from performing safety-sensitive functions until completing the RTD requirements of part 40, subpart O that enable the individual to resume operating a CMV and other safety-sensitive functions. Under § 382.503, no employer is permitted to allow the driver to resume safety-sensitive functions until the driver has completed RTD.

[2] *See* AAMVA Petition for Reconsideration of the Commercial Driver's License Drug and Alcohol Clearinghouse Final Rule (June 29, 2017), Docket No. FMCSA–2011–0031.

[3] *See* 49 CFR 383.73(b)(10; (c)(10); (d)(9); (e)(8); and (f)(4). MAP–21, as codified in 49 U.S.C. 31311(a)(24), explicitly requires that States query the Clearinghouse.

a driver can continue to hold a valid CLP or CDL, even while prohibited from operating a CMV under FMCSA's drug and alcohol regulations. The proposed downgrade would align a driver's CLP or CDL status with his or her CMV driving status under § 382.501(a), thus closing the current regulatory loophole that allows these CMV drivers to evade detection.

SDLAs would accomplish the mandatory downgrade by changing the commercial status on the CDLIS driver record (as defined in 383.5) [4] from ''licensed'' to ''eligible'' for CDL holders, and changing the permit status from ''licensed'' to ''eligible'' for CLP holders. This proposed mandatory downgrade procedure is identical to the process SDLAs currently use to record the removal of the CLP/CDL privilege on the CDLIS driver records of individuals whose medical certification standing changes from ''certified'' to ''not certified,'' as required under § 383.73(o)(4).[5]

Under this alternative, FMCSA also proposes to revise the definition of ''CDL downgrade,'' as set forth in § 383.5, and add a new definition of ''CLP downgrade'' to specifically set forth how removal of the CDL/CLP privilege is recorded on the CDLIS driver record. FMCSA proposes these definitional changes to ensure clarity and consistency in the downgrade process.

FMCSA prefers this alternative because it would enable effective and uniform enforcement of the CMV driving prohibition, minimize disruption at the State level by largely relying on existing processes, and take into account the SDLAs' preference for clear direction from the Agency concerning their use of Clearinghouse information.

Alternative #2—Optional Notice of Prohibited Status

This alternative would permit, but not require, SDLAs to receive ''push'' notifications from the Clearinghouse whenever CMV drivers licensed in their State are prohibited from driving due to a drug or alcohol testing violation (optional notice of prohibited status). SDLAs opting to receive this information through the Clearinghouse would also be notified when the driver is able to resume operating a CMV following completion of the RTD process, in accordance with § 382.503. Under this optional notification alternative, the State would determine whether, and how, to use the information to enhance enforcement of the driving prohibition. For example, the State could make the CLP or CDL holder's ''prohibited'' status more accessible to roadside enforcement officers,[6] or, under State law, use the information to initiate an action on the driver's license, such as suspending the CLP or CDL privilege while the driving prohibition is in effect. This approach would afford maximum flexibility to the States.

Application to CLP Holders

The Clearinghouse final rule required that SDLAs query the Clearinghouse before issuing, renewing, upgrading, or transferring of a CDL. However, CLP holders are currently subject to drug and alcohol testing under part 382 and the Clearinghouse final rule, and therefore subject to the driving prohibition. Accordingly, the NPRM would include CLP holders within the scope of the States' query required in § 383.73, meaning that SDLAs would check the Clearinghouse before issuing, renewing, or upgrading a CLP (CLPs cannot be transferred). In addition, CLP holders would also be subject to non-issuance and mandatory downgrade (removal of the CLP privilege) if they are prohibited from driving under § 383.501(a).

Addition of Driving Prohibition to Part 392

In order to receive MCSAP funding, a State must, among other things, adopt and enforce safety regulations comparable to those set forth in parts 390–397 (§ 350.201(a)). The NPRM would add the CMV driving prohibition now set forth in § 383.501, to part 392, subpart B, ''Driving of Commercial Motor Vehicles,'' as well. The purpose of this proposed amendment is to facilitate States' enforcement of the driving prohibition. Currently, 49 States and the District of Columbia receive MCSAP funding.

Actual Knowledge Violations Reported to the Clearinghouse—Issuance of Citation for DUI in a CMV

The NPRM would revise how an employer's report of actual knowledge of a driver's drug or alcohol use to the Clearinghouse, based on the issuance of a citation to the employee-driver for DUI in a CMV, are handled. First, the employer's report would remain in the Clearinghouse, regardless of whether the driver is ultimately convicted of the offense. The reason is that a driver violates part 382, subpart B, *when he or she receives a citation for DUI in a CMV;*[7] a subsequent conviction carries separate consequences under part 383.[8] Second, drivers who are not convicted of the offense of DUI in a CMV could petition FMCSA to add documentary evidence of that fact to their Clearinghouse record.

These proposed changes, explained more fully below, would ensure compliance with the statutory requirement that all violations identified in part 382, subpart B, be reported and retained in the Clearinghouse (49 U.S.C. 31306a(g)(1) and (6)), and would provide fairness to drivers and full disclosure to employers.

C. Costs and Benefits

The Agency proposes two ways that SDLAs could use Clearinghouse information. Alternative #1 would require SDLAs to initiate a mandatory downgrade of the CLP and CDL driving privilege. Drivers would be required to complete the RTD process and comply with any State-established procedures for reinstatement of the CMV driving privilege.[9] Under Alternative #2, SDLAs would be provided optional notice of a driver's prohibited status from the Clearinghouse. The States would decide whether, and how they would use the information under State law and policy to prevent a driver from operating a CMV without a valid CLP or CDL.

After completing the RTD process, a driver might incur an opportunity cost in the form of forgone income between the time he or she completes RTD requirements that permit the driver to resume operating a CMV and the point at which the SDLA reinstates the privilege to operate a CMV. Motor carriers might incur opportunity costs in the form of forgone profits due to the loss of productive driving hours during the same period. Alternative #1 would require the States to rely on their own

[4] § 383.5 defines ''CDLIS driver record'' as ''the electronic record for the CDL driver's status and history stored by the State-of-Record as part of the Commercial Driver's License Information System (CDLIS) established under 49 U.S.C. 31309.''

[5] *See,* AAMVA CDLIS State Procedures Manual, Release 5.3.3 (Dec. 2015), at 95; AAMVA CDLIS Technical Specifications Manual, Release 5.3.3 (Dec. 2015), at pp. 669–70; 683.

[6] The means by which roadside enforcement officers, including non-MCSAP personnel, will be able to access the driver's prohibited status is explained in section V.E., ''Roadside Enforcement.''

[7] FMCSA, when adopting the current definition of ''actual knowledge,'' noted: ''Actual knowledge 'includes' knowledge that the driver has received a traffic citation for driving a CMV while under the influence of alcohol or controlled substances. A CMV driver who receives a traffic citation while in a CMV is considered to have violated subpart B.'' (66 FR 43103, 43097, 43099 (Aug. 17, 2001))

[8] Any driver convicted of that offense is, under 383.51(b), disqualified from operating a CMV for a minimum of one year.

[9] The cost incurred by drivers to complete the RTD process were accounted for in the Regulatory Impact Analysis (RIA) published with the Clearinghouse final rule.

established procedures to accomplish the downgrade and any subsequent reinstatement. The loss of productive driving hours and the associated costs would be the result of the proposed rule.

Under Alternative #2, in addition to determining when and how an SDLA would use Clearinghouse information, the States could establish reinstatement procedures that would follow drivers' completion of the RTD process. Were States to establish reinstatement procedures, any opportunity costs or reinstatement costs that drivers would incur to comply with such procedures would be the result of a State action, not the proposed rule. Any associated motor carrier opportunity costs would also be the result of a State action, not the proposed rule.

Under Alternative #1, the procedures States establish for reinstating the CMV driving privilege could vary significantly. The Agency bases this assumption on the variations in downgrade procedures the States have established to reinstate CMV driving privilege following a medical certification-related mandatory downgrade pursuant to § 383.73(o)(4).

Based on currently available information, under existing State procedures, a number of States would likely reinstate the CMV driving privilege upon receiving Clearinghouse information that a driver has completed the RTD process, but require no reinstatement fee; other States would restore the CLP or CDL to the license upon payment of the reinstatement fee; and other States would require the driver to retake knowledge and/or skills test prior to reinstatement. All States imposing a retesting requirement do so only after a defined period of time has elapsed between the time of the downgrade and reinstatement, ranging from six months to a year or more. One State requires full retesting if more than 90 days has passed.

The Agency believes that, based on established downgrade procedures, drivers will incur minimal opportunity costs and reinstatement costs for a number of reasons. First, the vast majority of drivers (82 percent) would be referred by substance abuse professionals (SAPs) to two-day education programs, as part of the RTD process. This finding is based on results substance abuse treatment survey performed by Substance Abuse and Mental Health Service Administration (SAMHSA).[10] Given the short duration of these programs, the Agency expects that drivers would complete the RTD process before a downgrade would be recorded on their CDLIS record (the NPRM proposes that the downgrade be recorded within 30 days of the SDLA's receiving notification of the driver's prohibited status through the Clearinghouse). Thus, they would incur neither opportunity costs nor reinstatement costs. The Agency expects that downgrades will be recorded on the CDLIS records of drivers referred by SAPs to intensive outpatient treatment programs (IOT) because of the length of these programs, many of which last for a minimum of 90 days. As noted above, the Agency reviewed current State reinstatement procedures for restoring the CMV privilege for drivers downgraded due to invalid medical certification.

Assuming that States would apply these procedures, described above, to drivers downgraded due to drug or alcohol program violations, the Agency anticipates that drivers in most States would complete the RTD process before having to retest in order to have the CMV driving privilege restored. All but one State imposing retesting requirements do so no earlier than 6 months following the downgrade, which would allow ample time to complete most RTD programs. The remaining States require only that drivers provide a new medical certificate, and in some cases, pay a reinstatement fee to have the CMV driving privilege restored. Reinstatement fees would be a transfer payment. Thus, the Agency finds that the only opportunity costs and reinstatement costs that drivers would incur is the value of their time and the expense to travel to and from the SDLA, if they are licensed in a State that requires the driver to appear in person, and the Agency assumes this would be accomplished in one day. Since many States permit drivers to pay reinstatement fees electronically, many drivers will be able to complete the process in less than one day.

The Agency requests comments on the reinstatement procedures an SDLA would institute under Alternative #1, and the time it would take for a driver to comply with the requirements for reinstatement.

The Agency proposes two IT solutions, (referred to as Method #1 and Method #2) for transmitting Clearinghouse information to the SDLAs. The costs include IT system development costs and annual operating and maintenance expenses (O&M) incurred by the SDLAs and FMCSA. Method #1 uses the existing CDLIS platform to interface with the Clearinghouse. The Agency included these costs in the Regulatory Impact Analysis prepared for the Clearinghouse final rule. Therefore, only the SDLAs would incur costs under Method #1. Method #2 uses a web-based service call to transfer Clearinghouse information. SDLAs and FMCSA would incur IT development and O&M expenses under Method #2. Table 1 shows two cost estimates for Alternative #1 and Alternative #2. The totals include IT development and annual O&M expenses, driver opportunity costs and reinstatement costs and motor carrier opportunity costs. Driver opportunity costs and reinstatement costs, and motor carrier opportunity costs are included in Alternative #1 costs only. This is because these costs would only be incurred under Alternative #2 by drivers and motor carriers if SDLAs choose to initiate a downgrade based on receiving optional notification from the Clearinghouse that a driver has tested positive. Undiscounted costs are expressed in 2016 dollars. The total costs for the 10-year analysis period and the annualized costs are also estimated at a 7 percent discount rate. The Agency estimates the cost of Alternative #1, with Clearinghouse information transmitted using Method #1 at $44.0 million over the10-year analysis period. The annualized cost is estimated at $4.4 million. At a 7 percent discount rate, the 10-year cost of the proposed rule is estimated at $32.8 million, with an annualized cost of $4.7 million. If Clearinghouse information is transmitted using Method #2, the cost of Alternative #1 is estimated at $25.5 million over the 10-year analysis period, and the estimated annualized cost is $2.5 million. At a 7 percent discount rate, the 10-year total cost is estimated at $18.5 million. The estimated annualized cost is $2.6 million.

[10] The report is titled *National Survey of Substance Abuse Treatment Services (N–SSATS): 2017. Data on Substance Abuse Treatment Facilities.* SAMHSA. The report is available at *https://www.samhsa.gov/data/report/national-survey-substance-abuse-treatment-services-n-ssats-2017-data-substance-abuse,* Table 5–1a (accessed June 16, 2019).

TABLE 1—COMPARISON OF THE COST OF OPTIONS FOR TRANSMITTING AND USING CLEARINGHOUSE INFORMATION

Option	Undiscounted (2016 $ million)		Discounted at 7% ($ million)	
Clearinghouse information transfer method	10-year total cost	Annualized	10-year total cost	Annualized
Alternative #1				
Method 1: CDLIS Option	$44.0	$4.4	$32.8	$4.7
Method 2 Web Services Option	25.5	2.5	18.5	2.6
Alternative #2				
Method 1: CDLIS Option	28.0	2.8	21.5	3.1
Method 2 Web Services Option	9.4	0.9	7.2	1.0

Under Alternative #2, with Clearinghouse information transmitted using Method #1, the 10-year total cost of the proposed rule is estimated at $28.0 million. The estimated annualized cost is $2.8 million. At a 7 percent discount rate, the 10-year total cost is estimated at $21.5 million. The estimated annualized cost is estimated at $3.1 million. If Clearinghouse information is transmitted to SDLAs using Method #2, the 10-year total cost of Alternative #2 is estimated at $9.4 million, and the annualized cost is estimated at $0.9 million. At a 7 percent discount rate, the 10-year total cost is estimated at $7.2 million, and the annualized cost is estimated at $1.0 million.

The NPRM would improve the enforcement of the current driving prohibition by requiring that States not issue, renew, transfer or upgrade the CLP or CDL of affected drivers. Removal of the commercial privilege from the driver's license (mandatory CLP or CDL downgrade), as proposed in FMCSA's preferred alternative, would ensure more consistent roadside enforcement against drivers who continue to operate a CMV in violation of the prohibition. The Agency also believes that the mandatory downgrade would further reduce drug and alcohol testing violations, since a driver's loss of the commercial privilege directly impacts his or her ability to obtain employment that involves operating a CMV. The Agency's preferred alternative would also permit the Agency to use its enforcement resources more effectively. The NPRM's costs and benefits are addressed further below in section VIII.A, of ''E.O. 12866''.

III. Legal Basis for the Rulemaking

Title 49 of the Code of Federal Regulations (CFR), sections 1.87(e) and (f), delegates authority to the FMCSA Administrator to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 and 49 U.S.C., chapter 311, subchapters I and III, relating to CMV programs and safety regulations.

The ''Commercial Driver's License Drug and Alcohol Clearinghouse'' final rule (81 FR 87686 (Dec. 5, 2016)) implements section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–41, 126 Stat. 405, codified at 49 U.S.C. 31306a), which requires that the Secretary establish a national clearinghouse for records relating to alcohol and controlled substances testing by CMV operators who hold CDLs. As part of that mandate, MAP–21 requires that the Secretary establish a process by which the States can request and receive an individual's Clearinghouse record, for the purpose of ''assessing and evaluating the qualifications of the individual to operate a commercial motor vehicle'' (49 U.S.C. 31306a(h)(2)). Section 32305(b)(1) of MAP–21, codified at 49 U.S.C. 31311(a)(24), requires that States request information from the Clearinghouse before renewing or issuing a CDL to an individual. This NPRM proposes the processes by which the Agency and the States would implement these statutory requirements.

FMCSA also relies on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (the 1986 Act) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, codified at 49 U.S.C. chapter 313). Section 31308 requires the Secretary, through regulation, to establish minimum standards for the issuance of CLPs and CDLs by the States. This proposal would establish the requirement that States could not issue a CLP or CDL to an individual prohibited, under 49 CFR 382.501(a), from operating a CMV due to a drug or alcohol testing violation. The NPRM would also establish standards for the States' removal and reinstatement of the CLP or CDL privilege from the driver's licenses of such individuals, proposed under the Agency's preferred mandatory downgrade alternative. Additionally, section 31305(a) requires the Secretary to establish minimum standards for, among other things, ''ensuring the fitness of an individual operating a commercial motor vehicle.'' This NPRM will help ensure the fitness of CMV operators by requiring that States do not issue, renew, transfer, or upgrade a CDL, or issue, renew, or upgrade a CLP, for any driver prohibited from operating a CMV due to a drug or alcohol program violation. Under the Agency's preferred alternative, States would remove the CLP or CDL privilege from the driver's licenses of individuals who violate the Agency's drug and alcohol program requirements until those drivers complete the RTD requirements established by 49 CFR part 40, subpart O. In order to avoid having Federal highway funds withheld under 49 U.S.C. 31314, section 31311(a)(1) requires States to adopt and carry out a program for testing and ensuring the fitness of individuals to operate CMVs consistent with the minimum standards imposed by the Secretary under 49 U.S.C. 31305(a).

The Department's drug and alcohol use and testing regulations are authorized by the Omnibus Transportation Employee Testing Act of 1991 (OTETA) (Pub. L. 102–143, Title V, 105 Stat. 917, at 952, codified at 49 U.S.C. 31306). Among other things, OTETA authorizes the Secretary to determine ''appropriate sanctions for a commercial motor vehicle operator who is found to have used alcohol or a controlled substance'' in violation of applicable use testing requirements (*e.g.,* 49 CFR parts 40 and 382) (49 U.S.C. 31306(f)). As explained further below, FMCSA believes that non-issuance, as well as the proposed mandatory downgrade, are appropriate sanctions which will improve compliance with existing drug and alcohol program requirements.

Additionally, this NPRM is based on the authority of the Motor Carrier Safety Act of 1984 (the 1984 Act) (Pub. L. 98–554, Title II, 98 Stat. 2832, codified at 49 U.S.C. 31136), which provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a) of the 1984 Act requires the Secretary to prescribe safety standards for CMVs which, at a minimum, shall ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on CMV operators do not impair their ability to operate the vehicles safely; (3) the physical condition of the CMV operators is adequate to enable them to operate vehicles safely; (4) CMV operation does not have a deleterious effect on the physical condition of the operators; and (5) CMV drivers are not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of the regulations promulgated under 49 U.S.C. 31136 or 49 U.S.C. chapters 51 or 313 (49 U.S.C. 31136(a)).

This NPRM would help ensure that CMVs are ''operated safely'', as mandated by section 31136(a)(1), and that the physical condition of CMV operators is adequate to enable their safe operation, as required by section 31136(a)(3). The proposed mandatory downgrade alternative, requiring that States remove the CLP or CDL privilege from the license of an individual who engages in prohibited drug and/or alcohol-related conduct would promote the safe operation of CMVs. Specifically, it would improve compliance with current regulatory requirements set forth in 49 CFR 382.501(a) and 382.503, which prohibit a CLP or CDL holder from operating a CMV, or performing other safety-sensitive functions, after engaging in conduct prohibited by FMCSA's drug and alcohol testing and use program, until the driver has completed the RTD requirements established by 49 CFR part 40, subpart O. The NPRM does not directly address the operational responsibilities imposed on CMV drivers (section 31136(a)(2)) or possible physical effects caused by driving (section 31136(a)(4)). FMCSA does not believe this NPRM would result in the coercion of CMV drivers by motor carriers, shippers, receivers, or transportation intermediaries (section 31136(a)(5)), as these proposed regulatory changes concern only the transmission of Clearinghouse information between FMCSA and the States and the use of that information by the SDLAs. The Agency notes, however, that the Clearinghouse final rule prohibits employers from submitting false reports of drug or alcohol violations to the Clearinghouse, which could have coercive effects on drivers.[11]

The 1984 Act also requires that, before prescribing regulations, FMCSA must consider their ''costs and benefits'' and ''State laws and regulations on commercial motor vehicle safety, to minimize their unnecessary preemption'' (section 31136(c)(2)). Those factors are addressed below.

IV. Background

A. MAP–21 Mandate

The Clearinghouse final rule implemented the Congressional mandate, set forth in section 32402 of MAP–21 requiring the establishment of a national Drug and Alcohol Clearinghouse containing CDL holders' violations of FMCSA's drug and alcohol testing regulations set forth in 49 CFR part 382. MAP–21 identified the purposes of the Clearinghouse as twofold: To improve compliance with the drug and alcohol testing program applicable to CMV operators and to improve roadway safety by ''reducing accident and injury involving the misuse of alcohol or use of controlled substances'' by CMV operators (49 U.S.C. 31306a(a)(2)). Accordingly, the Clearinghouse regulations will enable FMCSA and motor carrier employers to identify drivers who, under 49 CFR 382.501(a), are prohibited from operating a CMV due to drug and alcohol program violations. The NPRM would help ensure that such drivers receive the required evaluation and treatment before operating a CMV on public roads, as required by § 382.503.

Additionally, MAP–21 required that SDLAs be provided access to the Clearinghouse records of individuals applying for a CDL in order to determine whether that person is qualified to operate a CMV and that SDLAs request information from the Clearinghouse before renewing or issuing a CDL to an individual (49 U.S.C. 31311(a)(24)). This NPRM further addresses those requirements.[12] The Clearinghouse information would allow the SDLA to determine whether the applicant is qualified to operate a CMV (49 U.S.C. 31306a(h)(2)(B)(ii)).

In the preamble to the Clearinghouse final rule, FMCSA noted that information in the Clearinghouse ''may have a direct impact on the ability of the individual to hold or obtain a CDL,'' and that if an applicant is not qualified to operate a CMV, ''that driver should not be issued a CDL.'' [13] However, as explained above, although drivers who incur drug and alcohol program violations are prohibited from operating a CMV until achieving a negative result on a RTD test, there is no current regulatory requirement that SDLAs take any specific licensure action if the driver's Clearinghouse record shows a violation of the Agency's drug and/or alcohol prohibitions in part 382.

Following publication of the Clearinghouse final rule, AAMVA, as well as some individual States, noted that the rule did not provide any direction to SDLAs should they become aware of a driver's drug or alcohol violation after conducting the required check of the Clearinghouse. AAMVA also raised a number of other questions and concerns. The NPRM is intended to address those issues by clarifying how SDLAs would use Clearinghouse information.

B. AAMVA's Petition

AAMVA's petition for reconsideration of the Clearinghouse final rule raised concerns related to the requirement, as set forth in § 383.73, that SDLAs request information from the Clearinghouse prior to the issuance, renewal, transfer, or upgrade of a CDL.[14] AAMVA asserted that FMCSA should not expect States to play any role in the Clearinghouse process, noting that ''states cannot be expected to take action on a license as the result of a query against the Clearinghouse even if that process is integrated seamlessly.'' [15] Concluding that ''[t]he authority for taking action based on federal clearinghouse records should remain solely with the employer and FMCSA,'' AAMVA requested that ''SDLAs be removed from the process as described in the final rule.'' [16]

As noted above, MAP–21 requires the States to access Clearinghouse information in order to avoid a loss of funds apportioned from the Highway Trust Fund (49 U.S.C. 31311(a)(24)). As explained in the Agency's response to

[11] *See* 49 CFR 382.723

[12] *See* 49 CFR 382.725; 49 CFR 383.73(b)(10), (c)(10), (d)(9), (e)(8), and (f)(4); and 49 CFR 384.235.

[13] *See* 81 FR 87686, 87708 (Dec. 5, 2016).

[14] *See* AAMVA Petition for Reconsideration of the Commercial Driver's License Drug and Alcohol Clearinghouse Final Rule (June 29, 2017), Docket No. FMCSA–2011–0031. AAMVA petitioned for reconsideration of the Clearinghouse final rule; however, it did not submit the petition within 30 days after publication of the rule in the **Federal Register**, as required by 49 CFR 389.35(a). Therefore, in accordance with 49 CFR 382.35(a), the Agency considers AAMVA's submission to be a petition for rulemaking submitted under 49 CFR 389.31.

[15] *Ibid.,* at 2.

[16] *Ibid.,* at 3.

AAMVA's petition,[17] FMCSA therefore has no discretion to ''remove'' the States from the Clearinghouse process. Further, although a Federal statute required that the CDL program be established, and the program is governed in part by Federal regulations, the Agency does not have authority to issue or rescind CDLs. Under the current regulatory scheme, only States may act on a commercial license. As discussed further below, FMCSA believes Congress intended that States, as the issuers and administrators of CDLs and CLPs, should exercise their commercial licensing authority to help keep drug and alcohol program violators off the road until they are legally permitted to operate a CMV.

AAMVA also asserted that various operational questions related to the States' role in the Clearinghouse process were not addressed in the final rule. These concerns included: What does FMCSA intend that the States do with information they receive from the Clearinghouse; what specific information would States receive in response to a request for information about an individual CDL holder or applicant; what privacy and data controls will be applied to the transmission of Clearinghouse information to SDLAs; how would an erroneous Clearinghouse record be corrected; to what extent would foreign-licensed drivers be included in the query and reporting process; and what are the cost implications for the SDLAs. AAMVA also cautioned FMCSA against requiring SDLAs to take a licensing action based on information received from the Clearinghouse, noting the direct impact of such action on an individual's livelihood.

This NPRM responds to the SDLAs' questions and concerns, as identified by AAMVA. The Agency explains how the NPRM addresses these issues in section V, ''Discussion of Proposed Rulemaking,'' below. The NPRM's estimated cost impact on the States, noted above in section II.C, ''Costs and Benefits'', is discussed further below in section VIII.A, ''Regulatory Analyses, E.O. 12866.''

V. Discussion of Proposed Rulemaking

A. The SDLAs' Role in the Clearinghouse

While the MAP–21 requirements pertaining to the SDLAs' role in the Clearinghouse are straightforward, the intent of these provisions is less clear and thus subject to interpretation. The Agency therefore relies on its authority, delegated by Congress through the Secretary, to interpret and implement the MAP–21 requirements summarized above.

First and foremost, FMCSA views the Clearinghouse provisions in MAP–21 as remedial, intended to address the risk to public safety posed by CLP and CDL holders who commit drug or alcohol testing violations, but continue to operate a CMV without completing RTD requirements. This NPRM is part of FMCSA's effort to address that problem. According to the National Highway Traffic Safety Administration's Fatality Analysis Reporting System (FARS), the number of large truck drivers involved in fatal crashes who tested positive for drug use increased 48.2 percent between 2012 and 2017.[18]

FMCSA, proceeding under accepted standards of statutory construction, interprets the Clearinghouse requirements in a way that will achieve Congress's remedial purpose as stated in MAP–21: Increasing compliance with current drug and alcohol program requirements and improving highway safety (49 U.S.C. 31306a(a)(2)). The Agency starts with the assumption that Congress intended that the separate statutory requirements pertaining specifically to States and to SDLAs be read as a whole, and therefore in harmony with one another.[19] The provision requiring States (through SDLAs) check the Clearinghouse before issuing or renewing a CDL (49 U.S.C. 31311(a)(24)) does not indicate the specific purpose of that request for information. The provision does, however, expressly cross-reference the Clearinghouse provisions in 49 U.S.C. 31306a. FMCSA therefore views these statutory sections, both enacted as part of MAP–21, as two parts of an integrated whole.

With this in mind, the Agency reaches the following conclusions. First, the required check of the Clearinghouse is intended to provide SDLAs with information about the driver's qualifications to operate a CMV (49 U.S.C 31306a(h)(2)(B)(ii)). Second, Congress included SDLAs in the process because they are the only authorized user of the Clearinghouse with authority to take action on a driver's license, such as issuance or renewal.[20] Third, SDLAs should use their licensing authority to enforce the existing CMV driving prohibition in 382.501(a). The Agency acknowledges that a licensing action, based on information from the Clearinghouse, is not an explicit statutory requirement. However, to assume that Congress required that States (SDLAs) query the Clearinghouse to assess the driver's qualifications to drive a CMV and *then take no action* if the query discloses that the driver is prohibited from operating a CMV would ascribe to Congress an irrational purpose, plainly contrary to the stated goals of the statute, noted above.

Having concluded that Congress intended SDLAs to use their licensing authority to further the goals of MAP–21, FMCSA proposes to require SDLAs ''act'' on the license by denying the requested issuance, upgrade, renewal or transfer of the CLP or CDL, as applicable, if the Clearinghouse query results in notice that the individual is prohibited from operating a CMV. For purposes of the NPRM, FMCSA considers non-issuance to be the minimum licensing action required by MAP–21.

However, in FMCSA's judgment, it would be contrary to public safety to infer that non-issuance is the only license action authorized under MAP–21.[21] Drug and alcohol information reported to the Clearinghouse will make it possible to identify current CLP or CDL holders subject to the driving prohibition. But non-issuance applies only to a subset of that group: Individuals seeking a specified license transaction. For example, the non-issuance requirement would preclude a current CDL holder from adding an endorsement to their license if the SDLA's Clearinghouse query disclosed that the individual is subject to the driving prohibition and therefore not qualified to operate a CMV. If denying the upgrade is the only action taken by the SDLA, however, that driver would continue to hold a valid CDL, which may not expire for years. FMCSA does not believe Congress intended that

[17] *See* Letter from Raymond Martinez (FMCSA) to Anne Ferro (AAMVA) (April 12, 2018), p. 2, Docket No. FMCSA–2011–0031.

[18] The FARS data is available at *https://www-fars.nhtsa.dot.gov/QueryTool/QuerySection/SelectYear.aspx,* (accessed August 19, 2019).

[19] This interpretation differs from the Agency's views expressed in the Clearinghouse final rule; *see* 81 FR 87686, 87708 (Dec. 5, 2016). In discussing the two statutory provisions, both of which contemplate that SDLAs would have access to Clearinghouse information, FMCSA characterized section 31311(24) as requiring access and 31306a(h)(2) as permitting such access. FMCSA concluded the separate requirements were therefore contradictory. As explained above, the Agency now views the two provisions as part of an integrated statutory scheme.

[20] 49 U.S.C. 31306a(m)(2) defines ''chief commercial driver's licensing official'' as the State official authorized to ''maintain a record about commercial driver's licenses issued by the State'' and ''take action on commercial driver's licenses issued by the State.''

[21] As discussed in Section III, ''Legal Basis'', in addition to MAP–21, the NPRM is also based on the concurrent statutory authorities of the Commercial Motor Vehicle Safety Act of 1986 and the Motor Carrier Safety Act of 1984.

result, because these drivers pose an obvious risk to highway safety. A driver not qualified to add an endorsement to their license due to a drug or alcohol testing violation is also not qualified to hold that license until he or she complies with RTD requirements that will allow the commercial driving privilege to be reinstated.

The Agency therefore proposes alternate means to further effectuate Congress's intent and increase compliance with the driving prohibition. FMCSA's preferred alternative, ''mandatory downgrade'' would require that SDLAs downgrade the license of any CLP or CDL holder subject to the CMV driving prohibition, whether the driver is actively pursuing a commercial licensing transaction or not. Under this approach, SDLAs would receive ''push'' notifications from the Clearinghouse, in addition to ''pulling'' driver status information through the query process.

Under the second proposed alternative, ''optional notice of prohibited status,'' States would decide whether, and how, they would use the information to enforce the CMV driving prohibition in accordance with State law or policy (*e.g.,* suspend the CLP or CDL privilege until the driver can operate a CMV in accordance with § 382.503, and/or make the driver's prohibited status more widely available to traffic safety enforcement officers in their State). This alternative would allow, but not require, SDLAs to identify all individuals in their State subject to the CMV prohibition by choosing to receive ''push'' notifications.

B. Impact of the NPRM on SDLAs

Non-Issuance

The Clearinghouse regulations require that SDLAs request (''pull'') information from the Clearinghouse prior to issuing, transferring, renewing, or upgrading a CDL (§ 383.73(b)(c)(d)(e)(f)). The NPRM proposes that if, in response to that request, the SDLA is notified that the applicant is prohibited from operating a CMV due to a drug or alcohol testing violation, the SDLA must not complete the licensing transaction (non-issuance). The driver would need to re-apply after complying with RTD requirements that permit him or her to resume safety-sensitive functions, such as driving a CMV.

Application to CLP Holders

The Clearinghouse final rule did not require that States request information from the Clearinghouse for CLP applicants. The NPRM addresses this apparent oversight by proposing that SDLAs must check the Clearinghouse prior to issuing, renewing or upgrading a CLP. FMCSA believes it is appropriate that SDLAs query the Clearinghouse for information pertaining to CLP applicants, because the driver may have previously held a CLP or CDL from another State, and a drug and alcohol program violation may have been reported to the Clearinghouse during that licensure period. In accordance with 382.103, CLP holders are subject to the requirements of part 382 and are therefore subject to the driving prohibition in § 382.501(a). Accordingly, States could not issue, renew, or upgrade the CLP of an applicant prohibited from operating a CMV under § 382.501(a). The proposed mandatory downgrade would also apply to CLP holders.

Mandatory Downgrade

Under the Agency's preferred alternative, FMCSA proposes that, in addition to non-issuance, SDLAs also would be required to downgrade the driver's license of CLP and CDL holders who violate FMCSA's drug and alcohol program rules. As discussed above, the proposed downgrade requirement is based on a simple premise: An individual prohibited from operating a CMV due to a drug and alcohol program violation should not hold a valid CLP or CDL until they are legally permitted to operate a CMV. As previously noted, and discussed further below, the NPRM would add the CMV driving prohibition to part 392, so that States receiving MCSAP funds would be required to adopt and enforce a comparable provision.

SDLAs would accomplish the downgrade by changing the commercial status from ''licensed'' to ''eligible'' on the CDLIS driver record, thereby removing the CLP or CDL privilege from the license. The downgrade would be initiated following notification from FMCSA that, under § 382.501(a), the CLP or CDL holder is prohibited from operating a CMV. SDLAs would learn of the driver's prohibited status by ''pulling'' the information from the Clearinghouse prior to a requested license transaction, and by receiving a ''push'' notification whenever a violation is reported to the Clearinghouse for a CLP or CDL holder licensed in that State. The SDLAs would rely on their respective State laws and processes to downgrade the license and to reinstate the CLP or CDL privilege to the license following ''push'' notification of the driver's completion of RTD requirements. Pushing notifications to SDLAs is necessary to address the situation under which drivers who are prohibited from operating a CMV continue to possess a valid CDL or CLP, enabling them to avoid detection while driving unlawfully.

Under this alternative, SDLAs must complete and record the downgrade on the CDLIS driver record within 30 days of the date the State received notification from FMCSA that the driver is prohibited from prohibited from operating a CMV. FMCSA understands that immediate licensing action may not be feasible in all States. The Agency believes that the 30-day period would allow SDLAs sufficient time to take the required action, taking into account any State-imposed due process requirements, such as providing notice of the pending downgrade to the affected driver.[22] However, the NPRM would not prohibit SDLAs from completing the downgrade before the end of the 30-day period. FMCSA requests comment on the proposed 30-day time frame for SDLAs to complete and record the downgrade on the CDLIS driver record.

The Agency prefers the mandatory downgrade alternative because (1) it could be implemented through the States' existing downgrade processes; (2) would ensure more consistent treatment of drivers subject to the CMV driving prohibition; and (3) it would strengthen enforcement of the prohibition by making the driver's status readily available to all roadside enforcement personnel, not just those specifically trained through MCSAP funding to enforce the Federal Motor Carrier Safety Regulations (FMCSRs). This issue is discussed further below in section V.F., ''Roadside Enforcement of the CMV Driving Prohibition.'' Other benefits of the proposed mandatory downgrade are discussed in section VIII.A., ''E.O. 12866.''

FMCSA requests comment on the mandatory downgrade alternative. The Agency invites SDLAs to identify any specific operational issues associated with implementing the downgrade, as proposed.

Reinstatement of the CLP/CDL Following RTD Completion

Under the mandatory downgrade alternative, FMCSA would ''push'' notice to the SDLAs when a driver's negative RTD test result is reported to the Clearinghouse, thereby informing

[22] However, FMCSA, notes that affected drivers would nevertheless remain subject to en route enforcement of the driving prohibition during the period before the downgrade is recorded on the individual's driving record. *See,* section V.F, ''Roadside Enforcement,'' *infra.*

them that the driver is no longer prohibited from operating a CMV. If the SDLA receives that notification *before* the downgrade is recorded, FMCSA would require that, subject to applicable State law, SDLAs terminate the downgrade process, since the CLP or CDL holder is no longer prohibited from driving a CMV. If the SDLA receives notice from FMCSA that the driver is no longer prohibited from operating a CMV *after* completing and recording the downgrade, the driver would be eligible for reinstatement of the CLP or CDL privilege to their license in accordance with State law and procedures. However, if the downgrade has been recorded on the CDLIS driver record, the driver could not operate a CMV until the CLP or CDL privilege is reinstated to the driver's license by the State. The NPRM would amend § 382.503 to make this clear.

FMCSA believes the reinstatement should be as efficient as possible so that drivers can resume their operation of a CMV as soon as they are qualified to do so. The Agency requests information on current reinstatement processes, including how long it takes to reinstate the CLP or CDL privilege to the driver's license.

Notice to Drivers of Downgrade/Reinstatement

The NPRM does not require that States notify the CLP or CDL holder that the downgrade process, proposed under the preferred alternative, is underway. (Such notice is currently required prior to the downgrade of a driver's license due to a change in medical certification status (§ 383.73(o)(4)(i)(A)). The Agency, by implementing its own notification procedures required by the Clearinghouse regulations, would like to relieve SDLAs of the administrative burden of directly notifying a CLP or CDL holder of the licensing action (*i.e.,* downgrade or reinstatement). Pursuant to § 382.707(a), FMCSA must notify drivers whenever information about them has been added to, revised, or removed from the Clearinghouse. When notifying the driver that a violation has been reported to the Clearinghouse, the Agency intends to let drivers know that FMCSA has informed their SDLA of the driver's prohibited operating status, and that the State must downgrade of the driver's license within 30 days. In addition, as part of FMCSA's required notification to the driver that a negative RTD test result has been reported to the Clearinghouse, the Agency would also inform drivers that FMCSA has notified their SDLA that the driver is no longer subject to the driving prohibition. FMCSA would notify drivers through first-class mail, or through electronic mail if the driver has registered in the Clearinghouse and selected that option. FMCSA requests comment on whether its intended method of notice to drivers, as described above, would satisfy existing State-based driver notification requirements.

Impact of Removing the CLP or CDL Privilege From the Driver's License

In its petition, AAMVA cautioned the Agency against requiring the SDLAs to take a licensing action that could affect the individual's livelihood. In response, FMCSA notes that a person's ability to earn a living can be impacted anytime an SDLA removes or restricts a driver's license, for any type of vehicle. Taking away the privilege to drive has serious consequences to the affected individual; that is the essence of the States' licensing authority when exercised to protect the public by keeping unsafe drivers off the road.

Further, SDLAs are already required to downgrade the CLP or CDL of any driver not having valid medical certification (§ 383.73(o)(4)). That requirement is intended to keep drivers from operating a CMV until they are medically certified to do so, as required under § 391.41(a)(1)(i). Similarly, the proposed licensing actions related to a drug or alcohol program testing violation (*i.e.,* non-issuance and mandatory downgrade) would improve compliance with current regulations (§ 382.501). Individuals who obtain the CLP or CDL credential are responsible for knowing the associated regulatory requirements, as well as the consequences of noncompliance. CMV drivers can therefore avoid the threat to their livelihood, posed by non-issuance or a downgrade, by complying with FMCSA's drug and alcohol program.

AAMVA's petition also asked whether licensing action would be in the form of a downgrade or a disqualification. FMCSA notes that CMV drivers subject to downgrade are not ''disqualified'' under part 383. Driver disqualifications under § 383.51 require that the individual be convicted of a specified traffic violation. Drivers prohibited from operating a CMV due to a drug or alcohol testing violation do not meet that criteria for disqualification.[23] Further, violation of FMCSA's drug and alcohol use testing regulations do not necessarily indicate impairment while driving.[24] Therefore, while a positive drug or alcohol test, or other program violation certainly raises safety concerns, such violations do not inherently constitute a basis for disqualification under § 383.51.

Alternative #2—Optional Notice of Prohibited Status

Under the second proposed alternative, the push notifications described above would also be available to SDLAs so that they could choose whether to receive the information and how to use it. As discussed above in section II.B, ''Summary of Major Provisions,'' the NPRM would add the driving prohibition, currently set forth in § 382.501, to part 392, thereby requiring States that receive MCSAP funding to adopt and enforce a comparable prohibition under State law. This would enable roadside enforcement by providing law enforcement personnel with electronic access to the CMV driver's prohibited operating status. However, as explained below in section V.F., ''Roadside Enforcement of the CMV Driving Prohibition,'' traffic enforcement officers who are not funded through the MCSAP program may have limited electronic access to that information.

Under this optional notification alternative, SDLAs choosing to receive ''push'' notifications of a driver's prohibited status could use the information to enhance their enforcement efforts in a number of different ways, consistent with MAP–21[25] and State law or policy. Although the Agency would not require SDLAs to take action on CDLs, they would have the option to receive push notifications of a CLP or CDL holder's prohibited operating status. The SDLA would then choose how to use the information to facilitate enforcement of the driving prohibition, as required by MCSAP funding. States would remain responsible for enforcing the driving prohibition, but would have the flexibility to determine how to comply with that requirement.

For example, SDLAs could make the driver's prohibited CMV operating status more accessible to non-MCSAP law enforcement at roadside, depending on their technological capability to do so. States opting to receive ''push'' notifications could also enact a law to suspend the commercial privilege from the driver's license until he or she completes RTD requirements, as three

[23] Driver disqualifications under part 383 are required by statute (49 U.S.C. 31310).

[24] Under § 383.51(b), persons convicted of driving under the influence of drugs or alcohol are disqualified from operating a CMV for a minimum of one year.

[25] MAP–21 requires that States ensure information in the driver's Clearinghouse record ''is not divulged to any person not directly involved in assessing and evaluating the qualifications of the individual to operate a commercial motor vehicle'' (49 U.S.C. 31306a(h)(2)(B)(ii)).

States have already done.[26] Under this proposed alternative, it would be up to the State to determine whether, and how, to use the information.

The Agency invites comment on the optional notification proposal. Would States opt to receive the CMV driver status information if FMCSA did not require a downgrade? Why or why not? How would States choosing to receive driver notification specifically use that information to enhance enforcement of the driving prohibition? If FMCSA did not require a downgrade, should SDLAs be required to receive the information, rather than having the option to do so? Why or why not?

Content of Driver-Specific Information Provided to SDLAs

The driver-specific information that would be provided to SDLAs, through both ''push'' and ''pull'' notifications, would indicate only that the driver is prohibited from operating a CMV. Because FMCSA would not disclose any specific information concerning the details of the driver's drug and alcohol program violation (*e.g.,* whether the driver tested positive or refused a test), SDLAs would not need to interpret drug or alcohol test results or other Clearinghouse data. After a negative RTD test has been reported to the Clearinghouse, FMCSA would ''push'' a notification to the SDLA that initially received notification of prohibited status, indicating the driver is no longer prohibited from operating a CMV.

Proposed Methods of Transmitting Driver-Specific Information to SDLAs

FMCSA expects to notify the SDLAs of the driver's status, either by ''pull'' or ''push'', through either the existing CDLIS platform, a web services call, some combination of the two, or other automated electronic means. The Agency invites comment concerning the preferred method for FMCSA's automated electronic transmission, by ''push'' or ''pull'', of the CLP or CDL holder's Clearinghouse information to the SDLAs, including associated costs and benefits. For example, if the existing CDLIS platform is utilized, what new data elements or fields would be required? Would a new AAMVA Code Dictionary (ACD) code be required? As noted below in the discussion of the estimated costs of the NPRM, if States ''pulled'' notification of a driver's CMV operating status from the Clearinghouse via the CDLIS platform, the Agency intends that, under this option, the information would be provided as part of the CDLIS driver record check already required under § 384.205. Under this approach, SDLAs would not be required to perform a separate query of the Clearinghouse; they would receive relevant Clearinghouse information along with any other driver-specific data, such as medical certification status, provided in response to the CDLIS record check.

Alternatively, the Agency requests comment on whether a web service call should be used to transmit information between the Clearinghouse and SDLAs. As noted above, this option would presumably require FMCSA to establish an interface between the SDLAs and the Clearinghouse. Should SDLAs have the option to determine which electronic transmission format best suits their needs, or is a uniform system of Clearinghouse data transmission preferable? How would the NPRM affect States that permit drivers to complete commercial license transactions online?

C. Compliance Date

The Agency generally allows States three years to achieve compliance with new requirements imposed on them under parts 383 and 384. Accordingly, the NPRM proposes that States come into compliance with the proposed requirements no later than three years following publication of a final rule. FMCSA acknowledges, however, that the time needed for implementation of the proposed data transmission options, identified above, may vary. FMCSA therefore requests comment on the time necessary for SDLAs to implement changes to their information technology systems in order to electronically request and receive information from the Clearinghouse, once the technical specifications are made available. To the extent possible, commenters should estimate the length of time needed to comply, depending on how the Clearinghouse information would be transmitted (*i.e.,* through the existing CDLIS platform, a web-based service, or some other electronic means). For example, can one method of transmission be implemented more quickly than another?

The Agency previously extended the date by which States must comply with the query requirement established by the Clearinghouse final rule. The initial compliance date of January 6, 2020, was extended to January 6, 2023 (84 FR 68052). As FMCSA noted at the time that change made, the extension was necessary because the way in which SDLAs would electronically receive Clearinghouse information, as well as the way SDLAs would be required to use that information, has not yet been determined. This NPRM addresses those factors. The current compliance date of January 23, 2023 will, if necessary, be replaced by the date established by the final rule resulting from this NPRM; however, the Agency does not expect the ''final'' compliance date to occur before January 23, 2023.

D. Impact of MAP–21 and the NPRM on State Laws

Reporting Requirements

MAP–21 expressly preempts State laws and regulations that are inconsistent with the Clearinghouse regulations, including State-based requirements for ''the reporting of violations of valid positive results from alcohol screening tests and drug tests,'' as well as alcohol and drug test refusals and other violations of part 382, subpart B (49 U.S.C. 31306a(l)(2)). Once the Clearinghouse is operational, drug and alcohol testing violation information must be reported to the Clearinghouse in accordance with § 382.705 (''Reporting to the Clearinghouse''). The Agency interprets 49 U.S.C. 31306a(l)(2) to mean that State-based reporting requirements inconsistent with the requirements in § 382.705 would be preempted.

FMCSA is aware that at least eight States (Arkansas, California, New Mexico, North Carolina, Oregon, South Carolina, Texas, and Washington [27]) currently require that CDL holders' positive test results and/or test refusals be reported to the State. States uncertain about whether their reporting requirements are inconsistent with the Clearinghouse statute (49 U.S.C. 31306a) or the Clearinghouse final rule may request a determination from the Agency.

State Actions on the Commercial Driver License or Driving Record

MAP–21 specifically *excepts* from Federal preemption State requirements relating to ''an action taken with respect to a commercial motor vehicle operator's commercial driver's license or driving record'' due to violations of FMCSA's drug and alcohol program requirements (49 U.S.C. 31306a(l)(3)). Several States currently take such licensing actions based on certain violations of FMCSA's drug and alcohol testing program. At least three States (North Carolina, South Carolina, and Washington) currently disqualify CDL

[26] The ways in which States currently use information of driver violations of FMCSA's drug and alcohol program is described below in section V.C, ''Impact of MAP–21 and the NPRM on State Laws.''

[27] *See* A.C.A. section 27–23–205; Ann. Cal. Vehicle Code sections 34520(c), 13376(b)(3); N.M.S.A. section 65–13–14(B); O.R.S. section 825.410(3); 37 T.A.C. section 4.21(a).

holders who test positive for drugs or alcohol, or refuse to submit to a test, from operating a CMV until completing RTD requirements.[28] Some States take additional licensing actions related to drug and alcohol program violations. For example, in Washington State, persons disqualified from driving a CMV due to a positive drug or alcohol confirmation test under the DOT testing program, more than twice in a five-year period, ''are disqualified for life.'' [29] In North Carolina, drivers testing positive for drugs or alcohol, or refusing to test, under 49 CFR part 382 are disqualified from operating a CMV for a minimum of 30 days and until completion of RTD requirements.[30] Based its interpretation of 49 U.S.C. 31306a(l)(3), the Agency believes that State-based requirements such as these would likely fall within the scope of the exception because they relate to an action taken on a CDL.

The exception in 49 U.S.C. 31306a(l)(3) also applies to State actions related to a CMV operator's driving record resulting from an individual's violation of FMCSA's drug and alcohol program. The NPRM's sole impact on the driving record is the requirement, proposed in FMCSA's preferred alternative, that the downgrade of the CLP or CDL be recorded on the CDLIS driver record for the downgrade to take effect. FMCSA does not propose that the reason for the downgrade, or the individual's prohibited CMV driving status, be posted on a CMV operator's driving record, though the NPRM does not prohibit States from doing so. Nor does the Agency propose any time limit for how long posted violation information may be retained on the driving record. Accordingly, the NPRM complies with Congress's intent, as expressed in MAP–21, to accord States the flexibility to record drug and alcohol violation information on the driving records of CLP and CDL holders as they deem appropriate.

States should, however, be aware of the MAP–21 privacy protection requirements applicable to SDLAs, including the need to ''ensure that the information in the [Clearinghouse] record is not divulged to any person [who] is not directly involved in assessing and evaluating the qualifications of the person to operate a commercial motor vehicle.'' [31] Further, State-maintained records of a driver's status and history are subject to the requirements of the Federal Driver's Privacy Protection Act of 1994.[32] State laws and procedures must therefore comply with these statutory requirements.

E. Impact on CLP/CDL Holders

Proposed Commercial Licensing Actions

As discussed above, pursuant to § 382.501(a), CLP and CDL holders are currently prohibited from operating a CMV if they engage in drug or alcohol-related conduct prohibited by subpart B of part 382, or if they violate the drug and alcohol requirements of another DOT agency. Once the CLP or CDL holder has met the RTD evaluation and testing requirements of part 40, the driver is eligible to resume operating a CMV, in accordance with § 382.503.

FMCSA proposes to enforce those requirements by prohibiting SDLAs from issuing, renewing, upgrading, or transferring a CDL, or issuing, renewing or upgrading a CLP, of any driver subject to the CMV driving prohibition in § 382.501(a).

Additionally, under the Agency's preferred mandatory downgrade alternative (#1), SDLAs would be required to downgrade the driver license of individuals prohibited from operating a CMV, resulting in the removal of the CDL or CLP privilege by changing the commercial or permit status from ''licensed'' to ''eligible'' on the CDLIS driver record. In this way, a driver's commercial license status would be aligned with his or her CMV driving status under § 382.501(a). Simply put, FMCSA believes that an individual prohibited from operating a CMV due to a drug and alcohol program violation should not hold a valid CLP or CDL until they are legally permitted to operate a CMV. This proposed approach is consistent with the Agency's current requirement that SDLAs downgrade the CDL or CLP of drivers who do not comply with FMCSA's medical certification requirements.[33]

Under the optional notice of prohibited status alternative (#2), States would have the flexibility to decide whether to receive notice of the driver's prohibited status in order to enhance roadside enforcement of the prohibition or to suspend the CDL/CLP privilege in accordance with State law.

Driver-Specific Notifications to SDLAs

FMCSA proposes to notify the SDLA that a CLP or CDL holder is prohibited from operating a CMV, pursuant to § 382.501(a), and, when applicable, that the driver is no longer prohibited from operating a CMV, in accordance with § 382.503. The Agency notes that, while the notification that a driver is prohibited from operating a CMV would be *based on* specific violation information reported to the Clearinghouse (*e.g.,* a verified positive drug test result), the Agency would not disclose that information to the SDLA. FMCSA believes the proposed limited disclosure of an individual's CMV driving status under § 382.501(a) would provide the States with the information they need to take commercial licensure actions (non-issuance; mandatory downgrade) required under the NPRM, while also reasonably accommodating the privacy interests of drivers.

Economic Impact of Proposed Mandatory Downgrade

Under FMCSA's preferred alternative, States must complete and record the downgrade on the CDLIS driver record within 30 days of receiving notice from FMCSA that the driver is prohibited from operating a CMV. Depending on the State, a driver whose license is downgraded may be required to pay a reinstatement fee, re-apply for a CLP or CDL, and/or repeat applicable skills or knowledge tests before the State would reinstate the CLP/CDL privilege to the driver license. Potential reinstatement-related costs on drivers are addressed in sections II.C., ''Costs and Benefits,'' and VIII. A., ''E.O. 12866.''

Under § 383.23(a)(2), no person may legally operate a CMV without possessing a valid CDL; under § 323.25(a), a CLP is considered a valid CDL for purposes of behind-the-wheel training on public roads. Therefore, drivers who complete the RTD requirements after the downgrade is recorded by the SDLA could not drive a CMV until the CLP or CDL privilege is reinstated. The Agency acknowledges that this outcome could be viewed as inconsistent with § 382.503, which currently states that drivers may resume safety sensitive functions, including driving a CMV, once the driver satisfies the RTD requirements of part 40, subpart O.[34] In order to clarify this issue, the mandatory downgrade proposal would amend § 382.503 to make clear that a valid CLP or CDL is required before the driver can operate a CMV after complying with RTD requirements. FMCSA notes, however, that the driver could perform other

[28] N.C.G.S.A. section 20–17.4(l); S.C. Code Ann. section 56–1–2110(G); Wash. Rev. Code section 46.25.090(7).

[29] Wash. Rev. Code 46.25.090(7).

[30] N.C.G.S.A. section 20–17.4(l).

[31] 49 U.S.C. 31306a(h)(2)(B)(ii). *See also* 49 CFR 382.725(c).

[32] *See* 18 U.S.C. 2721–2725 (1994 & Supp. IV 1998), amended by Public Law 106–69, section 350, 113 Stat. 956, 1025–26 (1999).

[33] *See* 49 CFR 383.73(o)(4).

[34] Under 49 CFR 40.305(b), an employer cannot return an employee to safety-sensitive duties until the employee has a negative result on a RTD drug or alcohol test.

safety-sensitive functions that do not involve driving a CMV, such as loading or unloading a vehicle, since those functions do not require a valid CLP or CDL.

FMCSA is aware that a CDL holder, otherwise qualified to operate a CMV by completing RTD requirements, may lose driving-related income while waiting for the CDL privilege to be reinstated. Similarly, a driver's behind-the-wheel training on public roads could not be completed until the CLP privilege is restored following completion of RTD requirements. The Agency requests comment on these potential economic impacts.

As discussed further below in section VIII.A. ''E.O. 12866,'' the Agency anticipates that most drivers could complete RTD requirements within 16 hours if the substance abuse professional (SAP) refers the driver to an outpatient education program. If the SAP refers the driver to an intensive outpatient treatment program, the time to complete the RTD is estimated at 108 hours. For drivers referred to an outpatient education program, it is possible the driver would complete the RTD process before the SDLA records the downgrade on the CDLIS driver record. The proposed rule would allow SDLAs 30 days to complete the downgrade. Under the proposed mandatory downgrade, SDLAs, consistent with applicable State law, would be required to terminate the downgrade process if FMCSA notifies the SDLA that the driver is no longer prohibited from operating a CMV before the SDLA has recorded the downgrade on the driving record. Because no licensing action would be taken in that situation, drivers would be qualified to operate a CMV upon completing the RTD requirements.

Licensing Actions Based on Inaccurate Clearinghouse Information

The Agency recognizes that CLP and CDL holders may be concerned that non-issuance or a license downgrade could occur due to erroneous information reported to the Clearinghouse. AAMVA's petition also noted the potential impact of inaccurate Clearinghouse information on the commercial licensure process. FMCSA understands the importance of maintaining the accuracy and privacy of driver information in the Clearinghouse. The Agency notes, for example, that in response to drivers' concerns about the potential for false reports of actual knowledge of drug or alcohol use (other than actual knowledge that the driver received a citation for operating a CMV under the influence of drugs or alcohol) or test refusals to the Clearinghouse, the final rule requires specified supporting documentation, such as an affidavit, to prevent false reporting of these violations.[35] Further, as part of its Clearinghouse implementation protocol, FMCSA intends to ensure that the required documentation has been provided before releasing the actual knowledge or test refusal violations from the Clearinghouse in accordance with § 382.701, and before relying on those reports as a basis for notifying the SDLA that the driver is prohibited from operating a CMV.

Further, due to the extensive and time-tested procedures for verifying the accuracy of positive drug and alcohol test results, as set forth in 49 CFR part 40, FMCSA expects that the reporting of inaccurate test results to the Clearinghouse will be exceedingly rare.

However, the reporting of inaccurate driver information to the Clearinghouse may occur, despite the Agency's best efforts to prevent it.[36] In such cases, incorrect information could result in non-issuance (*i.e.,* the SDLA would not process the requested license issuance, renewal, upgrade, or transfer). Under the Clearinghouse regulations, if FMCSA corrects driver information, or removes it from the Clearinghouse, the driver must be notified (§ 382.707(a)). Therefore, if non-issuance occurred due to inaccurate information subsequently corrected or removed from the Clearinghouse, the driver, after receiving notice of correction or removal, would return to the SDLA to complete the licensing transaction.

Under the proposed mandatory downgrade alternative, if a driver's license is downgraded based on erroneous information subsequently corrected or removed from the Clearinghouse, FMCSA would notify the SDLA that the driver is not subject to the CMV driving prohibition. The SDLA should reinstate the CLP or CDL privilege as fairly and efficiently as possible after receiving such notification. In addition, if an SDLA chooses to enter drug or alcohol testing violation information on a CMV operator's driving record, and FMCSA later determines the information is inaccurate and removes it from the Clearinghouse, the SDLA should also remove it from the individual's State-based driving record. FMCSA requests comment from drivers and SDLAs on whether a mandatory corrective action process should be included in the final rule resulting from this NPRM, and, if so, what the elements of that process should be.

CMV Driving Prohibition Adopted Under State Law

The NPRM proposes that the CMV driving prohibition in § 382.501 be added to part 392, so that States receiving MCSAP funds would be required to adopt and enforce a comparable provision. As discussed further below, the proposed change would enable roadside enforcement of the prohibition. Drivers who operate a CMV in violation of the prohibition would therefore be subject to appropriate intervention by safety enforcement personnel in these jurisdictions.

Actual Knowledge Violation Based on Citation for DUI in a CMV

Finally, drivers could be impacted by proposed changes to the way in which an actual knowledge violation, based on the employer's knowledge that the driver was issued a citation for DUI in a CMV, would be maintained in the Clearinghouse. Section § 382.717(a)(2)(i) states that, when the DUI citation does not result in the driver's conviction, the driver can petition FMCSA to remove the employer's report of the actual knowledge violation from the Clearinghouse. As the Agency then explained: ''Prohibiting a driver from performing safety sensitive functions when a citation does not result in a conviction contravenes fundamental principles of fairness.'' [37] This provision was based on the erroneous assumption that drivers issued a citation for DUI in a CMV, but not convicted, do not have to complete RTD requirements.

Under the NPRM, drivers would no longer be permitted to request removal of the actual knowledge report if the DUI citation did not result in a conviction. The proposed change is necessary for two reasons. First, as explained above in section II.B., ''Summary of Major Provisions,'' when an employer is aware that a driver received a citation for DUI in a CMV, that employer has actual knowledge that a driver engaged in the prohibited use of drugs or alcohol (§ 382.107). The driver therefore has violated FMCSA's drug and alcohol program requirements (§ 382.501(a)). The violation occurs whether the driver is ultimately convicted of the offense or not. Consequently, the Agency erred in stating that drivers not convicted of DUI in a CMV are not required to complete

[35] *See* 49 CFR 382.705(b)(3) and (4).

[36] The Clearinghouse regulations provide for the timely correction of inaccurate information, as do the Privacy Act regulations. *See* 49 CFR 382.717(e)(2); 49 CFR 10.43.

[37] 81 FR 87686, 87706 (Dec. 5, 2016).

RTD requirements. If an employer reports an actual knowledge violation to the Clearinghouse, based on the issuance of a citation for DUI in a CMV, the driver must not perform safety-sensitive functions until complying with RTD requirements, as required by § 382.503.

The second reason is that MAP–21 requires all violations of part 382, subpart B, be reported to the Clearinghouse, and that reported violations remain in the Clearinghouse for five years.[38] These statutory requirements therefore preclude the Agency from removing the actual knowledge violation report from the Clearinghouse, based solely on evidence that the driver was not convicted of DUI in a CMV.

The Agency believes that, in the interest of fairness, a driver who is not convicted of the offense of DUI in a CMV should be permitted to request that FMCSA add documentary evidence of non-conviction to their Clearinghouse record. The information, if accepted, would be available to employers who subsequently check the driver's record in accordance with § 382.701(a) or (b). Making the information available to employers would allow them to assess the relevance of non-conviction when deciding whether to hire or retain the driver.

F. Enforcement of the CMV Driving Prohibition

Under FMCSA's current regulations, a CLP or CDL holder who engages in prohibited drug or alcohol-related conduct cannot lawfully operate a CMV until complying with RTD requirements (§ 382.501(a)). The driving prohibition applies as soon as the drug or alcohol testing violation occurs. Ideally, traffic safety enforcement officials conducting roadside interventions should be able to determine whether a CMV driver is subject to the prohibition as soon as possible after the violation occurs. Today, however, the Agency's State and local enforcement partners have limited ability to identify drivers who pose a safety risk by continuing to drive CMVs in violation of FMCSA's drug and alcohol rules. As discussed above, only three States currently suspend the CDL of drivers who violate FMCSA's drug and alcohol program. Consequently, most individuals prohibited from driving a CMV due to a drug or alcohol testing violation can still hold a valid CLP or CDL.

The Clearinghouse will help close this knowledge gap. Based on violations reported to the Clearinghouse, FMCSA will be able to provide its State-based roadside enforcement partners notice of the driver's prohibited CMV operating status in real time by making the information available after a driver violation is reported to the Clearinghouse. (The Agency emphasizes that traffic safety personnel would not have access to the Clearinghouse, and would not receive any specific violation information about a CLP or CDL holder.) Additionally, the NPRM proposes to add the CMV driving prohibition to part 392, thereby requiring States receiving MCSAP funding to adopt and enforce a comparable provision, in accordance with § 350.201(a). The combined effect of these actions will improve highway safety by increasing the roadside detection of drivers who hold a valid CLP or CDL, but continue to operate a CMV in violation of the prohibition.

FMCSA will exercise its existing enforcement authority to make the driver's prohibited CMV operating status available to CMV safety enforcement personnel authorized to enforce highway safety laws. Incident to a traffic stop, or inspection at a roadside check point (*e.g.,* a CMV weigh station), highway traffic safety officers trained under FMCSA's Motor Carrier Safety Assistance Program (MCSAP) have access, through *cdlis.gov,* to the CLP or CDL holder's driving record through FMCSA's electronic enforcement tools. Nationwide, there are approximately 12,000 MCSAP officers, who have specialized knowledge and experience related to CMV safety. In addition, there are more than 500,000 safety personnel authorized to enforce traffic laws throughout the United States. Some non-MCSAP enforcement officers are currently able to access FMCSA's data through *cdlis.gov* or National Law Enforcement Telecommunication System (Nlets), and would therefore be aware of the driver's prohibited status. However, this information is not consistently and widely available to non-MCSAP enforcement personnel, due to resource limitations, or the inability to access an electronic database at roadside. Consequently, these traffic safety officers would not necessarily know the CMV driver's prohibited status.

However, at a minimum, *all* traffic safety enforcement officers, including non-MCSAP personnel, initiate a license check on any driver stopped for a traffic violation. Under the proposed mandatory downgrade alternative, drivers unlawfully operating a CMV would be detected through a license check if the CLP or CDL privilege had been removed from the license when the check is made. FMCSA believes that the downgrade requirement would therefore strengthen enforcement of the driving ban because it would enable all traffic safety officers, not just those trained and funded under MCSAP, to detect drivers prohibited from operating a CMV (*i.e.,* drivers whose license is downgraded due to a drug or alcohol testing violation).

FMCSA invites comment, particularly from traffic safety stakeholders, on the Agency's intended enforcement protocol, as described above. FMCSA also seeks comment on whether the proposed downgrade would further improve highway safety by enabling more extensive roadside detection of drivers not qualified to operate a CMV.

G. Foreign-Licensed Drivers

FMCSA's drug and alcohol program requirements apply to drivers licensed in Canada and Mexico who operate CMVs in commerce in the United States, and to those who employ such drivers.[39] Accordingly, pursuant to §§ 382.501(a) and 382.503, if a drug or alcohol violation is reported to the Clearinghouse for a driver licensed in Canada or Mexico, that individual cannot operate a CMV in the United States until completing RTD requirements.

As the Agency acknowledged in the preamble to the Clearinghouse final rule, Canadian and Mexican licensing authorities will not have direct access to the Clearinghouse because MAP–21 authorized such access only for SDLAs in the 50 States and the District of Columbia. FMCSA noted, however, that it would explore other ways in which drug and alcohol information in the Clearinghouse could be made available to foreign licensing authorities and to U.S. enforcement personnel. Accordingly, FMCSA intends to rely on the following enforcement protocol when a drug or alcohol violation by a foreign-licensed driver is reported to the Clearinghouse. The Agency intends to ''push'' a notification from the Clearinghouse to the Foreign Convictions and Withdrawal Database (FCWD) indicating that, under § 382.501(a), the driver is prohibited from operating a CMV in the United States. Enforcement personnel who use CDLIS to electronically initiate a foreign-licensed driver status request will also receive notifications provided to the FCWD and would thus be informed that the driver is prohibited from operating a CMV in the United States. The foreign-licensed driver could

[38] *See* 49 U.S.C. 31306a(g)(1)(C); 31306a(g)(6).

[39] *See* 49 CFR 382.103(a)(2) and (3).

be subject to citation for violating the driving prohibition.[40]

FMCSA would also notify the foreign-licensed driver (and the relevant foreign licensing authority) that the driver is prohibited from operating a CMV within the borders of the United States until he or she complies with RTD requirements, as required by § 382.503. When the driver's negative RTD test is reported to the Clearinghouse, a similar notification would be ''pushed'' to the FCWD, and FMCSA would also notify the driver and foreign licensing authority that the individual is no longer prohibited from operating a CMV in the United States. Under this process, foreign-licensed drivers who commit drug and alcohol program violations would, in effect, be treated no differently than their U.S.-licensed counterparts.

The Agency notes that these notification procedures are based on FMCSA's existing enforcement authority; therefore, no revision to 49 CFR parts 382, 383, or 384 is necessary. However, FMCSA intends to provide additional guidance on this enforcement protocol prior to its implementation.

H. Privacy Act Applicability

MAP–21 requires that the ''release of information'' from the Clearinghouse comply with the applicable provisions of the Privacy Act of 1974 (49 U.S.C. 31306a(d)(1)). The Privacy Act prohibits the disclosure of information maintained in a Federal system of records, except to the extent disclosures are specifically permitted by the Privacy Act, or pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.[41] Section (b)(3) of the Privacy Act permits disclosure of information from a system of records when the disclosure is a ''routine use.'' As defined in 5 U.S.C. 552a(7), ''the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.'' Under the Privacy Act, each routine use for a record maintained in the system, including the categories of users and the purpose of such use, must be included in a System of Records Notice (SORN) published in the **Federal Register**.

The Agency's proposed SORN for the new system of records titled ''Drug and Alcohol Clearinghouse (Clearinghouse),'' was published on October 22, 2019 (84 FR 56521). The SORN described the information to be maintained in the Clearinghouse and the circumstances under which the driver's consent must be obtained prior to the release of information to a current or prospective employer. The proposed SORN also identified the general and specific routine uses applicable to the Clearinghouse, including the disclosure of a driver's CMV operating status (prohibited or not prohibited) to an SDLA.

I. Fair Credit Reporting Act (FCRA) Applicability

In the preamble to the 2016 Clearinghouse final rule, the Agency briefly discussed how the FCRA would apply to FMCSA's administration of the Clearinghouse.[42] The Agency takes this opportunity to clarify its position. The FCRA, among other things, imposes certain obligations on ''consumer reporting agencies'' as that term is defined in the statute.[43] Because the Agency does not fall within FCRA's definition of ''consumer reporting agency,'' it is not subject to those obligations. Consequently, the FCRA requirements imposed on ''consumer reporting agencies'' do not apply to the Agency's administration of the Clearinghouse regulations, including these proposed requirements.

J. Major Issues on Which the Agency Seeks Comment

1. The NPRM proposes that SDLAs be prohibited from completing certain CLP or CDL transactions if the driver is subject to the CMV driving prohibition in § 382.501(a), resulting in non-issuance. Do you agree with that proposal? Why or why not?

2. In addition to non-issuance, should SDLAs be required to downgrade the license of CMV drivers subject to the driving prohibition, as proposed in FMCSA's preferred alternative? Why or why not?

3. How would SDLAs choosing to receive notice of a driver's prohibited CMV driving status, as proposed in the second alternative, use the information to enforce the prohibition? For example, would the State enact a law to suspend the CLP or CDL of affected drivers?

4. The Agency's preferred alternative proposes that SDLAs must complete and record the downgrade on the CDLIS driver record within 30 days after receiving notice that a driver is prohibited from operating a CMV due to a drug and alcohol program violation. Does 30 days allow sufficient time to complete and record the downgrade? If not, please explain why more time would be needed.

5. If the SDLA removes the CLP or CDL privilege, or takes other action on the license or driving record, based on information that FMCSA subsequently corrects or removes from the Clearinghouse, should FMCSA determine how States would reinstate the privilege and/or amend the driving record, or should that process be left to the States? Do SDLAs currently have established processes to correct errors on an individual's license or driving record?

6. Based on SDLAs' experience with the medical certification downgrade requirements currently in effect under § 383.73(o)(4), how long does it take to reinstate the CLP or CDL privilege to the driver's license?

7. If a driver's license is downgraded, he or she may incur costs, including fees associated with license reinstatement; time spent complying with reinstatement requirements; or the inability to earn income from driving during the period after RTD is completed, but before the license is reinstated. FMCSA invites comment, including quantitative data, addressing the economic impact of the proposed downgrade.

8. How would the proposed non-issuance and downgrade rules impact SDLAs and drivers in States allowing commercial licensing transactions, such as renewals, upgrades and transfers, to be completed online?

9. How can FMCSA electronically transmit Clearinghouse information to the SDLAs most efficiently (*e.g.,* by using the existing CDLIS platform, a web-based service, or some other automated means)? What are the pros and cons of these transmittal options?

10. How would the two options proposed for electronically transmitting Clearinghouse information (*i.e.,* CDLIS or a web-based alternative) impact the States in terms of cost? Please be as specific as possible when answering this question, and include, for example, one-time development costs, as well as the cost of ongoing operation and maintenance, if applicable.

11. In addition to IT-related costs, driver and motor carrier opportunity

[40] The NPRM proposes to add the CMV driving prohibition to part 392, so that States receiving MCSAP funds would be required to adopt and enforce a comparable provision.

[41] *See* 5 U.S.C. 552a(b). The Clearinghouse final rule requires the individual's prior written consent for the release of certain Clearinghouse records to employers. *See* 49 CFR 382.703.

[42] *See* 81 FR 87686, 87691 (Dec. 5, 2016).

[43] *See* 15 U.S.C. 1681a(f). This statute defines ''consumer reporting agency'' as ''any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.''

costs, and the cost incurred by drivers to have their CLP or CDL privilege reinstated, are there other costs to SDLAs that the Agency should consider in evaluating the regulatory impact of the proposed requirements?

12. How much time do the SDLAs need to adapt their IT systems and implement related processes to request, receive, and act on information from the Clearinghouse, as proposed in this NPRM? Please indicate whether the amount of time needed would vary according to the method of electronic transmission (*i.e.,* CDLIS or web-based), and whether the proposed downgrade would impact the time needed to make IT system changes.

13. Can the SDLAs that, under State law, currently disqualify CDL holders from operating a CMV due to violations of FMCSA's drug and alcohol program, provide quantitative or qualitative data addressing the safety benefit of those requirements?

VI. International Impacts

The specific impact of this NPRM on foreign-licensed drivers operating a CMV in the United States is discussed above in section V.E.

VII. Section-by-Section Analysis

This section includes a summary of the regulatory changes proposed for 49 CFR parts 382, 383, 384, 390, and 392, organized by section number.

A. Proposed Changes to Part 382

Part 382 establishes controlled substances and alcohol use and testing requirements for CLP and CDL holders and employers of such persons. FMCSA proposes to amend part 382 in the following ways.

Section 382.503

This section currently states that drivers who violate drug or alcohol use or testing prohibitions cannot resume safety-sensitive functions, including driving a CMV, until completing RTD requirements. Under the mandatory downgrade alternative, the section would be revised by designating the current provision as new paragraph (a). New paragraph (b) would be added to clarify that drivers whose licenses were downgraded due to a drug or alcohol testing violation cannot resume driving a CMV until the CLP or CDL privilege has been reinstated.

Section 382.717

Under § 382.717(2)(i), drivers may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge based on the issuance of a citation for DUI in a CMV, if the citation did not result in the driver's conviction. This sub-paragraph would be revised by deleting the reference to removal of the employer's actual knowledge report from the Clearinghouse and providing instead that the driver may request that FMCSA add documentary evidence of non-conviction of the offense of DUI in a CMV to the driver's Clearinghouse record.

Section 382.725

This section would be revised to require that SDLAs request information from the Clearinghouse for CLP applicants. A driver applying for a CLP would be deemed to have consented to the release of information from the Clearinghouse.

B. Proposed Changes to Part 383

Part 383 sets forth the requirements for the issuance and administration of CLPs and CDLs. FMCSA proposes to amend part 383 in the following ways.

Section 383.5

Under the mandatory downgrade alternative, the definition of ''CDL downgrade'' would be revised to clarify that the CDL privilege is removed from the driver license by changing the commercial status from ''licensed'' to ''eligible'' on the CDLIS driver record. A new definition of ''CLP downgrade'' would be added, clarifying that the CLP privilege is removed from the driver license by changing the permit status from ''licensed'' to ''eligible'' on the CDLIS driver record.

Section 383.73

Paragraph (a): Sub-paragraph (3) would be added to paragraph (a) to require that States request information from the Clearinghouse prior to CLP issuance, renewal or upgrade, beginning on the date established by the final rule resulting from this NPRM. If, in response to that request, FMCSA notifies the SDLA that the driver is prohibited from operating a CMV, the SDLA would not complete the CLP licensing transaction. Further, under the proposed mandatory downgrade alternative, if the applicant holds a CLP from that State at the time of the requested transaction, SDLAs would be required to initiate the downgrade process at that time, as set forth in new paragraph (q).

Paragraphs (b)(10); (c)(10); (d)(9); (e)(8) and (f)(4): These paragraphs address the issuance, transfer, renewal, or upgrade of a CDL, and the issuance, renewal, upgrade, or transfer of a non-domiciled CDL or CLP, respectively. Paragraph (f)(4) would be revised to include non-domiciled CLPs. Paragraphs (b)(10), (c)(10), (d)(9), (e)(8), and (f)(4) would each be revised to require that, beginning on the date established by the final rule resulting from this NPRM, States request information from the Clearinghouse incident to the specified licensing transaction. If, in response to that request for information, FMCSA notifies the SDLA that, pursuant to § 382.501(a), the individual is prohibited from operating a CMV, the SDLA would not complete the specified CDL, non-domiciled CDL, or non-domiciled CLP transaction. Under the mandatory downgrade alternative, the State would be required to initiate the downgrade process at that time, as set forth in new paragraph (q).

New paragraph (q): Under the preferred alternative, this new paragraph specifies the actions that SDLAs would be required to take upon receipt of information from the Clearinghouse, as proposed under the mandatory downgrade alternative. SDLAs, upon receiving notification from FMCSA that the driver is prohibited from operating a CMV due to a drug and alcohol program violation, would be required to initiate established State procedures to downgrade the license. States would be required to complete and record the CLP or CDL downgrade on the CDLIS driver record within 30 days of receiving notification from FMCSA that the driver is prohibited from operating a CMV. If FMCSA notifies the SDLA that the driver completed the RTD process *before* the SDLA completes and records the downgrade on the CDLIS driver record, the SDLA, if permitted by State law, would terminate the downgrade process at that point. Drivers who complete RTD *after* the downgrade is completed and recorded by the SDLA would be eligible for reinstatement of the CLP or CDL privilege to their driver license. Under Alternative #2, States who elect to receive push notifications from the Clearinghouse would be required to use such information in accordance with § 382.725(c).

C. Proposed Changes to Part 384

The purpose of Part 384 is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)). FMCSA proposes to amend part 384 in the following ways.

Section 384.225

Under the mandatory downgrade alternative, this section would be revised by adding new sub-paragraph

(a)(3) to require the State to post and maintain, as part of the CDLIS driver record, the removal of the CLP or CDL privilege from the driver license in accordance with § 383.73(q).

Section 384.235

This Agency has proposed, in a separate rulemaking, that the State, beginning December 13, 2019 (84 FR 68052) must request information from the Clearinghouse in accordance with § 383.73. The section would be amended by replacing the current compliance date with the date established by the final rule resulting from this NPRM, and by adding that the State must comply with the provisions of § 383.73 applicable to non-issuance. Under the mandatory downgrade alternative, additional text would be added to require compliance with those requirements. Under Alternative #2, additional text would be added to require States to adhere to the permissible use of information received from the Clearinghouse.

Section 384.301

This section sets forth the general requirements for the State to be in substantial compliance with 49 U.S.C. 31311(a). New paragraph (m) would be added to require that the State be in substantial compliance with the requirements in §§ 383.73 and 384.235 no later than the compliance date established by the final rule resulting from this NPRM.

D. Proposed Changes to Part 390

This part, entitled ''Federal Motor Carrier Safety Regulations; General'', establishes general applicability, definitions, general requirements and information as they pertain to persons subject to 49 CFR chapter 3. FMCSA proposes to amend § 390.3T(f)(1) to add the newly proposed § 392.13, described below, to the list of provisions that remain applicable to school bus operations as defined in § 390.5T. FMCSA also proposes to amend § 390.3(f)(1) in the same way; this amendment would become effective on the date that § 390.3T(f)(1) is no longer in effect.

E. Proposed Changes to Part 392

This part, entitled ''Driving of Commercial Motor Vehicles'', sets forth requirements pertaining to the management, maintenance, operation or driving of CMVs. New section 392.13, ''Driving prohibition,'' would be added to prohibit any driver subject to § 382.501(a) from operating a CMV.

VIII. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

Under E.O. 12866, ''Regulatory Planning and Review'' (issued September 30, 1993, published October 4 at 58 FR 51735, as supplemented by E.O. 13563 and DOT policies and procedures, FMCSA must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review. E.O. 12866 defines ''significant regulatory action'' as one likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal government or communities. (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency. (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles. OMB has determined that this proposed rule is not a significant regulatory action under Executive Order 12866, Regulatory Planning and Review.

As described above, the proposed rule prohibits SDLAs from issuing, renewing, upgrading, or transferring the CDL, or issuing, renewing, or upgrading the CLP, of any driver who is prohibited from operating a CMV due to drug and alcohol program violations. Additionally, under the Agency's preferred alternative, SDLAs would be required to downgrade the CLP or CDL of drivers who are prohibited from operating a CMV due to drug and alcohol program violations. Depending on which of the alternatives for the use of Clearinghouse information, and which method for transmitting Clearinghouse information to the SDLAs is selected, the proposed rule would result in differences in the costs, as well as the extent to which all or some of the entities would be affected by the rule (*i.e.,* SDLAs, drivers, motor carriers and FMCSA). The FMCSA also believes that the proposed rule would result in an increase in safety benefits. These factors are discussed below.

Need for Regulation

The Clearinghouse final rule included the MAP–21 requirement that SDLAs check the Clearinghouse prior to renewing or issuing a CDL. However, the rule did not address how SDLAs should use Clearinghouse information for drivers licensed, or seeking to become licensed, in their State. Therefore, under the current rule, a driver who violates the drug and alcohol program can continue to hold a valid CLP or CDL, even though they are prohibited from operating a CMV until completing RTD. These drivers, who are illegally operating a CMV, are thus able to evade detection by roadside enforcement personnel. The Agency considers this result a form of market failure caused by ''inadequate or asymmetric information,'' as described in OMB Circular A–4.[44] The NPRM would address this failure by improving the flow of information to SDLAs and enforcement officials from the Clearinghouse.

Costs

The RIA published with the Clearinghouse final rule assumed that SDLAs would incur no costs to query the Clearinghouse using CDLIS. However, the final rule RIA did not include SDLAs' IT development costs or operating and maintenance expenses (O&M) associated with the interface that would connect the Clearinghouse and CDLIS. Hence, they are accounted for in the estimate of the costs associated with the proposed rule.

The estimated cost of the proposed rule varies based on the alternative the Agency ultimately selects for the licensing action SDLAs would take in response to a positive test reported in the Clearinghouse. The estimated cost also depends on the method used to electronically transmit information from the Clearinghouse to SDLAs. The choice of two alternatives for SDLA use of Clearinghouse information, and the choice of two methods to transmit Clearinghouse information to SDLAs, results in four options the Agency is considering. The Agency notes that the non-issuance requirement pertaining to SDLAs' query of the Clearinghouse prior to completing a licensing transaction would apply to both Alternative #1 and Alternative #2, and thus, applies to the four options the Agency is considering.

The Agency estimates the cost of Alternative #1 (mandatory downgrade), transmitting Clearinghouse information to the SDLAs using Method #1 (CDLIS), at $44.0 million over 10 years with an annualized cost of $4.4 million. At a 7

[44] Office of Management and Budget, CircularA–4: Regulatory Analysis, September 17, 2003, pp.4–5. Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf,* (accessed August 1, 2019).

percent discount rate, the 10-year cost is estimated at $32.8 million, with an annualized cost at a 7 percent discount rate is estimated at $4.7 million.

Alternative #1 (mandatory downgrade) using Method #2 (web services/API) is estimated to cost $25.5 million over the 10-year analysis period. The annualized cost is estimated at $2.5 million. At a 7 percent discount rate, the 10-year total cost is estimated at $18.5 million. The annualized cost is estimated at $2.6 million.

The Agency estimates the cost of Alternative #2 (optional notice of prohibited status), with data transmitted using Method #1 (CDLIS), at $28.0 million. The annualized cost is estimated at $2.8 million. At a 7 percent discount rate the 10-year total cost is estimated at $21.5 million. The annualized cost is estimated at $3.1 million. The estimated costs of Alternative #2 with data transmitted using Method #2 over the 10-year analysis period is estimated at $9.4 million. The annualized cost is estimated at $0.9 million. At a 7 percent discount rate, the estimated 10-year cost is $7.2 million. The annualized cost is estimated at $1.0 million.

Although the alternatives addressing the SDLAs' use of Clearinghouse information and the method by which the information would be electronically transferred vary, they all include consideration of SDLA and FMCSA IT development costs, and annual operating and maintenance (O&M) expenses. Driver opportunity costs and reinstatement costs, and motor carrier opportunity costs, are considered under Alternative #1 only, because they would be incurred because of the proposed rule. With respect to Alternative #2, the States would determine whether to receive the Clearinghouse information to enforce the driving prohibition. Thus, State law or policy, and not the proposed rule would cause drivers to incur opportunity costs and reinstatement costs.

Electronic Transmission Method #1: Information Transfer via CDLIS

Method #1 would transmit Clearinghouse information to the SDLAs using the existing CDLIS technology platform. SDLAs, in conducting the required query, prior to issuing, renewing, upgrading or transferring a commercial license, would check the CDLIS driver record in order to ensure that the driver has not been disqualified in another State and that other regulatory requirements have been met. The proposed rule, by electronically linking the CDLIS pointer system to the Clearinghouse, the record check would electronically capture relevant Clearinghouse information (*i.e.,* a driver's prohibited status) along with other driver-specific data, such as moving violations or medical certification status. Thus, the Agency intends that SDLAs would comply with the requirement that they request information from the Clearinghouse by initiating a check of the CDLIS driver record. No additional query or request by the SDLA would be required at the time of the licensing transaction.

Because SDLAs already perform CDLIS driver record checks when engaging in a commercial license transaction, FMCSA finds that SDLAs would not incur labor costs to ''pull'' Clearinghouse information through CDLIS by performing a query.[45] The Agency also assumes that AAMVA would not charge SDLAs additional CDLIS-related costs to receive driver-specific violation information ''pushed'' to the SDLAs by FMCSA, because CDLIS already provides daily updates of licensing information to the SDLAs. FMCSA intends that Clearinghouse information would be an additional data element included in the daily transmission. According to AAMVA's October 1, 2018 *Product & Services Catalog-Government Rate Schedule,* AAMVA allocates the cost of Program Services and Technology Services based on the ratio of State population to national population using Census Bureau data.[46] Thus, the Agency finds that SDLAs would not incur transaction-specific CDLIS costs. FMCSA requests comment on whether either ''pull'' or ''push'' notifications would result in additional costs to the SDLAs.

By using the existing CDLIS platform, Method #1 would result in costs to SDLAs for initial system development and to make the needed upgrades and modifications, as well as ongoing O&M expenses. The Agency reviewed four SDLA grant applications submitted in 2017 for IT system upgrades needed to interface and receive information from the National Registry of Certified Medical Examiners (NRCME) database and used the grant application requests as a proxy for the IT development costs SDLAs would incur under Method #1. The four States requested grant funds ranging from $64,000 to $549,993 for the system upgrades, with an average value of just over $200,000 in 2017 dollars ($196,000 in 2016 dollars). IT development costs vary because of individual differences in the SDLAs' IT systems. The FMCSA accounted for this variation by estimating the average of the four grants the upfront/initial system development costs. Multiplying this cost by the number of SDLAs (51) resulted in a total of $10 million ($196,000 × 51, rounded to the nearest million) in SDLA initial/upfront development costs. This one-time cost would occur in the first year of the 10-year analysis period.

The Agency assumed that SDLAs' annual O&M expenses would be equal to 20 percent of the upfront costs, or $39,200 ($196,000 × 20%). Multiplying the O&M expense rate by the number of SDLAs resulted in $2.0 million of annual O&M expenses ($39,200 × 51 SDLAs, rounded to the nearest million). The Agency assumed that SDLAs would incur O&M expenses in the second year of the 10-year analysis period. O&M expenses over the 10-year analysis period are estimated at $18.0 million ($2.0 million × 9 years).[47]

The sum of Method #1 undiscounted IT development costs and O&M expenses over the 10-year analysis period is estimated at $28.0 million ($10.0 million IT development costs + $18.0 million O&M expenses). At a 7 percent discount rate, the 10-year total cost is estimated at $21.5 million. The annualized cost is estimated at $3.1 million.

Under Method #1, the Agency would not incur system development cost or O&M expenses. This annual cost was accounted for in the RIA published with the Clearinghouse final rule. The Agency estimated its annual cost to develop, operate and maintain the Clearinghouse at $2.2 million.

[45] SDLAs' CDLIS-related labor costs for licensing transactions were accounted for in the Agency's Final Regulatory Evaluation published with the final rule ''Commercial, Driver's License Testing and Commercial Learner's Permit Standards,'' 76 FR 26853, (May 11, 2011). The current information collection request (ICR) for that rule estimates, SDLAs on average, perform 6.5 million licensing transactions per year that include renewals, transfers, endorsements, disqualifications and establishing new driver records. The Agency estimates that the proposed rule would result in 77,600 transactions per year, many of which would be among the of the 6.5 million transactions estimated in the current ICR. For example, some renewal transactions in the 6.5 million would be denied, resulting in a non-issuance. The current ICR was approved by OMB on December 31, 2018. The ICR is available at *https://mobile.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-2126-001* (accessed June 21, 2019).

[46] AAMVA, *Product & Services Catalog-Government Rate Schedule,* October, 1 2018. The catalogue is available at *https://www.aamva.org/NetworkServices_government/* (accessed June 21, 2019).

[47] If IT development costs would vary plus or minus 10 percent above the average, undiscounted initial IT development costs would change plus or minus $996,600. Total O&M expenses over the 10-year analysis period would change plus or minus $1.8 million.

Electronic Transmission Method #2: Information Transfer via a Web-Based Services Call (AKA: Application Program Interface (API))

Method #2 involves the transmission of information from the Clearinghouse to the SDLAs using a web-based services call, which relies on cloud-based technology. The capacity for this alternative would reside within the DOT's Amazon Web Service (AWS) cloud. By using the DOT AWS cloud, FMCSA would be able to make efficient updates to the system on an as-needed basis.

In order to implement Method #2 FMCSA would develop an interface between the Clearinghouse and the SDLAs. FMCSA envisions that the API would connect seamlessly to the existing State interface so that when a State employee initiates the CDLIS driver record check, the State system would simultaneously query the Clearinghouse. FMCSA would provide the API code and work with the States to integrate the API into their existing technology platforms. In developing this interface, FMCSA would leverage the current FMCSA web-based services calls, such as Query Central, to reduce development costs wherever possible. In addition to the initial development cost, FMCSA would incur costs for annual O&M expenses.

Under Method #2, SDLAs would incur costs for initial modification of their systems to interface with the Clearinghouse, and annual O&M expenses. FMCSA expects that SDLAs' costs to implement the interface specifications would vary based on the characteristics of their individual IT systems. The Agency's IT staff estimated a representative initial/upfront cost taking into account that some States currently use a mainframe application and others use an existing web interface. The initial development costs for each method to interface with the Clearinghouse were estimated based on the man hours it would take a programmer to develop an application for use in a mainframe environment and in a non-mainframe environment. Developing a web interface in a mainframe environment is estimated to take 1,080 hours. Developing a web interface in a non-mainframe environment is estimated to take 360 hours. These hours were monetized in 2016 dollars using the United States Department of Labor, Bureau of Labor Statistics (BLS) $38.39 per hour median wage for a computer programmer.[48] The hourly wage is adjusted for a 70 percent fringe benefit rate obtained the from the BLS June 2016 ''Employer Cost of Employee Compensation News Release.'' [49] The resultant labor cost is $65.42 per hour. At that hourly rate, the cost for a programmer to develop an interface in a non-mainframe environment is estimated at $23,551 (360 hours × $65.42 per hours, rounded to the nearest dollar) and $70,654 (1,080 hours × $65.42 per hour, rounded to the nearest dollar) in a mainframe environment. The average of these two cost estimates results in an initial IT development of $47,100 per SDLA (rounded to the nearest hundred). Multiplying this cost by the number of SDLAs results in $2.4 million ($47,100 × 51) of initial IT development costs in the first year of the 10-year analysis period.

The Agency estimates an SDLA's annual O&M expenses equal to 20 percent of the initial IT development cost, or $9,420 ($47,100 × 20%). The total annual O&M expense for the 51 SDLAs is estimated at $480,420 ($9,420 × 51). SDLAs would begin incurring O&M expenses in the second year of the 10-year analysis period. Total O&M expenses over the 10-year analysis period are estimated at $4.3 million ($480,420 × 9). Under Method #2, the undiscounted cost SDLAs would incur over the 10-year analysis period is estimated at $6.7 million consisting of $2.4 in initial IT development costs, $4.3 million of O&M expenses. The undiscounted annualized cost is estimated at $0.6 million. It consists of $0.2 million of IT development costs and $0.4 million of O&M expenses. At a 7 percent discount rate, the total cost SDLAs would incur over the 10-year analysis period is estimated at $5.1 million that consists of $2.2 million of IT development costs and $2.9 million of O&M expenses. The annualized cost is estimated at $0.7 million, which consists of $0.3 million in IT development costs and $0.4 million of O&M expenses.

The Agency estimates that under Method #2, FMCSA would incur initial IT development costs of nearly $1.0 million in 2016 dollars in the first year of the 10-year analysis period. Annual O&M expenses are estimated at $192,000 ($0.96 million × 20%, rounded to the nearest million) beginning in the second year of the 10-year analysis period. Over remaining nine years of the analysis period, the Agency would incur $1.7 million of O&M expenses ($192,000 × 9 years, rounded to the nearest hundred). The sum of initial IT development costs and annual O&M expenses results in FMCSA incurring total undiscounted costs of $2.7 million over the 10-year analysis period ($1.0 million + $1.7 million). At a 7 percent discount rate, the Agency is estimated to incur $2.1 million IT development and O&M expenses over the 10-year analysis period. The annualized cost at a 7 percent discount rate is estimated at $0.3 million.

Table 2 compares total and annualized costs, undiscounted and at a 7 percent discount rate, that SDLAs and FMCSA would incur to transmit Clearinghouse information using Method #1 and Method #2. The total cost estimate for Method #1 would be the same under Alternative #1 and Alternative #2. Likewise, the total cost estimated for Method #2 would be the same under Alternative #1 and Alternative #2. FMCSA does not incur any IT development or annual operating and maintenance expenses under Method #1 because they have been accounted for in the Clearinghouse final rule RIA. However, the SDLAs' IT development and annual O&M expenses are greater under Method #1. Thus, the undiscounted 10-year overall cost of Method #2 is $21.3 million less than Method #1 ($28.0 million − $9.4 million).

The Agency requests comments on the feasibility and the estimated cost of allowing the SDLAs the flexibility to receive Clearinghouse information by choosing either method of electronic transmission.

[48] This hourly wage is for the BLS–SOC 15–1131 computer programmer. See *https://www.bls.gov/oes/2016/may/oes151131.htm* (accessed June 21, 2019)

[49] BLS, ''Employer Cost of Employee Compensation 2nd Quarter News Release,'' Table 4-State and Local Employees, available at *https://www.bls.gov/news.release/archives/ecec_09082016.pdf* (accessed June 21, 2019). The fringe benefit rate is the ratio of hourly wage for average hourly wage for State and local government administrative personnel and the associated hourly benefit rate (70 percent = $13.13/$18.65).

TABLE 2—COMPARISON OF COST TO TRANSMIT CLEARINGHOUSE INFORMATION

	Undiscounted (2016 $ million)		Discounted at 7% ($ million)	
	10-year total cost	Annualized	10-year total cost	Annualized
Electronic Transmission Method #1 (CDLIS Platform)				
SDLA Initial IT Development Costs	$10.0	$1.0	$9.3	$1.3
SDLA System Operating and Maintenance Expense	18.0	1.8	12.2	1.7
Method #1 Total	28.0	2.8	21.5	3.1
Electronic Transmission Method #2 (Web Service Call)				
Initial IT Development Costs:				
Government	1.0	0.1	0.9	0.1
SDLAs	2.4	0.2	2.2	0.3
System Operating and Maintenance Expense:				
Government	1.7	0.2	1.2	0.2
SDLAs	4.3	0.4	2.9	0.4
Method #2 Total Cost	9.4	0.9	7.2	1.0

Totals are subject to rounding error.

Driver Opportunity Cost and CLP/CDL Reinstatement Cost

Under Alternative #1 (mandatory downgrade), a driver could incur an opportunity cost equal to the income forgone between the time he or she is eligible to resume operating a CMV (*i.e.,* when an employer reports a negative RTD result to the Clearinghouse) and when the SDLA reinstates the driver's privilege to operate a CMV. Drivers may also incur reinstatement costs attributed to SDLA requirements for removing the downgrade. These reinstatement procedures could include payment of a reinstatement fee, and partial or full retesting.[50] The Agency finds mandatory downgrade required by Alternative #1 would cause drivers to incur modest opportunity costs and reinstatement costs. As discussed above in section II.C, ''Costs and Benefits'', the States have established a broad spectrum of procedures for reinstatement of the CLP/CDL privilege to the driver's license following a downgrade due to invalid medical certification. Thus, the Agency expects that the States will rely on existing procedures established for downgrading a CLP/CDL for invalid medical certification, as required by 383.73(o)(4). Any time drivers would spend to comply with State procedures for reinstatement would be a cost of the proposed rule under Alternative #1.

Under Alternative #2, the States would determine whether to receive the Clearinghouse information to enforce the driving prohibition under State law. Thus, any opportunity costs and reinstatement costs a driver would incur to comply with State procedures under Alternative #2 would be the result of State law or policy, not the proposed rule.

The estimate of opportunity costs drivers might incur under Alternative #1 would be a function of the number of drivers that SAPs refer to outpatient education programs versus intensive outpatient treatment (IOT) programs. In the RIA published with the Clearinghouse final rule, the Agency assumed an education program would be completed in 16 hours and an IOT program would be completed in 108 hours over 12 weeks. Alternative #1 would require SDLAs to record a downgrade on the driver's CDLIS record within 30 days. If the driver completes the RTD process before the SDLA records a downgrade in CDLIS, the SDLA would be required to terminate the downgrade, consistent with State law. A driver referred to a 16-hour education program by a SAP would likely complete the RTD process before the SDLA records the downgrade in CDLIS. In this case, a driver would be qualified to operate a CMV without having to comply with State-established procedures to reinstate the CMV driving privilege. Under these circumstances, drivers would not incur opportunity costs or reinstatement costs.

In the RIA published with the Clearinghouse final rule, the Agency assumed that 75 percent of drivers that violated the drug or alcohol program would be referred to a 16-hour education program. The remaining drivers would be referred to a 108-hour IOT program. In July 2018, the Substance Abuse and Mental Health Service Administration (SAMHSA), published a report titled *National Survey of Substance Abuse Treatment Services (N–SSATS): 2017. Data on Substance Abuse Treatment Facilities.* SAMHSA reported that 82 percent of individuals in outpatient programs participated in education programs. The remaining 18 percent participated in IOT programs.[51]

The Clearinghouse final rule RIA estimated that 53,500 drivers would test positive and be required to complete the RTD process. Of these, 24,100 drivers would complete the RTD process.[52] Based on SAMHSA's most recent survey, the Agency estimates that 82 percent, or 19,762 of the 24,100 drivers who would complete the RTD process before a downgrade would be recorded by SDLAs. These drivers would not incur opportunity or reinstatement costs. The remaining 4,338 drivers (24,100 drivers × 18 percent) presumably would be referred to an IOT program. Based on the proposed requirement that SDLAs record a downgrade within 30 days of receiving notice of the driver's prohibited status, the Agency assumes that a driver's license would be downgraded before he or she completes an IOT program and related RTD requirements. Therefore,

[50] A requirement to retake the knowledge and skills test would cause the driver to forego income during the 14-day waiting period required before taking the skills test.

[51] The report is available at *https://www.samhsa.gov/data/report/national-survey-substance-abuse-treatment-services-n-ssats-2017-data-substance-abuse,* Table 5–1a (accessed June 16, 2019).

[52] Federal Motor Carrier Administration, ''Final Rulemaking Regulatory Impact Analysis,'' November 2016, p. 32, available at *https://www.regulations.gov/document?D=FMCSA-2011-0031-0183* (accessed August 6, 2019).

these drivers would have to comply with any reinstatement procedures established by the State that could cause a driver to incur opportunity costs and reinstatement costs.

As noted above, FMCSA reviewed current procedures used by the States for drivers whose CLP or CDL has been downgraded for failure to maintain their medical certification. The Agency is aware that about half of the States require knowledge and/or skills retesting before removing a downgrade. However, in these States retesting would be required only if a driver is not able to present a new medical certificate before the expiration of a prescribed grace period. None of these States have a retesting grace period less than six months.

In the RIA published with the Clearinghouse final rule the Agency conservatively assumed that it would take a driver 12 weeks to complete a 108-hour program based on one 9-hour session per week. Thus, the Agency finds that drivers referred to IOT programs would complete the IOT program and the RTD process without having to retest to have the CLP or CDL privilege restored to their license.

To reinstate CMV driving privileges, SDLAs may require a driver to pay a reinstatement fee that would be a transfer payment. Additionally, a driver could be required to appear in person at the SDLA to complete the reinstatement process that could require the driver to incur opportunity costs for the time to travel to and from the SDLA. Some SDLAs allow the transaction to be completed by email or over the internet. For purposes of this analysis, the Agency conservatively assumes that drivers would need to complete the transaction in person. The Agency assumes that it would take one day for a driver to travel to an SDLA and complete the reinstatement process. Thus, drivers would incur opportunity cost for time spent traveling and out of pocket travel costs.

The estimated of driver opportunity costs and reinstatement costs are based on the following assumptions:

1. One day to travel to and from the SDLA and complete the reinstatement process.
2. 10 hours of lost wages.
3. 4,338 drivers subject to mandatory downgrades.
4. The $31.00 per hour wage to estimate income foregone.
5. $0.557 per-mile cost for use of private vehicle.[53]

Based on these assumptions, the upper bound of annual opportunity costs for one day spent traveling and completing the reinstatement process is estimated at $1.3 million in 2016 dollars (10 hours × 4,338 drivers × $31.0 per hour) and $13.4 million over 10 years. Annual travel costs are estimated at $120,800 in 2016 dollars (4,338 drivers × 50 miles × $0.557 per mile, rounded to the nearest hundred) and $1.2 million over 10 years. Thus, the total annual cost to drivers to have their CMV privilege restored is $14.7 million over 10 years. At a 7 percent discount rate, the 10-year cost is estimated at $10.3 million and the annualized cost is estimated at $1.5 million.

Motor Carrier Opportunity Costs

Motor carrier opportunity costs are estimated for Alternative #1, because drivers subject to reinstatement would not be eligible to resume safety-sensitive functions, such as driving, until the SDLA restores the CLP or CDL privilege to the driver's license. This represents a change from current requirements in parts 382 and 40, which permit resumption of safety-sensitive functions immediately following a negative RTD test result. Thus, motor carriers may also incur opportunity costs under Alternative #1 based on the profits forgone from the loss of productive driving hours between the time the driver completes the RTD process and State reinstatement. The Agency estimates that a motor carrier will lose 10 hours of productive driving time while a driver completes the reinstatement process. FMCSA bases this estimate on current processes the States employ to reinstate a CLP or CDL privilege following a downgrade of the driver's license due to invalid medical certification. The Agency requests that States comment on the time needed to reinstate a CLP or CDL privilege to a downgraded license, including the extent to which a driver can be reinstated without appearing in person at the SDLA.

The Agency uses a typical motor carrier's marginal hourly cost to operate a CMV as a measure of profit margin. The Agency estimates that motor carriers would lose 43,380 hours of productive driving time (4,338 drivers × 10 hours) while a driver completes the reinstatement process.

The FMCSA used an estimate of the marginal cost to operate a vehicle reported in ''An Analysis of the Operational Costs of Trucking: 2017 Update,'' published by the American Transportation Research Institute.[54] The Agency used this as the base from which it estimated an hourly profit margin. The elements of marginal operating costs consist of vehicle-based costs (*e.g.,* fuel costs, insurance premiums, etc.), and driver based-costs (*i.e.,* wages and benefits). The ATRI survey found that marginal operating costs were $63.60 per hour in 2016, rounded to $64 per hour in this analysis.

Profit is a function of revenue and operating expenses. The ATA defines the operating ratio of a motor carrier as a measure of profitability based on operating expenses as a percentage of gross revenues. Armstrong & Associates, Inc. (2009) states that trucking companies that cannot maintain a minimum operating ratio of 95% (calculated as Operating Costs ÷ Net Revenue) will not have sufficient profitability to continue operations in the long run. *Forbes* reported the average profit margin for general freight trucking companies at 6 percent in 2017, with annual profit margins ranging from 2.5 percent to 4 percent since 2012. Based on this range, the Agency assumed a 5 percent profit margin.[55]

Applying the assumed 5 percent motor carrier profit margin to the $64 per-hour marginal operating cost noted above yields an hourly operating profit of $3.20 per-hour. Based on the loss of 43,380 hours of product driving hours, the Agency estimates motor carrier undiscounted opportunity costs at $1.4 million over the 10-year analysis period ($3.20 per hour × 43,380 hours × 10 years, rounded to the nearest one hundred thousand). The annualized cost is estimated at $138,816. At a 7 percent discount rate, motor carrier opportunity costs are estimated at $1 million (rounded to the nearest million) over 10 years. The annualized cost is estimated at $1 million (rounded to the nearest million). The Agency did not estimate motor carrier opportunity costs for

[53] The mileage rate is the General Services Administration current reimbursement rate for use of private vehicles expressed in 2016 dollars using the Bureau of Economic Analysis 2018 GDP price deflator. The mileage rate for private vehicle use is available at *https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates* (accessed August 9, 2019).

[54] The ATRI report presents industry operating data for the 10-year period ending in 2016. The report is available at *https://atri-online.org/wp-content/uploads/2017/10/ATRI-Operational-Costs-of-Trucking-2017-10-2017.pdf* (accessed August 10, 2019).

[55] Mary Ellen Biery and Sagework Stats, *Forbes,* ''Trucking Companies Hauling in Higher Sales,'' available at *https://www.forbes.com/sites/sageworks/2018/03/04/trucking-companies-hauling-in-higher-sales/* (accessed June 25, 2019).

Alternative #2, because any downgrade/reinstatement procedures States might choose to establish would not be required by the proposed rule.

Summary of the Estimated Cost of the Proposed Rule

Table 3 compares the total and annualized costs estimated for the four pairings of Alternatives #1 (non-issuance/mandatory downgrade) and Alternative #2 (optional notice of prohibited status) with electronic transmission Method #1 (CDLIS) and Method #2 (web services/API).[56]

TABLE 3—ESTIMATED COST OF PROPOSED RULE

Option	2016 $ million						Costs discounted at 7%	
	State	Driver	Motor carrier	FMCSA	Total	Annualized	Total	Annualized
Alternative #1 with Method #1	$28.0	$14.7	$1.4	$0	$44.0	$4.4	$32.8	$4.7
Alternative #1 with Method #2	6.7	14.7	1.4	2.7	25.5	2.5	18.5	2.6
Alternative #2 with Method #1	28.0	0	0	0	28.0	2.8	21.5	3.1
Alternative #2 with Method #2	6.7	0	0	2.7	9.4	0.9	7.2	1.0

The total cost estimates over the 10-year analysis period range from $9.4 million to $44.0 million in 2016 dollars. Annualized costs range from $0.9 million to $4.4 million. At a 7 percent discount rate, the 10-year total cost estimates from $7.2 million to $32.8 million. Annualized costs at a 7 percent discount rate range from $1.0 million to $4.7 million. Alternative #1 cost estimates are larger than Alternative #2 because neither drivers nor motor carriers would incur opportunity costs and reinstatement costs because of the rule. SDLA IT costs are also larger under Alternative #1. Alternative #2 does not require the States to implement downgrade/reinstatement procedures. States are not precluded from acting on the optional notice of a driver's prohibited status. However, any costs incurred by drivers and motor carriers because of a State-initiated action would not be a cost of the proposed rule. The States will still incur IT development and O&M expenses under Alternative #2 because they are required to query the Clearinghouse when performing a licensing transaction.

Benefits

The Clearinghouse final rule required States to request information from the Clearinghouse when processing specified licensing transactions. This NPRM builds on that requirement by proposing that SDLAs could not issue, renew, upgrade, or transfer the CDL, or issue, renew or upgrade the CLP, of any driver prohibited from operating a CMV due to drug and alcohol program violations. The Agency's preferred alternative proposes that, in addition, SDLAs downgrade the driver licenses of individuals prohibited from operating a CMV due to drug and alcohol program violations. SDLAs would rely on applicable State law and procedures[57] to accomplish the downgrade and any subsequent reinstatement of the CLP or CDL privilege. FMCSA believes these proposed requirements would improve highway safety by increasing the detection of CLP or CDL holders not qualified to operate a CMV due to a drug or alcohol testing violation. The safety benefits attributable to the increased distribution of information about the driver's prohibited status must be viewed in the context of the current regulatory scheme, as explained below.

The current CMV driving prohibition is largely self-enforcing in that it relies on motor carrier employers to prevent non-compliant drivers from operating. The Agency is aware, through motor carrier compliance reviews, targeted investigations, and other forms of retrospective compliance monitoring, that non-compliance with the driving prohibition occurs. Non-compliant drivers evade detection because, although subject to the driving prohibition, these drivers continue to hold a valid CLP or CDL in 47 States and the District of Columbia. Consequently, during a traffic stop or roadside checkpoint inspection, traffic safety enforcement officers have no way of knowing the driver is not qualified to operate a CMV. The Clearinghouse will change that by making the information available to certain highway safety enforcement officers in real time at roadside through FMCSA's electronic enforcement tools, thereby increasing the detection of drivers not qualified to operate a CMV. MCSAP personnel would be able to immediately place these drivers out of service.

The mandatory downgrade, as proposed in Alternative # 1, would further strengthen roadside detection of drivers not qualified to operate due to a drug or alcohol testing violation. The reason is that not all traffic safety enforcement officers have reliable access to FMCSA's electronic enforcement tools that, after the Clearinghouse is operational, would make the driver's prohibited status available at roadside. While the 12,000 officers who are trained, and certified under MCSAP would have consistent roadside access to a CMV driver's prohibited status, most of the 500,000 non-MCSAP enforcement officers likely would not. Accordingly, if a driver subject to the prohibition holds a valid CLP or CDL at the time of a traffic stop, non-MCSAP personnel would not have access to the driver's prohibited operating status. However, all traffic safety officers have access to the driver's license status; a check of the license is conducted whenever there is a roadside intervention. Therefore, a driver whose license is downgraded due to a drug and alcohol program violation would be detected, through a routine license check, as not qualified to operate a CMV. The proposed downgrade, by increasing the detection of individuals unlawfully driving a CMV, would therefore improve public safety.

Just as a driver's prohibited status is not currently available to traffic safety personnel, most SDLAs cannot currently identify drivers who are subject to the prohibition. Both alternatives would address this information gap by making the driver's prohibited status known to SDLAs at the time of a driver's requested licensing transaction. Under this approach, if the SDLA's mandated

[56] The Agency notes that the CDL Program Implementation (CDLPI) grant program provides financial assistance to States to achieve compliance with 49 CFR parts 383 and 384. States would therefore be eligible to apply for CDLPI funds to help offset the cost of SDLA IT system upgrades necessary to comply with the CLP/CDL downgrade requirement, as proposed.

[57] Under 383.73(o)(4), States are currently required to downgrade the license of CLP and CDL holders not in compliance with medical certification requirements, by changing the commercial status on the driver's license from ''licensed'' to ''eligible'', thereby removing the CLP or CDL privilege from the license. Accordingly, States have established procedures to implement those downgrade requirements.

Clearinghouse query results in notice that the driver is subject to the CMV driving prohibition in § 382.501(a), the SDLA would not complete the transaction, resulting in non-issuance. This proposed requirement would strengthen enforcement of the CMV prohibition by ensuring that these drivers complete RTD requirements before obtaining, renewing, transferring, or upgrading a CLP or CDL, as applicable.

As described above, both alternatives would allow improved SDLA and traffic safety enforcement officer enforcement of the CMV driving prohibition. In that sense, the prohibition would no longer be self-enforcing. As a result, FMCSA expects that, by ''raising the stakes'' of non-compliance, some CLP and CDL holders would be deterred from drugs or alcohol misuse, though the Agency is unable to estimate the extent of deterrence. FMCSA invites comment on this issue.

Finally, this proposal would permit the Agency to use its enforcement resources more efficiently. Currently, FMCSA generally becomes aware that a driver is operating a CMV in violation of § 382.501(a) during the course of a compliance review of a motor carrier, or through a focused investigation of a carrier or service agent. The process for imposing sanctions on a driver who tested positive for a controlled substance, but continued to operate a CMV, is a lengthy one that involves outreach to the driver to determine whether RTD requirements have been met, issuance of a Notice of Violation, the driver's possible request for a hearing (and potentially a subsequent request for administrative review), and possible issuance of a Letter of Disqualification (LOD) to the driver, based on § 391.41(b)(12).[58] FMCSA may then forward the LOD to the SDLA, requesting that the driver's CDL be downgraded. Under current regulations, the SDLA is not obligated to comply with that request. The proposed downgrade requirement will obviate the need for this time-consuming and labor-intensive process, thus enabling the Agency's enforcement resources to be deployed more effectively elsewhere.

Table 4 summarizes information on the cost to the Agency to conduct different types of investigations. It provides a measure of the costs the Agency would avoid due to the availability of driver-specific information, in real time, in the Clearinghouse. The average cost of an investigation is $2,012. This cost savings was not included in the Clearinghouse final rule RIA.

TABLE 4—COST COMPARISON OF INVESTIGATIONS WITH AND WITHOUT FUTURE ENFORCEMENT SLATED FOR COMPREHENSIVE AND ONSITE FOCUSED INVESTIGATIONS

Investigation type	Enforcement	Cases	Average cost
Offsite	No	31	$1,088
Offsite	Yes	5	1,495
Onsite Comprehensive	No	302	2,424
Onsite Comprehensive	Yes	108	2,866
Onsite Focused	No	652	1,965
Onsite Focused	Yes	2172	2,236
Average			2,012

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of E.O. 13771 because it has been designated a non-significant regulatory action.

C. 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).

D. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857, (March 29, 1996), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000 (5 U.S.C. 601). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. Therefore, FMCSA is publishing this initial regulatory flexibility analysis (IRFA) to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. FMCSA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FMCSA will consider all comments received in the public comment process when deciding on the final regulatory flexibility assessment.

An IRFA must include six components (5 U.S.C. 603(b) and (c)). The Agency discusses each of the components below.

1. A description of the reasons why the action by the agency is being considered.

The Agency is taking this action to respond to operational and legal issues identified by individual SDLAs and AAMVA following publication of the Clearinghouse final rule.

2. A succinct statement of the objectives of, and legal basis for, the proposed rule.

Title 49 of the Code of Federal Regulations (CFR), sections 1.87(e) and (f), delegates authority to the FMCSA Administrator to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 and 49 U.S.C., chapter 311, subchapters I and III, relating to CMV programs and safety regulations.

The ''Commercial Driver's License Drug and Alcohol Clearinghouse'' final rule (81 FR 87686 (Dec. 5, 2016)) implements section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–41, 126 Stat. 405, codified at 49 U.S.C.

[58] Section 391.41(b)(12) applies only to the use of controlled substances; alcohol use, test refusals, and actual knowledge violations are not a basis for disqualification under this provision.

31306a), which requires that the Secretary establish a national clearinghouse for records relating to alcohol and controlled substances testing by CMV operators who hold CDLs. As part of that mandate, MAP–21 requires that the Secretary establish a process by which the States can request and receive an individual's Clearinghouse record, for the purpose of ''assessing and evaluating the qualifications of the individual to operate a commercial motor vehicle'' (49 U.S.C. 31306a(h)(2)). Section 32305(b)(1) of MAP–21, codified at 49 U.S.C. 31311(a)(24), requires that States request information from the Clearinghouse before renewing or issuing a CDL to an individual. This NPRM proposes the processes by which the Agency and the States would implement these statutory requirements. A full explanation of the legal basis for this rulemaking is set forth in Section III.

3. A description, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

''Small entity'' is defined in 5 U.S.C. 601(6) as having the same meaning as the terms ''small business'' in paragraph (3), ''small organization'' in paragraph (4), and ''small governmental jurisdiction'' in paragraph (5). Section 601(3) defines a small business as a ''small business concern'' under section 3 of the Small Business Act (15 U.S.C. 632(a)), which mean a business that is independently owned and operated and is not dominant in its field of operation. Section 601(4) defines small organizations as not-for-profit enterprises that are independently owned and operated, and are not dominant in their fields of operation. Additionally, section 601(5) defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

This proposed rule would affect SDLAs, CDL, or CLP applicants, interstate motor carriers, interstate passenger carriers, and intrastate hazardous materials motor carriers. However, drivers do not meet the definition of a small entity in section 601 of the RFA. Specifically, CMV drivers are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA. SLDAs do not meet the definition of a small entity because they are governmental entities with statewide jurisdiction over licensing CMV operators.

FMCSA used data from the 2012 Economic Census to determine the percentage of motor carriers with annual revenue at or below the Small Business Administration's (SBA) thresholds.[59] The SBA thresholds are used to classify a business as a small business for purposes of determining eligibility to participate in SBA and Federal contracting programs.[60] The Economic Census sums the number of firms classified according to their North American Industry Classification System (NAICS) code by ranges of annual revenue. The range with the high end closest to the SBA thresholds was used to determine the percentage of motor carriers that meet the definition of an SBA small business. FMCSA used the Economic Census as the basis for estimating the number of small entities affected by the proposed rule. As discussed below, the Agency estimates that 98.7 percent of trucking firms and 95.2 percent of passenger carriers are classified as small businesses.

The Economic Census aggregates the Truck Transportation industry under the NAICS Code 484–Trucking Firms. Survey respondents are categorized in one of 10 revenue ranges. The range with the high end closely aligned with the SBA $27.5 million threshold that includes trucking firms with annual revenue up to $24.9 million. Of the trucking firms surveyed that operated for the entire year, 98.7 percent had revenues less than or equal to $24.9 million. The Agency finds that this 98.7 percent is a reasonable proxy for the number of trucking firms with annual revenue, equal to or less than the $27.5 million SBA threshold.

The Agency used the same methodology to determine the percentage of passenger carriers that qualify as an SBA small business. The SBA threshold for Transit and Ground Transportation firms (NAICS Code 485) is $15 million. For purposes of determining the percentage of passenger carriers with annual revenue less than or equal to $15 million, the Agency considered the number of passenger carriers in three NAICS Code subsectors: Charter Bus; Interurban Transportation and Rural Transportation; and School and Employee Transportation subsectors.[61] The Economic Census revenue range closest to the SBA $15 million threshold includes passenger carriers with revenue ranging from $5 million to $9.9 million. Passenger carriers with revenue less than or equal to $9.9 million accounted for 95.2 percent of survey respondents within the three subsectors. Thus, the Agency finds that 95.2 percent of passenger carriers with revenue less than or equal to $9.9 million is approximately the same percentage of those with annual revenue less than the $15 million SBA threshold.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

The purpose of the proposed rule is to develop the information technology platform through which the States would query the Clearinghouse when initiating a licensing transaction. If the Clearinghouse transmits information that a driver is prohibited from operating a CMV because of a violation the drug and alcohol program, the SDLA would be required to deny the transaction, resulting in a non-issuance. Once a transaction is denied, a driver would need to reapply after completing the RTD process. The proposed information technology platform would provide for transmission of Clearinghouse information on a real-time. In light of the capability to electronically transmit Clearinghouse information to the SDLAs, the Agency is proposing alternative uses of the Clearinghouse data by the SDLAs to improve the States' enforcement of the prohibition of the use of drugs and alcohol by CMV drivers. The SDLAs are the only entities with reporting and recordkeeping requirements under the proposed rule.

The SDLAs would incur IT development costs and annual O&M expenses for an interface with the Clearinghouse. FMCSA would also incur costs IT development and annual O&M expenses for one of the proposed methods for transmitting Clearinghouse information to the SDLAs. The SDLAs are not small entities. As discussed in Item 3, motor carriers are small entities that would be affected by the proposed rule. However, the propose rule does

[59] U.S. Census Bureau, *2012 Economic Survey,* Table EC1248SSSZ4-Summary Statistics by Revenue and Size of Firm. Available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk#* (accessed April 24, 2019).

[60] The SBA regulation defining small business size standards by North American Industry Classification System codes is set forth in 13 CFR 121.201.

[61] Commuter rail, public transit systems, taxi, limousine, and special needs transportation that are included in Subsector 485 are excluded from the analysis.

not impose reporting or recordkeeping on motor carriers.

5. An identification, to the extent practicable of all relevant Federal rules that may overlap, duplicate or conflict with the proposed rule.

The Agency is proposing this rule in furtherance of the MAP–21 requirement that the Agency establish the Clearinghouse. The Agency finds that no other Federal rules exist that would be duplicative, overlap or conflict with the proposed rule.

6. A description of any significant alternative to the proposed rule which accomplish the stated objections of the applicable statutes and which minimize significant economic impact on small entities.

The Agency did not identify any significant alternatives to the proposed rule that would minimize the impact on small entities.

E. Assistance for Small Entities

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult FMCSA point of contact, Mr. Juan Moya, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $165 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2018 levels) or more in any 1 year. Though this proposed rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The current ICR will expire on January 1, 2020, and is being renewed through the established process.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of Executive Order (E.O.) 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA analyzed this proposed rule under that Order and determined that it has implications for federalism. In accordance with section 6(c)(2) of E.O. 13132, the Agency's federalism summary impact statement follows.

MAP–21 (49 U.S.C. 31306a(l)(1) and (2)) specifically preempts State laws and regulations inconsistent with the establishment of the Clearinghouse and Federal regulations implementing the Clearinghouse mandate, including State-based requirements pertaining to the reporting of violations of FMCSA's drug and alcohol use and testing program. In addition, this NPRM imposes minimum requirements for the issuance of CLPs and CDLs by the States, consistent with the Agency's authority under the Commercial Motor Vehicle Safety Act of 1986 (1986 Act) (codified at 49 U.S.C. chapter 313). In accordance with sections 4(e) and 6(c)(1) of E.O. 13132, FMCSA consulted with the National Governors Association, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators (AAMVA) early in the process of developing the proposal to gain insight into the federalism implications of the NPRM.

The States' representatives requested that the NPRM delineate the States' role and responsibilities regarding the Clearinghouse, as well as the potential cost implications for the States, as clearly as possible and in a manner consistent with Congressional intent. They also requested that the preemptive effect of MAP–21 on existing State drug and alcohol program violation reporting requirements be specifically discussed, and that FMCSA allow States the time they need to enact laws or regulations implementing Federal regulatory requirements related to the Drug and Alcohol Clearinghouse. AAMVA suggested that the Agency disqualify drivers who commit drug or alcohol violations before requiring the SDLAs to take action on the commercial license. The Agency addresses these issues above, in section II (Executive Summary), subsection C (Costs and Benefits); section III (Legal Basis); section V (Discussion of Proposed Rulemaking), subsections B (Impact on SDLAs), C (Compliance Date) and D (Impact of MAP–21 and the NPRM on State Laws); and below in section VIII, subsection A (E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures (Benefits)). Additionally, as discussed in section IV (Background), subsection B (AAMVA's Petition), the NPRM responds, in part, to a petition for rulemaking submitted to FMCSA by AAMVA in June 2017. The petition, available in the docket of this rulemaking, raised questions and concerns about the extent and nature of the States' role in the Clearinghouse; the NPRM addresses those issues directly. Finally, the Agency notes that, while the 1986 Act grants broad authority to the Secretary to prescribe regulations on minimum uniform standards for the issuance of commercial drivers' licenses and learners' permits by the States, the CDL program itself does not have preemptive effect. It is voluntary; States may withdraw their participation at any time, although doing so could would result in the loss of certain Federal highway funds, pursuant to 49 U.S.C. 31314.

I. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a), requires the Agency to conduct a Privacy Impact Assessment of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information and has evaluated protections and alternative information handling processes in developing the rule to mitigate potential privacy risks. FMCSA preliminarily

determined that this proposed rule would not require the collection of individual personally identifiable information beyond that which is already required by the Clearinghouse final rule.

Additionally, the Agency submitted a Privacy Threshold Assessment analyzing the rulemaking and the specific process for collection of personal information to the DOT, Office of the Secretary's Privacy Office. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

The E-Government Act of 2002, Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a Privacy Impact Assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information because of this proposed rule.

J. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

K. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

L. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

M. Environment (National Environmental Policy Act)

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraphs (6)(t)(2). The Categorical Exclusion (CE) in paragraph (6)(t)(2) covers regulations ensuring States comply with the provisions of the Commercial Motor Vehicle Act of 1986, by having the appropriate information technology systems concerning the qualification and licensing of persons who apply for and persons who are issued a CDL. The proposed requirements in this rule are covered by this CE, and the proposed action does not have the potential to significantly affect the quality of the environment. The CE determination is available for inspection or copying in the regulations.gov website listed under **ADDRESSES**.

List of Subjects

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 392

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

In consideration of the foregoing, FMCSA proposes the following amendments to 49 CFR chapter III, parts 382, 383, 384, 390, and 392 for each alternative to read as follows:

Regulatory Text for the Preferred Alternative—Mandatory Downgrade

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for part 382 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 2. Revise § 382.503 to read as follows:

§ 382.503 Required evaluation and testing, reinstatement of commercial driving privilege.

(a) No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title.

(b) No driver whose commercial driving privilege has been removed from the driver's license, pursuant to 382.501(a), shall drive a commercial motor vehicle until the State Driver Licensing Agency reinstates the CLP or CDL privilege to the driver's license.

■ 3. Amend § 382.717 by revising the section heading and paragraph (a)(2)(i) to read as follows:

§ 382.717 Access by State licensing authorities.

(a) * * *

(2) *Exceptions.* (i) Petitioners may request that FMCSA add documentary evidence of a non-conviction to an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the

purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

* * * * *

■ 4. Amend § 382.725 by revising paragraphs (a) and (b) to read as follows:

§ 382.725 Access by State licensing authorities.

(a) If a driver has applied for a commercial driver's license or a commercial learner's permit from a State, to determine whether the driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must have access to information from the Clearinghouse in accordance with § 383.73 of this chapter.

(b) By applying for a commercial driver's license or a commercial learner's permit, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

* * * * *

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 5. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 6. Amend § 383.5 by:

■ a. Revising paragraph (4) of the definition of ''CDL downgrade; and

■ b. Adding a definition for ''CLP downgrade'' in alphabetical order.

The revision and addition read as follows:

§ 383.5 Definitions.

* * * * *

CDL downgrade means either:

* * * * *

(4) A State removes the CLP or CDL privilege from the driver's license by changing the commercial status from ''licensed'' to ''eligible'' on the CDLIS driver record.

* * * * *

CLP Downgrade means a State removes the CLP privilege from the driver record by changing the permit status from ''licensed'' to ''eligible'' on the CDLIS driver record.

* * * * *

■ 7. Amend § 383.73 by:

■ a. Adding paragraph (a)(3);

■ b. Revising paragraphs (b)(10), (c)(10), (d)(9), (e)(8) and (f)(4); and

■ c. Adding paragraph (q).

The additions and revisions read as follows:

§ 383.73 State procedures.

(a) * * *

(3) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter, and if, in response to the request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not issue, renew, or upgrade the CLP. If the applicant currently holds a CLP issued by the State, the State must also comply with the procedures set forth in paragraph (q) of this section.

(b) * * *

(10) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not issue the CDL.

* * * * *

(c) * * *

(10) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not transfer the CDL.

(d) * * *

(9) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not renew the CDL and must comply with the procedures set forth in paragraph (q) of this section.

(e) * * *

(8) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not issue an upgrade of the CDL and must comply with the procedures set forth in paragraph (q) of this section.

* * * * *

(f) * * *

(4) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not issue, renew, transfer or upgrade a non-domiciled CLP or CDL.

* * * * *

(q) *Drug and Alcohol Clearinghouse.* Beginning [compliance date], the State must, upon receiving notification from the Drug and Alcohol Clearinghouse that pursuant to § 382.501(a) of this chapter the CLP or CDL holder is prohibited from operating a commercial motor vehicle, initiate established State procedures for downgrading the CLP or CDL. The downgrade must be completed and recorded on the CDLIS driver record within 30 days of the State's receipt of such notification.

(1) If, before the State completes and records the downgrade on the CDLIS driver record, the State receives notification from the Drug and Alcohol Clearinghouse that pursuant to § 382.503(a) of this chapter the CLP or CDL holder is no longer prohibited from operating a commercial motor vehicle, the State must, if permitted by State law, terminate the downgrade process without removing the CLP or CDL privilege from the driver's license.

(2) If, after the State completes and records the downgrade on the CDLIS driver record, the Drug and Alcohol Clearinghouse notifies the State that pursuant to § 382.503(a) of this chapter a driver is no longer prohibited from operating a commercial motor vehicle, the driver must, if permitted by State law, be eligible for reinstatement of the CLP or CDL privilege to the driver's license.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 8. The authority citation for part 384 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 9. Amend § 384.225 by adding paragraph (a)(3) to read as follows:

§ 384.225 CDLIS driver recordkeeping.

* * * * *

(a) * * *

(3) The removal of the CLP or CDL privilege from the driver's license in accordance with § 383.73(q) of this chapter.

* * * * *

■ 10. Revise § 384.235 to read as follows:

§ 384.235 Commercial driver's license Drug and Alcohol Clearinghouse.

(a) Beginning [compliance date], the State must:

(1) Request information from the Drug and Alcohol Clearinghouse in accordance with § 383.73 of this chapter and comply with the applicable provisions therein; and

(2)(i) Comply with the provisions of § 383.73(q) of this chapter upon receiving notification from the Drug and Alcohol Clearinghouse that pursuant to § 382.501(a) of this chapter the CLP or CDL holder is prohibited from operating a commercial motor vehicle; and

(ii) Comply with the provisions of § 383.73(q) of this chapter upon receiving notification from the Drug and Alcohol Clearinghouse that pursuant to § 382.503(a) of this chapter the CLP or CDL holder is no longer prohibited from operating a commercial motor vehicle.

■ 11. Amend § 384.301 by revising paragraph (m) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(m) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of [EFFECTIVE DATE OF FINAL RULE] as soon as practical, but, unless otherwise specifically provided in this part, not later than [compliance date].

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 12. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 13. Amend § 390.3 as follows:

■ a. Lift the stay of the section;

■ b. Revise paragraph (f)(1); and

■ c. Stay § 390.3 indefinitely.

§ 390.3 General applicability.

* * * * *

(f) * * *

(1) All school bus operations as defined in § 390.5, except for the provisions of §§ 391.15(e) and (f), 392.13, 392.80, and 392.82 of this chapter;

* * * * *

■ 14. Amend § 390.3T(f)(1) to read as follows:

§ 390.3T General applicability.

* * * * *

(f) * * *

(1) All school bus operations as defined in § 390.5T, except for the provisions of §§ 391.15(e) and (f), 392.13, 392.80, and 392.82 of this chapter;

* * * * *

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 15. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405–805 (2012); and 49 CFR 1.87.

■ 16. Add § 392.13 to read as follows:

§ 392.13 Prohibited driving status.

No driver, who holds a commercial learner's permit or a commercial driver's license, shall operate a commercial motor vehicle if prohibited by § 382.501 of this subchapter.

Regulatory Text for Alternative #2—Optional Notice of Prohibited Status

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 17. The authority citation for part 382 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 18. Revise § 382.503 to read as follows:

§ 382.503 Required evaluation and testing, reinstatement of commercial driving privilege.

(a) No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title.

(b) No driver whose commercial driving privilege has been removed from the driver's license, pursuant to 382.501(a), shall drive a commercial motor vehicle until the State Driver Licensing Agency reinstates the CLP or CDL privilege to the driver's license.

■ 19. Amend § 382.717 by revising the section heading and paragraph (a)(2)(i) to read as follows:

§ 382.717 Access by State licensing authorities.

(a) * * *

(2) *Exceptions.* (i) Petitioners may request that FMCSA add documentary evidence of a non-conviction to an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

* * * * *

■ 20. Amend § 382.725 by revising paragraphs (a) and (b) to read as follows:

§ 382.725 Access by State licensing authorities.

(a) If a driver has applied for a commercial driver's license or a commercial learner's permit from a State, to determine whether the driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must have access to information from the Clearinghouse in accordance with § 383.73 of this chapter.

(b) By applying for a commercial driver's license or a commercial learner's permit, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

* * * * *

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 21. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 22. Amend § 383.73 by:

■ a. Adding paragraph (a)(3);
■ b. Revising paragraphs (b)(10), (c)(10), (d)(9), (e)(8) and (f)(4); and
■ c. Adding paragraph (q).

The additions and revisions to read as follows:

§ 383.73 State procedures.

(a) * * *

(3) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter, and if, in response to the request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not issue, renew, or upgrade the CLP.

(b) * * *

(10) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not issue the CDL.

* * * * *

(c) * * *

(10) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not transfer the CDL.

(d) * * *

(9) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not renew the CDL.

(e) * * *

(8) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this chapter the applicant is prohibited from operating a commercial motor vehicle, the State must not issue an upgrade of the CDL.

* * * * *

(f) * * *

(4) Beginning [compliance date], the State must request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter. If, in response to that request, the State receives notification that pursuant to § 382.501(a) of this section the applicant is prohibited from operating a commercial motor vehicle, the State must not issue, renew, transfer or upgrade a non-domiciled CLP or CDL.

* * * * *

(q) *Drug and Alcohol Clearinghouse.* Beginning [compliance date], States may elect to receive automatic notification from the Drug and Alcohol Clearinghouse that, pursuant to § 382.501(a), of this chapter a CLP or CDL holder is prohibited from operating a commercial motor vehicle. The State's use of such information must be in accordance with § 382.725(c) of this chapter.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 23. The authority citation for part 384 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 24. Revise § 384.235 to read as follows:

§ 384.235 Commercial driver's license Drug and Alcohol Clearinghouse.

Beginning [compliance date], the State:

(1) Must request information from the Drug and Alcohol Clearinghouse in accordance with § 383.73 of this chapter and comply with the applicable provisions therein; and

(2) Comply with the provisions of § 383.73(q) of this chapter if the State elects to receive automatic notification from the Drug and Alcohol Clearinghouse that, pursuant to § 382.501(a) of this chapter, a CLP or CDL holder is prohibited from operating a commercial motor vehicle.

■ 25. Amend § 384.301 by revising paragraph (m) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(m) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of [EFFECTIVE DATE OF FINAL RULE] as soon as practical, but, unless otherwise specifically provided in this part, not later than [compliance date].

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 26. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 27. Amend § 390.3 as follows:
■ a. Lift the stay of the section;
■ b. Revise paragraph (f)(1); and
■ c. Stay § 390.3 indefinitely.

§ 390.3 General applicability.

* * * * *

(f) * * *

(1) All school bus operations as defined in § 390.5, except for the provisions of §§ 391.15(e) and (f), 392.13, 392.80, and 392.82 of this chapter.

* * * * *

■ 28. Amend § 390.3T(f)(1) to read as follows:

§ 390.3T General applicability.

* * * * *

(f) * * *

(1) All school bus operations as defined in § 390.5T, except for the provisions of §§ 391.15(e) and (f), 392.13, 392.80, and 392.82 of this chapter.

* * * * *

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 29. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405–805 (2012); and 49 CFR 1.87.

■ 30. Add § 392.13 to read as follows:

§ 392.13 Prohibited driving status.

No driver, who holds a commercial learner's permit or a commercial driver's license, shall operate a commercial motor vehicle if prohibited by § 382.501 of this subchapter.

Issued under authority delegated in 49 CFR 1.87.

James A. Mullen,

Acting Administrator.

[FR Doc. 2020–08230 Filed 4–27–20; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 52

SIP Call Withdrawal and Air Plan Approval; NC: Large Internal Combustion Engines NO_X Rule Change; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0303; FRL–10007–76–Region 4]

SIP Call Withdrawal and Air Plan Approval; NC: Large Internal Combustion Engines NO_X Rule Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA), Region 4 is approving a portion of a State Implementation Plan (SIP) revision submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NC DAQ), in a letter dated June 5, 2017, which changes North Carolina's SIP-approved rule regarding nitrogen oxides (NO_X) emissions from large internal combustion engine sources. In so doing, Region 4 is first adopting an alternative policy regarding startup, shutdown, and malfunction (SSM) exemption provisions in the North Carolina SIP that departs from the national policy on this subject, as described in EPA's June 12, 2015 action (2015 SSM SIP Call Action). Accordingly, Region 4 is also withdrawing the SIP Call issued to North Carolina for exemptions contained in the State's existing SIP-approved provisions for SSM events. This action is limited to the SIP Call issued to North Carolina and the associated evaluation of the North Carolina SIP and does not otherwise change or alter EPA's 2015 SSM SIP Call Action.

DATES: This rule is effective on May 28, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2019–0303. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Huey can be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

The following topics are discussed in this preamble:

I. Background for This Action
II. EPA's SSM SIP Policy and SIP Call Issued to North Carolina
III. Region 4's Alternative Policy on Automatic and Director's Discretion Exemption Provisions in the North Carolina SIP and Withdrawal of the North Carolina SIP Call
IV. Region 4's Action on North Carolina's June 5, 2017, SIP Revision
V. Responses to Comments
VI. Incorporation by Reference
VII. Final Action
VIII. Statutory and Executive Order Reviews

I. Background for This Action

On June 5, 2019, EPA Region 4 announced that it was considering adopting an alternative policy regarding startup, shutdown and malfunction (SSM) exemptions in state implementation plans (SIPs), and, if adopted, also proposed to withdraw the SIP Call issued to North Carolina in 2015 and to approve a SIP revision submitted by NC DAQ in 2017.[1] The 60-day comment period closed on August 5, 2019. Region 4 received public comments, all of which are included in the public docket for this action at *www.regulations.gov.* This document includes summaries of the adverse comments received and responses to those comments. After reviewing and carefully considering the comments received, as described more fully in this document, Region 4 is (1) adopting an alternative policy applicable to North Carolina for SSM exemption provisions in the North Carolina SIP and withdrawing the SIP Call issued to North Carolina, and (2) approving the SIP revision submitted by NC DAQ, through a letter dated June 5, 2017, which seeks to change North Carolina's SIP-approved rule regarding NO_X emissions from large internal combustion engine sources at 15A N.C. Admin. Code (NCAC) 2D .1423.

Relevant to this action, in the 2015 SSM SIP Call Action (80 FR 33840 (June 12, 2015)) EPA restated its national policy prohibiting the inclusion of provisions in SIPs that exempt excess emissions during periods of SSM. In that action, EPA also issued findings that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions) were substantially inadequate to meet the Clean Air Act (CAA or Act) requirements and thus issued ''SIP Calls'' pursuant to CAA section 110(k)(5) for all of those states and local jurisdictions.[2] That action includes a SIP Call for North Carolina to address two specific provisions in the State's implementation plan that provide discretion to the State agency to exempt emissions from being considered a violation of an otherwise applicable State rule, in certain circumstances.[3] Also relevant, the June 5, 2017, SIP submission Region 4 is approving in this action revises a different provision in the North Carolina code that was not included in the 2015 SSM SIP Call Action, but which includes a sub-provision that automatically exempts periods of SSM, not to exceed 36 consecutive hours, and scheduled maintenance activities from regulation.[4]

The rationale for the alternative policy on SSM exemptions that Region 4 is applying to the North Carolina SIP is articulated in Section III of this document and in Sections III and IV of the June 5, 2019, NPRM.[5] Region 4's decision to withdraw the SIP Call previously issued to North Carolina is substantiated by the adoption of the alternative policy. Region 4's approval of the revision to North Carolina's SIP-approved rule regarding NO_X emissions from large internal combustion engine sources at 15A NCAC 2D .1423 is described in Section IV of this

[1] SIP Call Withdrawal and Air Plan Approval; NC: Large Internal Combustion Engines NO_X Rule Changes, Proposed Rule, 84 FR 26031 (June 5, 2019). Hereafter, the June 5, 2019, notice of proposed rulemaking will be referred to as the June 5, 2019, NPRM.

[2] *See* 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 33839 (June 12, 2015).

[3] *Id.* at 33964. EPA issued a SIP Call to North Carolina regarding provisions 15A NCAC 2D .0535(c) and 15A NCAC 2D .0535(g).

[4] 15A NCAC 02D .1423 was not included in the 2015 SSM SIP Call Action because, in that action, EPA elected to first focus its review on the specific provisions that had already been identified by Sierra Club in its petition regarding the SSM SIP Call. *See* 80 FR at 33880.

[5] *See* 84 FR at 26033–39.

document and Section V of the June 5, 2019, NPRM.[6]

II. EPA's SSM SIP Policy and SIP Call Issued To North Carolina

In the final 2015 SSM SIP Call Action, EPA updated and restated its national policy regarding provisions in SIPs that exempt periods of SSM events from otherwise applicable emission limitations. Referencing previously issued guidance documents and regulatory actions, the Agency expressed its interpretation of the CAA that SIP provisions cannot include exemptions from emission limitations for emissions during SSM events.[7] EPA's position in the 2015 SSM SIP Call Action, based in part on D.C. Circuit precedent, was that the general definitions provision of the CAA providing that an emission limitation must apply to a source ''continuously'' means that an approved SIP cannot include periods during which emissions from sources are legally or functionally exempt from regulation.

Also in the 2015 SSM SIP Call Action, the Agency defined the term ''automatic exemption'' as a generally applicable SIP provision that does not consider periods of excess emissions as violations of an applicable emission limitation if certain conditions existed during the exceedance period.[8] The Agency defined a ''director's discretion provision'' as a regulatory provision that authorizes a state regulatory official to grant exemptions or variances from otherwise applicable emission limitations or to otherwise excuse noncompliance with applicable emission limitations, where the regulatory official's determination would be binding on EPA and the public.[9] The Agency defined ''emission limitation'' in the SIP context, relying on the general definition set forth in CAA section 302 (''Definitions''), as a legally binding restriction on emissions from a source or source category, such as a numerical emission limitation, a numerical emission limitation with higher or lower levels applicable during specific modes of source operation, a specific technological control measure requirement, a work practice standard, or a combination of these things as components of a comprehensive and continuous emission limitation.[10] As stated in the 2015 SSM SIP Call Action, the Agency took the position that an emission limitation ''must be applicable to the source continuously, *i.e.,* cannot include periods during which emissions from the source are legally or functionally exempt from regulation.'' [11]

Relying substantially on its interpretation of the general definition of ''emission limitation'' in CAA section 302(k)—specifically, that that definition provides for the limitation of emissions of air pollutants ''on a continuous basis''—the Agency explained its position that exemptions from emission limitations in SIPs, whether automatic or discretionary, are not permissible in SIPs.[12] EPA explained that even a brief exemption from an otherwise applicable limit would render the emission limitation non-continuous and therefore not consistent with the CAA section 302(k) definition of ''emission limitation.'' [13]

With respect to discretionary exemptions, the Agency took the position that a regulatory official's grant of an exemption pursuant to a ''director's discretion'' exemption could result in air agency personnel modifying a SIP requirement without going through the CAA statutory process for SIP revisions.[14] In the 2015 SSM SIP Call Action, the Agency did allow that some director's discretion exemptions could be included in SIPs, if those exemptions were structured such that variances or deviations from the otherwise applicable emission limitation or SIP requirement were not valid as a matter of Federal law unless and until EPA approved the exercise of the director's discretion as a SIP revision.[15]

As further support for the Agency's position on excluding SSM exemption provisions in SIPs, the 2015 SSM SIP Call Action relied on *Sierra Club* v. *Johnson.*[16] In that 2008 case, the D.C. Circuit evaluated the validity of an SSM exemption in the General Provisions [17] of EPA rules issued under CAA section 112 (''Hazardous Air Pollutants''). Reading CAA sections 112 and 302(k) together, the D.C. Circuit found that ''the SSM exemption violates the CAA's requirement that some section 112 standard apply continuously.'' [18] In the 2015 SSM SIP Call Action, EPA interpreted the *Sierra Club* decision regarding CAA section 112 requirements and applied the reasoning of that decision to the requirements of EPA's rules issued under CAA section 110 (''Implementation Plans''), specifically CAA section 110(a)(2)(A), which provides that SIPs shall include ''enforceable *emission limitations* and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.'' [19] EPA's application of the *Sierra Club* decision to CAA section 110 SIP requirements was based on an understanding that the D.C. Circuit was interpreting the definition of ''emission limitation'' in CAA section 302(k) that applies generally to the Act. Following this reasoning, EPA determined that *Sierra Club* was consistent with the Agency's position, as expressed in previously issued guidance documents and regulatory actions that prohibited exemption provisions for otherwise applicable emission limits in SIPs (such as automatic exemptions granted for SSM events).[20]

As part of the 2015 SSM SIP Call Action, EPA found that 15A NCAC 2D .0535(c) and 15A NCAC 2D .0535(g) were substantially inadequate to meet CAA requirements because they allow exemptions from otherwise applicable emission limitations for excess emissions [21] that may occur during malfunctions and during periods of startup and shutdown, respectively, at the discretion of the state agency.[22] On that basis, EPA issued a SIP Call pursuant to CAA section 110(k)(5) to North Carolina with respect to these provisions.

[6] *Id.* at 26039–040.

[7] *See* 80 FR at 33976.

[8] *Id.* at 33977.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 33918 (referencing CAA sections 110(k)(3), which establishes the framework for EPA to fully or partially approve SIP submittals, and 110(l) and 193, which specify that revisions to SIPs must be submitted to EPA and can be approved only if the Administrator determines that the revisions meet specific requirements, including non-interference with attainment and reasonable further progress and equivalent or greater emission reductions in nonattainment areas). *See also id.* at 33977–78.

[15] *Id.* at 33978.

[16] 551 F.3d 1019 (D.C. Cir. 2008).

[17] Subpart A of 40 CFR part 63 (''National Emission Standards for Hazardous Air Pollutants for Source Categories'').

[18] *Sierra Club,* 551 F.3d at 1027–28.

[19] *See* 42 U.S.C. 7410(a)(2)(A) (emphasis added).

[20] *See, e.g.,* 80 FR at 33852, 33874, 33892–94.

[21] The North Carolina SIP defines *excess emissions* as ''an emission rate that exceeds any applicable emission limitation or standard allowed by any regulation in Sections .0500 or .0900 of this Subchapter or by a permit condition.'' In this final action, we clarify that exemptions allowed under rules 2D .0535(c) and 2D .0535(g) apply only to numerical emission limits of the North Carolina SIP and do apply to any of the SIP's requirements to utilize emission control devices or to employ work practice standards that reduce emissions.

[22] *See* 80 FR at 33964.

III. Region 4's Alternative Policy on Automatic and Director's Discretion Exemption Provisions in the North Carolina SIP and Withdrawal of the North Carolina SIP Call

A. Automatic Exemption Provisions

As discussed in the June 5, 2019, NPRM, in reviewing the North Carolina SIP revision at issue, as well as the North Carolina SIP in its entirety, Region 4 has considered the national policy regarding SSM exemptions [23] in SIPs included in the 2015 SSM SIP Call Action, described above, and has determined that there is a reasonable alternative way for Region 4 to consider SSM provisions in the North Carolina SIP: after evaluating the SIP comprehensively and determining that the SIP, as a whole, is protective of the national ambient air quality standards (NAAQS or standards), Region 4 concludes that automatic SSM exemptions are allowable in that SIP.[24] Further, the alternative policy's interpretation of the relevant CAA provisions, together with the specific automatic SSM provisions in the North Carolina SIP, make it reasonable for Region 4 to find that the SIP meets the applicable requirements of the CAA and therefore do not mandate a finding that the SIP is substantially inadequate.

The compilation of state and Federal requirements in the North Carolina SIP result from the Federal-state partnership that is the foundation of the CAA, as well as the various requirements of the Act. Although the North Carolina SIP contains SSM exemptions for limited periods applicable to discrete standards, the SIP is composed of numerous planning requirements that are collectively NAAQS-protective. The North Carolina SIP's overlapping requirements, described more fully later in this section, provide additional protection of the standards such that Region 4 concludes that the SIP adequately provides for attainment and maintenance of the NAAQS, even if the SIP allows exemptions to specific emission limits for discrete periods, such as SSM events. This redundancy helps to ensure attainment and maintenance of the NAAQS, one of the goals of Congress when it created the SIP adoption and approval process in the CAA.[25] The fact that North Carolina does not currently have any nonattainment areas for any NAAQS, even though the exemption provisions have been included in the State's implementation plan, supports the conclusion that the SSM exemptions do not interfere with attainment and maintenance of the NAAQS.[26] Region 4 appropriately considered all of these factors when evaluating the North Carolina SIP.

At the outset, Region 4 notes that it maintains discretion and authority to change its CAA interpretation from a prior position. In *FCC* v. *Fox Television Stations, Inc.,* the U.S. Supreme Court plainly stated an agency's obligation with respect to changing a prior policy:

> We find no basis in the Administrative Procedure Act or in our opinions for a requirement that all agency change be subjected to more searching review. The 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.[27]

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.'' [28] In so doing, the Court emphasized 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.'' [29] 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.[30]

As discussed above, the 2015 SSM SIP Call Action updated and restated EPA's SSM policy that SIPs containing any type of SSM exemptions were not approvable because exemptions from emission limitations created the possibility that a state could not ensure attainment or maintenance of the NAAQS for one or more criteria pollutants. This policy is predicated on the idea that a requirement limiting emissions would not apply ''on a continuous basis''— and thus would not itself constitute an ''emission limitation''—if the SIP permitted exemptions for any period of time from that requirement.[31] Under this policy, the lack of a continuous standard was viewed as creating a substantial risk that exemptions could permit excess emissions that could ultimately result in a NAAQS violation. Region 4 acknowledges the policy position updated and restated in the 2015 SSM SIP Call Action, and the associated rationale. However, as will be discussed further in this section, Region 4 has determined that the general requirements in CAA section 110 to attain and maintain the NAAQS and the latitude provided to states through the SIP development process create a framework in which a state may be able to ensure attainment and maintenance of the NAAQS notwithstanding the presence of SSM exemptions in the SIP. Further, for the reasons articulated in this document, Region 4 has concluded that the automatic SSM exemptions in the North Carolina SIP do not mandate a finding of substantial inadequacy pursuant to CAA section 110(k)(5) or preclude a finding under CAA section 110(k)(3) that the SIP meets all of the applicable requirements of the CAA. Additionally, as discussed in Section IV, and consistent with the policy rationale explained in this document, Region 4 has determined that the SIP revision will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

Consistent with the interpretation provided in the June 5, 2019, NPRM, this alternative policy is reasonable because the D.C. Circuit's decision in *Sierra Club* does not, on its face, apply to SIPs and actions taken under CAA section 110. In the 2015 SSM SIP Call Action at 80 FR 33839, EPA extended the legal reasoning of the D.C. Circuit's *Sierra Club* decision regarding SSM exemptions from CAA section 112 rules to CAA section 110 SIP approved rules; that extension of the *Sierra Club* decision supported the Agency's

[23] Throughout this document, we use the term ''exemption'' to refer to automatic exemptions for SSM events in general; specific references to director's discretion provisions are referred to as ''director's discretion exemptions.''

[24] The 2015 SSM SIP Call Action explained that while a SIP may contain provisions that apply during periods of SSM, the applicability of those provisions was not plain on the face of the SIP provision. *See generally* 80 FR at 33943. As explained in this document, EPA Region 4 has determined that, for the North Carolina SIP, it is reasonable to take a broader perspective of evaluation of the SIP and its provisions that ensure attainment and maintenance of the NAAQS.

[25] *See, e.g.,* H.R. Rep. No. 91–1783 at 193–95 (1970).

[26] As of the effective date of this document, no areas of North Carolina are designated nonattainment for any NAAQS. *See https://www3.epa.gov/airquality/greenbook/ancl3.html.*

[27] *See* 556 U.S. 502, 514 (2009) (referencing *Motor Vehicle Mfrs. Ass'n of United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983)).

[28] *Id.* at 515.

[29] *Id.*

[30] *Id.* at 515–16.

[31] *See* 42 U.S.C. 7602(k) (providing the general definition of ''emission limitation'' and ''emission standard'').

existing position that SSM exemptions were inconsistent with CAA SIP requirements. At the time, the Agency interpreted CAA section 302(k) as applying uniformly and requiring that the ''emission limitations'' required under the CAA, whether under section 110 or section 112, be continuous as a general matter.[32] Further consideration of the issue has shown that an alternative reading of the application of the *Sierra Club* decision to CAA section 110 is reasonable, and consideration of the facts surrounding the SIP revision submitted by the State of North Carolina, and an evaluation of the North Carolina SIP as a whole, show that such an interpretation is appropriate in this instance. Simply stated, while the *Sierra Club* decision did not allow sources to be exempt from complying with CAA section 112 emission limitations during periods of SSM, that finding is not necessarily binding on CAA section 110 and EPA's consideration of SIPs under that section.

The interpretation offered in this document is informed by and consistent with the distinct structures and purposes of CAA sections 110 and 112. As explained in the June 5, 2019, NPRM, the D.C. Circuit in *Sierra Club* specifically referred to CAA section 112 when it framed Petitioners' argument and found that the Agency ''constructively reopened consideration of the exemption from section 112 emission standards during SSM events.'' [33] The court's analysis reads the definition of emission limitation and standard at CAA section 302(k) in the context of CAA section 112: ''When sections 112 and 302(k) are read together then, Congress has required that there must be continuous section 112-compliant standards.'' [34] Further, specific to CAA section 112 rules, the court explained, ''[i]n requiring that sources regulated under section 112 meet the strictest standards, Congress gave no indication that it intended the application of [maximum achievable control technology] standards to vary based on different time periods.'' [35] In *Sierra Club,* the court found that when EPA promulgates standards pursuant to CAA section 112, CAA section 112-compliant standards must apply continuously. The stringency of CAA section 112 was thus an important element of the court's decision,[36] and the court did not make any statement explicitly applying its CAA section 112-dependent holding beyond the emissions standards promulgated under CAA section 112.

While EPA chose to rely on the *Sierra Club* decision in the 2015 SSM SIP Call Action, such reliance was not required—the court's decision does not speak to whether the rationale articulated with respect to SSM exemptions in CAA section 112 standards necessarily applies to SIPs submitted and reviewed under CAA section 110. As discussed below, the *Sierra Club* decision, on its face, does not interpret section 110, and there are valid reasons for not extending the reasoning to the North Carolina SIP provisions at issue. CAA section 112 sets forth a prescriptive standard-setting framework; CAA section 110 does not. CAA sections 112 and 110 have different goals and establish different EPA roles in implementation. Given the *Sierra Club* decision's singular focus on CAA section 112 standards, and the vastly different purposes and implementation approaches between CAA sections 110 and 112, there is a reasonable basis for interpreting the *Sierra Club* decision as only applying to CAA section 112.

The purpose of CAA section 112 is fundamentally different than the purpose of CAA section 110. Importantly, the court in *Sierra Club* recognized that Congress intended ''that sources regulated under section 112 meet the strictest standards.'' [37] As described in the June 5, 2019, NPRM, under CAA section 112, once a source category is listed for regulation pursuant to CAA section 112(c), the statute directs EPA to use a specific and exacting process to establish nationally applicable, category-wide, technology-based emissions standards under CAA section 112(d).[38] Under CAA section 112(d), EPA must establish emission standards for major sources that ''*require the maximum degree of reduction in emissions* of the hazardous air pollutants subject to this section'' that EPA determines is achievable taking into account certain statutory factors.[39] EPA refers to these rules as ''maximum achievable control technology'' or ''MACT'' standards. The MACT standards for existing sources must be at least as stringent as the average emission limitation achieved by the best performing 12 percent of existing sources in the category (for which the Administrator has emissions information) or the best performing five sources for source categories with less than 30 sources.[40] This level of minimum stringency is referred to as the MACT floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled existing similar source.[41] EPA also must analyze more stringent ''beyond-the-floor'' control options, for which consideration is given not only to the maximum degree of reduction in emissions of a hazardous air pollutant, but also to the costs, energy, and non-air quality health and environmental impacts.[42]

In contrast, the CAA sets out a fundamentally different regime with respect to CAA section 110 SIPs, reflecting the principle that SIP development and implementation is customizable for each state's circumstances and relies on the Federal-state partnership.[43] CAA section 110(a)(2)(A) requires states to adopt, and include in their SIP submissions, ''enforceable emission limitations and other control measures, means, or techniques (including incentives such as fees, marketable permits, and auctions of emissions rights) . . . *as may be necessary or appropriate* to meet the applicable requirements of this Act.'' [44] The CAA sets forth the minimum requirements to attain, maintain, and enforce air quality standards, while allowing each state to identify and effectuate an approach that is appropriate for the sources and air quality challenges specific to each state.[45] CAA section 109(a) directs the EPA Administrator to promulgate primary and secondary NAAQS for pollutants for which air quality criteria have been issued. For each criteria pollutant, CAA section 109(b)(1) directs the Administrator to establish a primary NAAQS based on the attainment and maintenance of which there is an adequate margin of safety as required to

[32] *See* 80 FR at 33874.

[33] *Sierra Club,* 551 F.3d at 1026.

[34] *Id.* at 1027.

[35] *Id.* at 1028.

[36] *See id.* at 1027 (''Section 112(d) provides that '[e]missions standards' promulgated thereunder must require MACT standards.''); *id.* at 1028 (explaining that Congress intended that ''sources regulated under section 112 meet the strictest standards.'').

[37] *Id.* at 1028.

[38] EPA can also set work practices under CAA section 112(h).

[39] *See* 42 U.S.C. 7412(d)(2) (emphasis added).

[40] *See* 42 U.S.C. 7412(d)(3)(A), (B).

[41] *See* 42 U.S.C. 7412(d)(3).

[42] *See Cement Kiln Recycling Coal.* v. *EPA,* 255 F.3d 855, 857–58 (D.C. Cir. 2001).

[43] *See, e.g., Virginia* v. *EPA,* 108 F.3d 1397, 1408 (D.C. Cir. 1997) (''EPA 'identifies the end to be achieved, while the states choose the particular means for realizing that end.' '') (*quoting Air Pollution Control Dist.* v. *EPA,* 739 F.2d 1071, 1074 (D.C. Cir. 1984)). *See also, e.g.,* H.R. Rep. No. 95–294, 95th Cong. 1st Sess. at 213 (explaining that for nonattainment areas, Congress intended to ''give the States more flexibility in determining how to protect public health while still permitting reasonable new growth'') (May 12, 1977).

[44] *See* 42 U.S.C. 7410(a)(2)(A) (emphasis added).

[45] *See Virginia* v. *EPA,* 108 F.3d at 1408.

protect public health. Similarly, CAA section 109(b)(2) directs the Administrator to establish secondary standards based on the attainment and maintenance of which there is an adequate margin of safety as required to protect the public welfare from known or anticipated adverse effects associated with the presence of such pollutants in ambient air. Based on the scientific and technical information available at the time of issuing a standard, EPA identifies the level of the NAAQS for each criteria pollutant as a means of setting a target for state and regional air quality planning. The standard-setting process related to the regulation of pollutants in ambient air, as directed by section 109 and as implemented by section 110 of the CAA, is therefore fundamentally different in nature than the process for setting stringent source-specific standards that EPA is required to issue under CAA section 112. The D.C. Circuit's concern that CAA section 112-compliant standards must apply ''continuously'' to regulate emissions from a particular source does not translate directly to the context of CAA section 110, where a state's plan may contain a broad range of measures, including limits on multiple sources' and source categories' emissions of multiple pollutants—all working together to ensure attainment and maintenance of an ambient standard that is not itself an applicable requirement for individual sources. Importantly, regardless of the measures a state seeks to include in its SIP, those measures must collectively work toward compliance with the nationally uniform NAAQS.

The Fourth Circuit has acknowledged that ''[s]tates are accorded flexibility in determining how their SIPs are structured'' to ensure that the state meets the NAAQS.[46] Further, the U.S. Supreme Court has recognized that the CAA gives a state ''wide discretion'' to formulate its plan pursuant to CAA section 110 and went so far as to say that ''the State has virtually absolute power in allocating emission limitations so long as the national standards are met.'' [47] The U.S. Supreme Court has also explained, ''so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation.'' [48] State and Federal Government divide this responsibility, which results in a balance of state and Federal rights and responsibilities. States typically have primary responsibility for determining how and to what extent to regulate sources within the state to comply with NAAQS.[49] In fact, EPA has implemented guidance addressing a number of requirements in CAA section 110 and explained that SIPs could satisfy the requirements of CAA section 110(a)(2)(A) by simply ''identify[ing] existing EPA-approved SIP provisions or new SIP provisions . . . that limit emissions of pollutants relevant to the subject NAAQS.'' [50] Given their understanding of emission sources and air quality within their jurisdictions, states are uniquely suited and well-equipped to determine how best to implement the NAAQS in light of their particular local needs. Comments from NC DAQ emphasize that the State ''has a long and successful history of implementing [the NAAQS attainment and maintenance] framework in North Carolina'' and notes that ''all NAAQS are being met in the state.'' [51] NC DAQ lauds Federal, state and local partnerships for the successful implementation.[52]

Region 4 received comments challenging the reliance on *Train* and the associated line of cases because in the 2015 SSM SIP Call Action the Agency viewed *Train* as not authorizing exemptions in SIPs. However, acknowledging the prior interpretation, in this action, Region 4 has evaluated the North Carolina SIP and is adopting an alternative approach, consistent with the Region's interpretation of the flexibility afforded pursuant to CAA section 110(a)(2)(A) and the *Train* decision. Incorporating the explanation provided in the NPRM, Region 4 maintains that because the North Carolina SIP includes numerous protective provisions and evidence shows that the SIP is ensuring attainment and maintenance of the NAAQS, it is appropriate to rely on the flexibility afforded to states by *Train* in this circumstance.

The statutory text of CAA section 110(a)(2)(A) reflects this EPA-state cooperative relationship, providing state flexibility that simply does not exist in the text of CAA section 112, as outlined earlier in this section. CAA section 110(a)(2)(A) generally requires that each SIP shall include ''enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.'' [53] EPA has never interpreted this provision to require the type of exacting analysis set forth in CAA section 112, and the flexibility Congress gave states in section 110 warrants a differing interpretation. The presumption of consistent usage—that a word or phrase is presumed to bear the same meaning throughout a text—only ''makes sense when applied . . . pragmatically.'' [54] It is appropriate, and pragmatic, for Region 4 to consider the distinct frameworks and purposes of CAA sections 110 and 112 when implementing the term ''emission limitation'' in evaluating the North Carolina SIP.

The U.S. Supreme Court has recognized that principles of statutory construction are not so rigid as to necessarily require that the same terminology has the exact same meaning in different parts of the same statute.[55] Terms can have ''different shades of meaning,'' reflecting ''different implementation strategies'' even when used in the same statute.[56] Emphasizing that ''[c]ontext counts,'' the Court explained that ''[t]here is . . . no effectively irrebuttable presumption that the same defined term in different provisions of the same statute must be

[46] *North Carolina ex rel. Cooper* v. *TVA,* 615 F.3d 291, 299 (4th Cir. 2010).

[47] *See, e.g., Union Elec. Co.* v. *EPA,* 427 U.S. 246, 250 & 267 (1976). *See also id.* at 269 (''Congress plainly left with the States, so long as the national standards were met, the power to determine which sources would be burdened by regulation and to what extent.''). Commenters challenged the proposal's reliance on the *Union Electric* and *Train* decisions, but do not disagree with Region 4's basis for relying on the decisions, specifically that they establish that states are afforded discretion regarding how to develop SIPs. The alternative policy's explanation, detailed below, that North Carolina may provide exemptions from numerical emission limits because its SIP contains a set of emission limitations, control means, or other means or techniques, which, taken as a whole, meet the requirements of attaining and maintaining the NAAQS negates commenters' assertion that the Agency is authorizing North Carolina to adopt emission limitations or standards that violate the CAA.

[48] *Train* v. *Natural Res. Def. Council, Inc.,* 421 U.S. 60, 79 (1975).

[49] *See, e.g., Mirant Potomac River, LLC* v. *EPA,* 577 F.3d 223, 227 (4th Cir. 2009) (''Under Title I, states have the primary responsibility for assuring that air quality within their borders meets the NAAQS. Title I requires each state to create a State Implementation Plan . . . to meet the NAAQS.'').

[50] *See* September 13, 2013, Memorandum from Stephen D. Page, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' at page 18.

[51] Comment Letter submitted by NC DAQ, EPA–R04–OAR–2019–0303–0020.

[52] *Id.*

[53] *See* 42 U.S.C. 7410(a)(2)(A).

[54] Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 171 (Thompson/West) (2012).

[55] *See Envtl. Def.* v. *Duke Energy Corp.,* 549 U.S. 561, 574 (2007).

[56] *Id.* at 574 (citations omitted).

interpreted identically.'' [57] Contrary to assertions by commenters, the distinct purposes of CAA sections 110 and 112 provide the relevant context that justifies Region 4's decision to interpret the definition of emission limitation or standard differently in the two provisions. As opposed to assertions from commenters who disagreed with the June 5, 2019, NPRM's discussion of the *Duke Energy* decision, the interpretation of CAA sections 302(k) and 110(a)(2)(A) advanced in this document does not disregard the concept of continuity from CAA section 302(k), nor does it nullify the provision's meaning. Rather, the concept of continuity is acknowledged and afforded significance through the fact that the North Carolina SIP in which such emission limitations exist, as a whole, applies continuously. The concept of continuous ''emission limitations'' in a SIP need not be focused on continuous implementation of each individual limit, but rather on the approved SIP as a whole and whether the SIP operates continuously to ensure attainment and maintenance of the NAAQS.

Region 4's interpretation is consistent with the concept that the CAA requires that some section 110 standard apply continuously. Specifically, CAA 110(a)(2)(A) requires the SIP to include ''enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.'' The phrase ''as may be necessary or appropriate to meet the applicable requirements of [the] Act'' explicitly allows the State some flexibility to develop SIP provisions that are best suited for their purposes. In this context, Region 4 finds that a reasonable interpretation of the section 302(k) definition of the terms ''emission limitation'' and ''emission standard'' does not preclude North Carolina from adopting provisions that apply continuously while also allowing that unavoidable excess emissions that occur during certain discrete, time-limited periods of operation may not be considered a violation of the rule. This is consistent with Region 4's determination that the North Carolina SIP, considered as a whole, meets the requirements of the Act. But even if commenters are correct that ''enforceable emission limitations'' must be interpreted as a single limit that applies continuously and without exempt periods, Region 4 finds that North Carolina's SIP provisions that include periods of exemptions are not inconsistent with the CAA under the latter part of provision 110(a)(2)(A) as ''other control measures, means or techniques . . . *as may be necessary or appropriate* to meet the applicable requirements of [the] Act'' [58] (emphasis added).

Region 4 interprets CAA section 110(a)(2)(A) to mean a state may provide exemptions from numerical emission limits so long as the SIP contains a set of emission limitations, control means, or other means or techniques, which, taken as a whole, meet the requirements of attaining and maintaining the NAAQS under subpart A. As supported by NC DAQ's comment letter [59] on the NPRM and as this section further elaborates, our evaluation of the North Carolina SIP shows this to be the case. The State has a combination of emission limits that apply ''as may be necessary or appropriate'' during normal operations but with exemptions during SSM periods and ''other control measures, means, or techniques'' that remain applicable during periods of SSM in which the exemptions apply—such as general duty provisions in the SIP, work practice standards, best management practices, or alternative emission limits—and are protective of the NAAQS. Additionally, SIPs are required to include entirely separate provisions, such as minor source review and major source new source review provisions regulating construction or modification of stationary sources, that also effectively limit emissions of NAAQS pollutants within the state. North Carolina regulates the construction and modification of sources to prevent significant deterioration of air quality in areas already attaining the NAAQS, or to allow improvement of air quality while still providing for growth in areas not meeting the NAAQS, through 15A NCAC 2D .0530 and 2D .0531. Thus, as the U.S. Supreme Court explained in *Duke Energy* that a term may be interpreted differently when justified by different contexts (in this case different parts of the same statute), the CAA definition of an emission limitation in section 302(k), when read in the context of section 110, could mean states may, at their discretion, provide exemptions from specific numerical emission limits during periods when it is not practicable or necessary for such limits to apply, so long as the SIP contains other provisions that remain in effect and ensure the NAAQS are protected. Region 4 evaluated the North Carolina SIP and determined it is not inconsistent with CAA requirements for the SIP to contain such exemption provisions because the State's overlapping protective requirements sufficiently ensure overall attainment and maintenance of the NAAQS.

Consistent with this interpretation, Region 4 has evaluated the North Carolina SIP as a whole and has determined that the SIP contains numerous provisions intended to assure that air quality standards will be achieved, as explained below. Any provisions allowing exemptions for periods of SSM do not alter the applicability of these general SIP requirements. In analyzing the air quality protections provided by the entirety of the North Carolina SIP, Region 4 concludes that the SIP contains overlapping planning requirements that are protective of each individual criteria pollutant NAAQS. In fact, both provisions that were included in the 2015 SSM SIP Call Action for North Carolina include substantial protection of air quality standards within the SIP-called provision itself.

First, as Region 4 outlined in the June 5, 2019, NPRM, the exemption provided at NCAC 2D .0535(g) requires that owners or operators use best available control practices when operating equipment to minimize emissions during startup and shutdown periods. Specifically, it states:

> Start-up and shut-down. Excess emissions during start-up and shut-down shall be considered a violation of the appropriate rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable when requested to do so by the Director. The Director may specify for a particular source the amount, time, and duration of emissions that are allowed during start-up or shut-down. *The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control*

[57] *Id.* at 575–76.

[58] Region 4 also notes that this interpretation is consistent with language in the CAA definition of ''Federal Implementation Plan'' (FIP) (*i.e.,* a plan, or portion thereof, promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a SIP). The definition, at section 302(y), states that a FIP ''includes enforceable emission limitations *or* other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard'' (emphasis added). This language clarifies that ''other control measures, means or techniques'' is an approach that is separate from ''enforceable emission limitations'' and thus does not invoke the 302(k) definition of ''emission limitation.''

[59] Letter from Michael A. Abraczinskas, Director, NC DAQ, to EPA, August 5, 2019, Docket ID No. EPA–R04–OAR–2019–0303–0001 for this rulemaking.

equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down. (Emphasis added.)

Even though this provision includes an exemption, it also provides a backstop that requires sources to use the best practicable air pollution control practices to minimize emissions during startup or shutdown periods.

Second, the exemption provided at NCAC 2D .0535(c) outlines seven criteria that the director will consider when evaluating whether the source qualifies for an emissions limit exemption during a malfunction. Specifically, it states:

Any excess emissions that do not occur during start-up or shut down shall be considered a violation of the appropriate rule unless the owner or operator of the source of the excess emissions demonstrates to the director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the director shall consider, along with any other pertinent information, the following:

(1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions;

(2) Repairs have been made in an expeditious manner when the emission limits have been exceeded;

(3) The amount and duration of the excess emissions, including any bypass have been minimized to the maximum extent practicable;

(4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;

(5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(6) The requirements of Paragraph (f) of the Regulation have been met; and

(7) If the source is required to have a malfunction abatement plan, it has followed that plan.

All malfunctions shall be repaired as expeditiously as practicable. However, the director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year.

The existence of these specific criteria themselves provide additional protections of the NAAQS because factors considered by the director include whether sources minimize emissions and limit the extent of emissions which could occur to the greatest extent practicable. Additionally, the provision itself establishes bounds on a source's ability to employ this exemption by prohibiting the Director from excusing excess emissions from a source due to malfunctions for more than 15 percent of the operating time. This limitation reasonably minimizes the risk that excess emissions from malfunctions would contribute to a NAAQS exceedance or violation.

Apart from the SIP-called provisions discussed above, as discussed in the June 5, 2019, NPRM, the North Carolina SIP also contains numerous overlapping requirements providing for protection of air quality and the NAAQS, requirements that generally control emissions of NAAQS pollutants. Each of these provisions ensures that emissions are minimized to protect air quality, independent of an SSM exemption that may also apply. Described as follows, these generally applicable requirements collectively support Region 4's alternative policy for the North Carolina SIP.

First, 15A NCAC 2D .0502, which is included in the North Carolina SIP and addresses emission control standards generally, provides: ''The purpose of the emission control standards set out in this Section is to establish maximum limits on the rate of emission air contaminants into the atmosphere. All sources shall be provided with the maximum feasible control.'' [60] The requirement for ''maximum feasible control'' on all sources applies at all times, including periods of startup and shutdown. Thus, by requiring sources to be subject to emission control standards established at the maximum feasible level of control, the SIP ensures that air quality in the State will be protected to the highest degree possible. This guiding purpose broadly applies to the emission control standards in Section .0500 of the North Carolina SIP. North Carolina confirmed as much in their comment letter on EPA's 2015 SSM policy, explaining that the State's requirement that sources implement ''maximum feasible control'' is one of the provisions of the SIP that ''provide assurances that air quality and emission standards will be achieved.'' [61] In light of the flexibility in CAA section 110(a)(2)(A) and SIP development generally, North Carolina has developed a reasonable overall emissions control approach that requires all sources to implement maximum feasible emission control efforts at all times, even though the State may exempt sources from numerical emission limits during some SSM periods.

Second, the North Carolina SIP includes general provisions that require sources not to operate in such a way as to cause NAAQS violations. 15A NCAC 2D .0501(e) directs all sources to operate in a manner that does not cause any ambient air quality standard to be exceeded at any point beyond the premises on which the source is located, despite the SIP containing SSM exemptions for emission limitations. 15A NCAC 2D .0501(e) states:

In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

Accordingly, even if the SIP contains exemptions from numerical emission limits during SSM events, this provision ensures that the source at issue must ensure that none of its emissions cause a NAAQS exceedance or violation, consistent with the primary purpose of CAA section 110.

Third, the North Carolina SIP provides additional assurances that sources will prevent and correct equipment failures that could result in excess emissions by requiring utility boilers (and any source with a history of excess emissions, as determined by the Director) to have a malfunction abatement plan approved by the Director. Utility boilers in North Carolina contribute a significant portion of the point source pollutant emissions in the State.[62] 15A NCAC 2D .0535(d) states:

All electric utility boiler units subject to a rule in this section shall have a malfunction abatement plan approved by the director. In addition, the director may require any source that he has determined to have a history of excess emissions to have a malfunction abatement plan approved by the director. The malfunction plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. . . .

This provision goes on to describe the minimum requirements for a malfunction abatement plan, including:

[60] *See* 40 CFR 52.1770(c)(1).

[61] Letter from Sheila C. Holman, Director, NC DAQ, to EPA, May 13, 2013, page 2, Docket ID No. EPA–HQ–OAR–2012–0322–0619, available at *www.regulations.gov.*

[62] For example, utility boilers in North Carolina contribute approximately 24 percent of PM_{10} emissions, 66 percent of SO_2 emissions, and 47 percent of NO_X emissions from total point sources in the State. *See* spreadsheet titled ''NC 2014 NEI Summary'' in the docket for this action.

(1) A complete preventive maintenance program (including identification of the individual responsible for inspecting, maintaining and repairing air cleaning devices; description of the items or conditions that will be inspected and maintained; the frequency of the inspection, maintenance services, and repairs; and identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement); (2) the procedures for detecting a malfunction or failure (including identification of the source and air cleaning operating variables and outlet variables; the normal operating range of those variables; and a description of the monitoring method or surveillance procedures and of the system for alerting operating personnel of any malfunctions); and (3) a description of the corrective procedures that will be taken to achieve compliance with the applicable rule as expeditiously as practicable in case of a malfunction or failure.[63] Although specific to electric utility boilers (and other sources as required by the Director), this SIP provision ensures that subject units are taking steps to prevent, detect, and correct malfunctions, even if an SSM exemption applies. This provision serves to limit any excess emissions that could result from such events, thus reducing the possibility that any excess emissions would result in a NAAQS exceedance or violation.

Fourth, the North Carolina SIP provides general provisions to reduce airborne pollutants and to prevent NAAQS exceedances beyond facility property lines, despite the SIP containing SSM exemptions for numerical emission limits, for particulates from sand, gravel, or crushed stone operations and from lightweight aggregate operations (at 15A NCAC 2D .0510(a) and 0511(a), respectively):

> The owner or operator of a [. . .] operation shall not cause, allow, or permit any material to be produced, handled, transported or stockpiled without taking measures to reduce to a minimum any particulate matter from becoming airborne to prevent exceeding the ambient air quality standards beyond the property line for particulate matter, both PM_{10} and total suspended particulates.

And in a similar manner, the North Carolina SIP includes general provisions to reduce airborne pollutants and to prevent NAAQS exceedances beyond facility property lines for particulates from wood products finishing plants (at 15A NCAC 2D .0512):

> A person shall not cause, allow, or permit particulate matter caused by the working, sanding, or finishing of wood to be discharged from any stack, vent, or building into the atmosphere without providing, as a minimum for its collection, adequate duct work and properly designed collectors, or such other devices as approved by the commission, and in no case shall the ambient air quality standards be exceeded beyond the property line.

Accordingly, even if the SIP contains exemptions from numerical emission limits during SSM events, these provisions ensure that the source at issue must ensure that none of its emissions cause a NAAQS exceedance or violation.

Fifth, the North Carolina SIP provides a general requirement at 15A NCAC 2D .0521(g) for sources that operate continuous opacity monitoring systems (COMS) that ''[i]n no instance shall excess [opacity] emissions exempted under this Paragraph cause or contribute to a violation of any emission standard in this Subchapter or 40 CFR part 60, 61, or 63 or any ambient air quality standard in Section 15A NCAC 2D .0400 or 40 CFR part 50.'' As recognized by this provision, Federal standards in 40 CFR parts 60, 61, and 63, as applicable to a source, regulate source emissions and operation, regardless of any SSM exemption in the SIP.

Finally, Region 4 notes that the SIP includes an overall strategy for bringing all areas into compliance with the NAAQS for all pollutants regulated by the CAA. On September 26, 2011, Region 4 approved into the SIP significant NO_X and sulfur dioxide (SO_2) emission limitations from the North Carolina Clean Smokestacks Act (NCCSA).[64] This State law became effective in 2007 and set caps on NO_X and SO_2 emissions from public utilities operating coal-fired power plants in the State that cannot be met by purchasing emissions credits.[65] The NCCSA resulted in permanent emission reductions that helped nonattainment areas in the State achieve attainment of the 1997 Annual $PM_{2.5}$ NAAQS.[66] Thus, even if a source could avail itself of an SSM exemption for certain excess emissions, its total emissions must fit within the utility-wide cap for the State provided under a law adopted as part of a comprehensive plan for improving air quality in North Carolina.

Region 4 also notes that the exemption provisions in the North Carolina SIP are limited in scope and do not apply to sources to which Rules .0524, .1110 or .1111 of subchapter 2D apply. *See* 15A NCAC 2D .0535(b). These SIP provisions require that sources that are subject to EPA's New Source Performance Standards (NSPS) at 40 CFR part 60 or National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR part 61 or 63 must comply with those Federal standards rather than with any otherwise-applicable rule of the SIP (except where the SIP rule is more stringent than the Federal standards).

Region 4 received comments challenging the June 5, 2019, NPRM's reliance on the generally applicable provisions, which commenters characterized as ''general duty'' provisions. Commenters raised concerns about Region 4 relying on these provisions, asserting they ''fail to meet the level of control required by the applicable stringency requirements'' and that these provisions are not legally or practically enforceable. As discussed in Section V of this document, Region 4 disagrees with commenters' concerns regarding generally applicable provisions. Region 4 has not asserted that the numerous protective provisions serve to replace the applicable stringency requirements. Instead, these provisions provide additional assurances that the applicable stringency requirements will effectively ensure attainment and maintenance of the NAAQS, despite the fact that there are provisions allowing for narrow exemptions during certain periods of SSM. In terms of enforcing the protective provisions, many of the provisions identified in this document are, in fact, mandatory. For example, 15A NCAC 2D .0502 states: ''All sources *shall* be provided with the maximum feasible control'' (emphasis added). And 15A NCAC Code 2D .0501(e) instructs: ''. . . any source of air pollution *shall* be operated with such control or in such manner that the source *shall* not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located'' (emphasis added). Further, when warranted by a situation, EPA can bring an action to enforce these types of provisions.

EPA has a statutory duty pursuant to CAA section 110(k)(3) to approve SIP submissions that meet all applicable

[63] *See* 15A NCAC 2D .0535(d)(1)–(3).

[64] *See* 76 FR 59250 (September 26, 2011).

[65] *See* 40 CFR 52.1781(h).

[66] *See Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of the Hickory-Morganton-Lenoir 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment; Proposed Rule,* 76 FR 58210, 58217 (Sept. 20, 2011), and *Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of the Greensboro-Winston Salem-High Point 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment; Proposed Rule,* 76 FR 59345, 59352 (Sept. 26, 2011).

CAA requirements. For North Carolina, Region 4 has concluded that the SIP's approach to exemptions is consistent with the CAA requirement to protect attainment and maintenance of the NAAQS. Region 4 recognizes that the exemptions from emission limitations in the North Carolina SIP provide the State with flexibility as it develops robust approaches to air quality protection through a set of planning requirements. The numerous protective provisions are a significant justification for Region 4 adopting an alternative policy for the North Carolina SIP. Further, these provisions reflect North Carolina's reasoned judgment for how to best assure attainment and maintenance of the NAAQS in the State.

B. Director's Discretion Exemption Provisions

In addition to the general SSM exemption issues discussed above, in the 2015 SSM SIP Call Action EPA also raised concerns that North Carolina's 15A NCAC 2D .0535(c) and 15A NCAC 2D .0535(g) are examples of what EPA referred to as ''director's discretion'' exemptions. Rule 15A NCAC 2D .0535(c) lists seven criteria that the Director of NC DAQ will evaluate to determine whether excess emissions resulting from a malfunction are a violation of the given standard. In addition, rule 15A NCAC 2D .0535(g) directs facilities, during startup and shutdown, to operate all equipment in a manner consistent with best practicable air pollution control practices to minimize emissions and to demonstrate that excess emissions were unavoidable when requested to do so by the Director. In the 2015 SSM SIP Call Action, EPA took the position that these director's discretion provisions were also problematic because they allow air agency personnel to modify existing SIP requirements under certain conditions, which essentially constituted a variance from an otherwise applicable emission limitation. EPA considered director's discretion provisions to effectively provide for impermissible SIP revisions by allowing air agency personnel to make unilateral decisions on an *ad hoc* basis regarding excess emissions during SSM events and, thus, as not in compliance with the necessary process required for SIP revisions.[67]

While acknowledging those concerns, consistent with the June 5, 2019, NPRM, Region 4 is finalizing a finding that SSM exemptions may not necessarily make a SIP substantially inadequate to meet CAA requirements[68] and is making a finding that the director's discretion SSM exemptions in the North Carolina SIP are not inconsistent with CAA requirements. In this action, Region 4 is adopting an alternative policy for North Carolina that automatic exemptions during periods of SSM are not inherently inconsistent with CAA section 110(a)(2)(A). The rationale provided above for finding that automatic exemptions in the North Carolina SIP do not preclude the SIP from meeting the CAA requirements of attainment and maintenance of the NAAQS under subpart A as long as the SIP, when evaluated comprehensively, contains a set of emission limitations, control means, or other means or techniques, also applies to Region 4's evaluation of director's discretion exemptions in the North Carolina SIP. As explained below, because automatic SSM exemptions are broader than director's discretion provisions but do not render the North Carolina SIP inadequate, Region 4 also finds that director's discretion exemptions do not render the SIP inadequate.

Further, consistent with the perspective that the North Carolina SIP, considered as a whole, generally protects against NAAQS violations and that SIP provisions containing SSM exemptions may not be inconsistent with CAA requirements, Region 4 has determined that use of the director's discretion provisions in the North Carolina SIP also does not constitute an improper SIP revision. Given the specific criteria contained within them, North Carolina's director's discretion provisions excuse excess emissions in more limited circumstances than provided for by automatic exemptions. Accordingly, the same reasoning that supports our position that automatic exemptions in the North Carolina SIP may not be inconsistent with the CAA also informs our position that the narrower director's discretion exemption provisions in the North Carolina SIP that were SIP-called in the 2015 SSM SIP Call Action are not inconsistent with the CAA. This finding is predicated on a holistic view that includes consideration of all provisions in the North Carolina SIP. Relevant to this evaluation, as discussed above, the North Carolina SIP includes provisions that provide for sources to be operated in a manner that does not cause an exceedance or violation of the NAAQS, and that requirement is not displaced by the director's discretion exemptions. The North Carolina director's discretion provisions outline the specific conditions under which air agency personnel can make a factual decision that SSM emissions do not constitute a violation of the NAAQS, and that limitation is part of Region 4's holistic consideration of the SIP. The SIP, as federally approved, provides air agency personnel with the framework and authority to exempt certain excess emission events from being a violation. Because that allowance is provided for in the approved SIP, and the SIP provisions went through a public comment period prior to Region 4's final action in this document to approve them, an action made in accordance with these approved provisions would not constitute an unlawful SIP revision.

CAA section 113 authorizes the United States to enforce, among other things, the requirements or prohibitions of an applicable implementation plan or permit. CAA section 304 authorizes citizens to enforce, among other things, any emission standard or limitation under the CAA, including applicable state implementation plan and permit requirements. The framework and authority contained in 15A NCAC 2D .0535 requires sources to make specific demonstrations and the Director to make specific determinations before exempting sources from compliance with an otherwise applicable emission limitation. Accordingly, and consistent with statements made by EPA when the Agency approved 15 NCAC 2D .0535(c) into the North Carolina SIP in 1986,[69] the exercise of authority under the director's discretion provisions of 15A NCAC 2D .0535 shall not be construed to bar, preclude, or otherwise impair the right of action by the United States or citizens to enforce a violation of an emission limitation or emission standard in the SIP or a permit where the demonstration by a source or a determination by the Director does not comply with the framework and authority under 15 NCAC 2D .0535. Failure to comply with such framework and authority would invalidate the Director's determination.

[67] *See* 80 FR at 33977–78.

[68] *See Texas* v. *EPA,* 690 F.3d 670 (5th Cir. 2012); *Luminant Generation Co.* v. *EPA,* 675 F.3d 917 (5th Cir. 2012) (vacating and remanding EPA's disapproval of discretionary SIP provisions).

[69] *See* 51 FR 32073, 32074 (September 9, 1986) (EPA stated: ''it should be noted that EPA is not approving in advance any determination made by the State under paragraph (c) of the rule, that a source's excess emissions during a malfunction were avoidable and excusable, but rather s approving the procedures and criteria set out in paragraph (c). Thus, EPA retains its authority to independently determine whether an enforcement action is appropriate in any particular case.'').

C. Withdrawal of the SIP Call for North Carolina

As part of the 2015 SSM SIP Call Action, EPA issued CAA section 110(k)(5) SIP calls to a number of states, including North Carolina regarding provisions 15A NCAC 2D .0535(c) and 15A NCAC 2D .0535(g).[70] In the 2015 SSM SIP Call Action, the Agency explained that it would evaluate any pending SIP submission or previously approved submission through notice-and-comment rulemaking and, as part of that action, determine whether a given SIP provision is consistent with CAA requirements and applicable regulations.[71] In this context, Region 4 re-evaluated the two subject provisions in the June 5, 2019, proposed notice-and-comment action that Region 4 is finalizing in this document.

As discussed above, the North Carolina SIP contains numerous provisions that work in concert and provide redundancy to protect against a NAAQS exceedance or violation, even if an SSM exemption provision also applies. Therefore, based on an analysis of the multiple provisions contained in the North Carolina SIP that are designed to be protective of the NAAQS, Region 4 concludes that it is reasonable for the NC DAQ Director to be able to exclude qualifying periods of excess emissions during periods of SSM while ensuring attainment or maintenance of the NAAQS. A holistic review of the North Carolina SIP shows that there are protective provisions that ensure attainment and maintenance of the NAAQS even though a SIP includes SSM exemptions, and Region 4 believes that this result is not precluded by the D.C. Circuit decision in *Sierra Club* v. *Johnson.* Consistent with the alternative policy being adopted, as set forth above, Region 4 has reviewed the applicability of the SIP Call previously issued to North Carolina, including Region 4's specific evaluation of the State's subject SIP, and finds that the subject SIP provisions are not inconsistent with CAA requirements. Accordingly, Region 4 is changing the finding from the 2015 SSM SIP Call Action at 80 FR 33840 that certain SIP provisions included in the North Carolina SIP are substantially inadequate to meet CAA requirements and withdraws the SIP Call that was issued in the 2015 SSM SIP action with respect to 15A NCAC 2D .0535(c) and 15A NCAC 2D .0535(g).

The alternative SSM policy is a policy statement and, thus, constitutes guidance within Region 4 with respect to the North Carolina SIP. As guidance, this does not bind states, EPA, or other parties, but it reflects Region 4's interpretation of the CAA requirements with respect to the North Carolina SIP. The evaluation of any other state's implementation plan provision, and that SIP provision's interaction with the SIP as a whole, must be done through notice-and-comment rulemaking.

EPA's regulations allow EPA Regions to take actions that interpret the CAA in a manner inconsistent with national policy when a Region seeks and obtains concurrence from the relevant EPA Headquarters office. Pursuant to EPA's regional consistency regulations at 40 CFR 56.5(b), the Region 4 Administrator sought and obtained concurrence from EPA's Office of Air and Radiation to propose an action that outlines an alternative policy that is inconsistent with the national EPA policy, most recently articulated in the 2015 SSM SIP Call Action, on provisions exempting emissions exceeding otherwise applicable SIP limitations during periods of unit startup, shutdown and malfunction at the discretion of the state agency and to propose action consistent with that alternative policy. Likewise, the Region 4 Administrator sought and obtained concurrence to finalize the alternative policy in this action. The concurrence request memorandum, signed March 19, 2020, is included in the public docket for this action.

IV. Region 4's Action on North Carolina's June 5, 2017, SIP Revision

As discussed in the June 5, 2019, NPRM, on September 18, 2001, North Carolina submitted a new rule section regarding the control of NO_X emissions from large stationary combustion sources to Region 4 for approval into its SIP.[72] The rule section—15A NCAC 2D .1400 (''Nitrogen Oxides Emissions'')—contains 15A NCAC 2D .1423 (''Large Internal Combustion Engines'') as well as other rules not related to this final action. On August 14, 2002, North Carolina submitted to Region 4 a SIP revision with changes to its Section .1400 NO_X rules, including several changes to 15A NCAC 2D .1423. Region 4 did not act on the August 14, 2002, submittal. However, on December 27, 2002, Region 4 approved the portion of North Carolina's September 18, 2001, SIP revision incorporating 15A NCAC 2D .1423.[73]

On June 5, 2017, North Carolina withdrew its August 14, 2002, SIP revision and resubmitted identical changes to 15A NCAC 2D .1423 as a SIP revision as well as the changes to the other rules contained in the original 2002 SIP revision.[74] [75] The State provided this resubmission in response to a Region 4 request for a version of the rule that highlights, using redline-strikethrough text, the State's proposed revisions to the federally approved rule. The June 5, 2017, SIP revision relies on the hearing record associated with the August 14, 2002, SIP revision [76] because the revised rule text is the same.

Region 4 is approving the changes to subparagraphs (a)–(f) of 15A NCAC 2D .1423 provided in North Carolina's June 5, 2017, SIP revision for the reasons explained in the notice of proposed rulemaking. Regarding 15A NCAC 2D .1423(d)(1), as noted in the June 5, 2019, NPRM, the rule revision inserted the phrase ''and .1404 of this Section'' at the end so that it now provides that the owner or operator of a subject internal combustion engine shall determine compliance using ''a continuous emissions monitoring systems (CEMS) which meets the applicable requirements of Appendices B and F of 40 CFR part 60, excluding data obtained during periods specified in Paragraph (g) of this Rule *and .1404 of this Section*.'' This change ensures that the CEMS used to obtain compliance data must meet the applicable requirements specified in 15A NCAC 2D .1404 (in particular, Paragraphs (d)(2) and (f)(2) of 15A NCAC 2D .1404) as well as the applicable part 60 requirements since those provisions specify additional Federal requirements for obtaining CEMS data. In addition, although the reference to ''Paragraph (g) in this Rule'' is existing federally approved language, Region 4 has considered its approvability in light of the 2015 SSM policy because paragraph (g) provides that the emission standards of 15A NCAC 2D .1423 (regulating large internal combustion engines) do not apply during periods of ''(1) start-up and shut-down periods and periods of malfunction, not to exceed 36 consecutive hours; (2) regularly scheduled maintenance activities.'' As discussed in Section III above, Region 4 has determined that the provisions of

[70] *See* 80 FR at 33964.

[71] *Id.* at 33976.

[72] See Rule .1402—''Applicability'' and the definition of ''source'' in Rule .1401 for the scope of this rule section.

[73] *See* 67 FR 78987 (December 27, 2002).

[74] Region 4 acted on the other rule changes through a separate rulemaking (83 FR 66133, December 26, 2018).

[75] On June 28, 2018, North Carolina supplemented its June 5, 2017, submittal to acknowledge that Rules .1413 and .1414 are not in the SIP. This supplement is not relevant to this action.

[76] North Carolina held public hearings on May 21, 2001, and June 5, 2001, to accept comments on the rule changes contained in the August 14, 2002, SIP revision.

15A NCAC 2D .1423(g), when considered in conjunction with other elements in the North Carolina SIP, are sufficient to provide adequate protection of the NAAQS. North Carolina has bounded the time during which a source can employ this exemption, minimizing the potential that any excess emissions during these periods would cause or contribute to a NAAQS exceedance or violation. Therefore, the exemption, which allows for emission standards of the rule to not apply during periods of startup, shutdown, and malfunction of up to 36 consecutive hours, or maintenance, is not inconsistent with the requirements of CAA section 110, including CAA section 110(l). Consequently, Region 4 has determined, consistent with the policy outlined *supra* in Section III, that these changes to the North Carolina SIP are consistent with CAA requirements.

V. Responses to Comments

Region 4 received ten supporting comments and three adverse comments on the proposed action. In this section, Region 4 describes in detail the adverse comments received and provides responses to them.

1. Comments That the Action Constitutes a Nationally-Applicable Rulemaking and Should be Reviewed in the D.C. Circuit

Comment 1: Commenters state that EPA Headquarters was the driving force behind the preparation of the June 5, 2019, NPRM and that the NPRM is an attempt to revise EPA's 2015 national policy on SSM in SIPs in a fashion that is not reviewable by the D.C. Circuit. Other commenters state that the June 5, 2019, NPRM does not adequately justify the exception to the national policy on SSM, asserting that the June 5, 2019, NPRM is a ''backdoor attempt to change national policy through a Regional action'' with the aim of review in an individual Circuit Court rather than the D.C. Circuit. Commenters also assert that the proposed withdrawal of the North Carolina SIP Call departs from EPA's 2015 action and that ''this reversal effectively amends EPA's national SSM policy.''

Commenters argue that if EPA were to withdraw its SSM SIP Call for North Carolina, review of its action should occur in the D.C. Circuit because such action would reverse a nationally applicable policy. Commenters add that any EPA refusal to find that the D.C. Circuit is the appropriate venue for review of EPA's SSM SIP Call is likely to result in different standards and methodologies applying in different areas of the country, thereby unlawfully and arbitrarily defeating the CAA's goal of ensuring uniformity of national issues, which is Congress's clear intent. Other commenters state that EPA recognized in the 2015 SSM SIP Call Action that the Agency's ''legal interpretation of the [CAA] concerning permissible SIP provisions to address emissions during SSM events'' was a ''nationally applicable'' rule and, thus, any petitions for review challenging aspects of EPA's nationally applicable SSM SIP Call or its SSM policy were required to be filed in the D.C. Circuit, which is where those petitions are still pending.

Commenters also state that the June 5, 2019, NPRM is based on several determinations of nationwide scope or effect, and therefore EPA must find that any challenge to the rule is appropriate only in the D.C. Circuit. Commenters add that because the ''scope or effect'' of the Region 4 June 5, 2019, NPRM for North Carolina and the Region 6 NPRM for Texas (84 FR 17986 (April 29, 2019)) extends across six judicial circuits (covering Regions 4 and 6), the NPRMs must be reviewed only in the D.C. Circuit. Commenters also state that EPA's treatment of its June 5, 2019, NPRM as Region-specific rather than of nationwide scope or effect is arbitrary and capricious and reviewable because it departs from how EPA has treated other, similar past actions. Commenters also state that precedent supports the conclusion that EPA's proposed amendment to the SSM SIP Call is ''nationally applicable.''

Commenters state that although EPA is now proposing to exempt North Carolina from the nationally applicable SIP Call (and exempt states in Region 4 from the SSM SIP policy established in the final SIP Call rule) in a separate **Federal Register** document, the Agency must acknowledge that the SSM SIP Call and the June 5, 2019, NPRM at issue are part of the same overarching and ''nationally applicable regulation'' under 42 U.S.C. 7607(b)(1). Commenters state that the proposed withdrawal of North Carolina from the national SSM SIP Call explicitly ''departs from EPA's 2015 national policy'' and announces a substantive change to determining whether exemptions for SSM events in SIPs are approvable. Commenters also state that although the June 5, 2019, NPRM ostensibly applies to the states in Region 4, EPA is using it to announce a substantial change to the CAA's SIP requirements.

Response 1: Comments received regarding Region 6's April 29, 2019, notice of proposed rulemaking concerning affirmative defense provisions in the Texas SIP are not within the scope of this rulemaking, and Region 4 is not providing a response to comments regarding that action. Comments regarding any subsequent and separate actions by Region 4 are also speculative and not within the scope of this rulemaking.

This is a regional action to approve a SIP submission from a single state in Region 4 and to withdraw the SSM SIP Call that was issued for North Carolina based on an alternative SSM policy that is being adopted and applied by Region 4 only with regard to the North Carolina SIP; the commenter provides no factual basis for the claim that Region 4 is speaking on behalf of EPA Headquarters in this action. EPA Headquarters and Regional Offices routinely collaborate on rulemaking activities, and the nature of the collaborative relationship varies depending on the circumstances of the specific action involved. EPA Headquarters staff may be involved in drafting complex regional actions, including proposed and final rulemakings where EPA acts on SIP submissions under CAA section 110(k), as appropriate. However, as explained below in this response, the level of involvement by different EPA offices is not an appropriate inquiry for determining which court would review a final action. As described in Section III, the alternative policy on SSM adopted in this action applies only to Region 4's evaluation of the North Carolina SIP and does not change or alter EPA's national policy on SSM from the June 12, 2015, action at 80 FR 33840.

Recognizing that Congress intended the Federal-state partnership to serve as a cornerstone of the SIP development process under the CAA, the latitude typically afforded to state air agencies as they develop SIPs to address air pollution prevention in their states is one of the bases for this action. Section III of both the proposed action and this final action provides a comprehensive explanation for Region's 4 bases for adopting the alternative policy for North Carolina. Section III of this final action then applies that alternative policy to the specific facts of the North Carolina SIP.

The comments stating that this action is a ''backdoor attempt to change national policy through Regional action'' or that this action establishes a new *de facto* national policy overstate and misunderstand the scope of the present action. Region 4 is not establishing a new national policy; rather Region 4 is taking action on a specific provision submitted to EPA as a revision of the North Carolina SIP and evaluating the adequacy of specific

North Carolina SIP provisions to meet CAA requirements.

Region 4 does not agree with commenters' assertion that this action is a reversal of EPA's national SSM policy because the alternative policy adopted by Region 4 on SSM exemptions is specific to Region 4's evaluation of the North Carolina SIP—the policy is not adopted or applied to any other SIP in Region 4 and does not change or alter the national policy on SSM established in the 2015 SSM SIP Action. This action is limited to the North Carolina SIP. Region 4 is simply reexamining the 2015 SSM SIP Action as it applies to the North Carolina SIP, including the North Carolina SIP provisions that were the subject of EPA's finding of substantial inadequacy in that prior action. Region 4 is also reevaluating the interpretation of the *Sierra Club* decision and determining that it is not necessary to extend the reach of the *Sierra Club* decision to the particular North Carolina SIP provisions at issue in this action.

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.'' [77] On its face, this action is locally applicable because it applies to only a single state, North Carolina (withdrawing the SIP Call issued to North Carolina in 2015 and approving the specific North Carolina SIP provisions in the revision submitted by the State on June 5, 2017). This action has immediate or legal effect only for and within North Carolina. If 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.

Moreover, EPA's regulations at 40 CFR part 56 contemplate and establish a process for regional deviation from national policy. Region 4 followed that process and received concurrence from the appropriate EPA headquarters office for both the proposed action and this final action. The memoranda documenting this process are available in the docket for this action. We disagree with commenters' contention that this action undermines a goal of ensuring uniformity of national issues of the CAA. We assume that the commenter is referencing section 301(a)(2), which requires EPA to promulgate regulations establishing general applicable procedures and policies for regions that are designed, among other things, to ''assure fairness and uniformity in the criteria, procedures, and policies applied.'' Region 4 followed the process to deviate from national policy set forth in 40 CFR part 56, the regulations that EPA promulgated in accordance with CAA section 301(a)(2). Commenters' concern regarding the Agency's general process for regional deviation from national policy is beyond the scope of this action.

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.[78] The only exception to this mandate is where the Administrator expressly finds that the locally or regionally applicable action is based on a determination of nationwide scope or effect and publishes such a finding. The requirement that the Administrator find and publish that an otherwise locally or regionally applicable action is based on a determination of nationwide scope or effect is an express statutory requirement for application of this venue exception; this exception has not been and is not being invoked by EPA in this action. 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.[79] CAA section 307 expressly provides the Agency full discretion to make its own determination of whether to exercise an exception to a Congressionally-dictated venue rule.[80] Even assuming that a court could review the lack of such a finding, and lack of publication of such a finding, in this final action under the Administrative Procedure Act's arbitrary and capricious standard, the absence of invocation of the exception is not unreasonable in this case. Commenters assert that numerous aspects of Region 4's action, including its 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 or effect. Commenters are not clear on how or why taking the step necessary to deviate from nationwide policy somehow transforms that deviation into nationwide policy. Region 4 lacks the authority to issue a policy beyond the states included in the Region. In any case, Region 4 states throughout this document that this action, and the CAA interpretation it is based upon, only applies in North Carolina and does not alter EPA's national policy.[81]

The commenters argue that it is appropriate for EPA to find and publish a finding that an action is based on a determination of nationwide scope or effect where a regionally applicable action encompasses multiple judicial circuits. Region 4 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 North Carolina, and thus only a single judicial circuit. Although at proposal Region 4 was contemplating a regionwide policy on SSM exemption provisions in SIPs, the Region has decided to limit the deviation from national policy to North Carolina. The final action being taken herein is limited in scope to approval of a North Carolina SIP revision and withdrawal of the SIP Call issued to North Carolina.

Region 4 does not agree with commenters' assertion that EPA has previously directed review of SIP Calls to the D.C. Circuit. We note that EPA consolidated a single announcement of national policy and issued 36 individual SIP Calls through a single document in the 2015 SSM SIP Action. However, at other times, individual regions have issued SIP Calls, which were subsequently reviewed in regional circuits. In 2011, for example, EPA Region 8 made a finding that the Utah SIP was substantially inadequate to meet CAA requirements. On that basis, EPA Region 8 issued a SIP Call for Utah, requiring the state to revise its SIP to change an unavoidable breakdown rule, which exempted emissions during unavoidable breakdowns from compliance with emission limitations.[82] This SIP Call was subsequently reviewed in and upheld by the U.S.

[77] *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)).

[78] *See* 42 U.S.C. 7607(b)(1) (emphasis added).

[79] *See, e.g., Lion Oil* v. *EPA,* 792 F.3d 978, 984 n.1 (8th Cir. 2015) (even where 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* v. *EPA,* 808 F.3d 875 (D.C. Cir. 2015).

[80] *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 or effect.'') (emphasis added).

[81] *See Am. Road & Transp. Builders Ass'n* v. *EPA,* 705 F.3d 453, 456 (D.C. Cir. 2013) (holding that venue for review of 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).

[82] *See* 76 FR 21639 (April 18, 2011).

Court of Appeals for the Tenth Circuit.[83] Similarly, EPA Region 8 made a finding that the Montana SIP was substantially inadequate to attain and maintain the SO_2 NAAQS and issued a call for Montana to submit a SIP revision.[84] That SIP Call and related actions were subsequently reviewed in and upheld by the U.S. Court of Appeals for the Ninth Circuit.[85]

2. Comments That EPA Lacks the Statutory Authority To Undertake the Action

Comment 2: Commenters state that, faced with plain statutory language in section 302(k) and a statutory structure and cross-references in section 110, EPA may not invent statutory authority where none exists, nor adopt regulations lacking statutory authority, merely because EPA believes its approach to be better policy. Commenters state that agencies need especially clear congressional delegations of authority to create regulatory exemptions and that the Region 4 (and Region 6) ''alternative interpretations'' amount to contradictory, unlawful statutory readings that advance policy preferences. Commenters add that those policy preferences furnish EPA with no statutory authority to withdraw the 2015 SSM SIP Call or to approve SIPs or submissions inconsistent with the SIP Call, plain statutory language, and the *Sierra Club* SSM decision.

Commenters state that EPA must reject at least a portion of this submittal as substantially inadequate because it includes a prohibited automatic exemption for SSM events at 15A NCAC 2D .1423(g) (''The emission standards of this Rule shall not apply to . . . start-up and shut-down periods and periods of malfunction . . . .'').

Commenters state that by proposing to find North Carolina provisions 15A NCAC 2D .0535(c) and .0535(g) are not substantially inadequate to meet CAA requirements, EPA proposes an unlawful act that is beyond the scope of the SIP revision submitted to Region 4. Commenters allege that because North Carolina's June 5, 2017, submission to Region 4 makes no revision to its SSM exemptions or any mention of 15A NCAC 2D .0535, this action would amount to an EPA-initiated revision of the SIP, which, in addition to EPA's self-initiated change in regional policy, is not among the actions EPA may take when presented with a SIP revision. Commenters add that even if EPA could initiate such an action, EPA would still proceed unlawfully by purporting to act on a submittal that does meet applicable completeness requirements because the Agency has received no submittal or requested revision on to act on 15A NCAC 2D .0535(c) and .0535(g) and that the submission received does not include 15A NCAC 2D .1423(g) among the revised subsections of 15A NCAC 2D .1423 submitted for review. Commenters also contend that part 51 requires that the record for a SIP revision submittal contain a letter ''from the Governor or his designee, requesting EPA approval of the plan or revision''[86] but that North Carolina's submission is not signed by the governor, and its signatory, Michael Abraczinskas, gives no indication of acting at the Governor's request.

Response 2: Rather than inventing statutory authority as contemplated by the comment, after conducting a searching and thorough evaluation of the North Carolina SIP and relevant statutory and regulatory framework, Region 4 is offering an alternative interpretation to the national policy on SSM outlined in the 2015 action. The U.S. Supreme Court has expressly provided that administrative agencies may change an interpretation.[87] Consistent with the U.S. Supreme Court's decision, in its June 5, 2019, NPRM Region 4 acknowledged the Agency's prior position, provided statutory authority for the new interpretation, explained its rationale for the change and explained why the action taken in this document is the better policy in this circumstance.[88] Commenters' disagreement with the interpretation does not preclude Region 4 from having authority to change its policy when it has met the required conditions.

Region 4 disagrees with commenters' contention that the plain statutory language of CAA section 302(k) and a statutory structure and cross-references in section 110 preclude the alternative policy adopted. Acknowledging that the Agency took a different approach in the 2015 SSM SIP Call Action, for the reasons articulated in Section III of this final action Region 4 has adopted an alternative policy for the North Carolina SIP. It is reasonable to interpret the 302(k) definition of ''emission limitation'' and ''emission standard'' as meaning ''a requirement . . . which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis'' and account for the fact that there are numerous source types for which a single limitation cannot apply at all times for technical reasons. In *Sierra Club,* the Court agreed that the Act does not require a single limitation apply at all times but that some section 112-compliant standard must be applicable at all times.[89] In response to the *Sierra Club* decision's directive that a single standard need not apply continuously, for many of the NESHAP, EPA has established numerical emission limits that apply during full operation but that would be either impractical or impossible to meet during periods of startup and shutdown and therefore also established other emission limitations, such as work practice standards, to apply during periods of startup and shutdown.

Under CAA section 110(a)(2)(A), states are tasked with adopting ''emission limitations and other control measures, means, or techniques . . . *as may be necessary or appropriate* to meet the applicable requirements of this Act'' (emphasis added). States have generally adopted numerical emission limits that apply to sources during full operational mode. However, since some source types may not be capable of complying with such limits during periods of startup and shutdown, North Carolina has provided for exclusions from the numerical limits during those events and adopted other mechanisms for minimizing source emissions instead. As discussed in Section III of this final action, the North Carolina SIP contains myriad provisions that generally provide for attainment and maintenance of the NAAQS. Region 4's evaluation of the North Carolina SIP contributed to determining that it is appropriate to adopt an alternative policy for North Carolina for SSM exemption provisions in SIPs. As stated in the June 5, 2019, NPRM and in this final action, these other mechanisms may include a combination of general duty provisions, work practice standards, best management practices, or alternative emission limits, as well as entirely separate provisions, such as minor source and major source new source review provisions regulating construction or modification of stationary sources, that also effectively limit emissions of NAAQS pollutants at all times, including during any SSM events. For the reasons articulated in Section III of this document, Region 4 disagrees that the automatic exemption for SSM events at 15A NCAC 2D

[83] *US Magnesium* v. *EPA,* 690 F.3d 1157 (10th Cir. 2012).

[84] *See* 58 FR 41430 (Aug. 4, 1993).

[85] *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174 (9th Cir. 2012).

[86] *See* 40 CFR part 51, appendix V, 2.1(a).

[87] *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009).

[88] *Id.* at 515.

[89] *See* 551 F.3d at 1021.

.1423(g) impacts approvability of the SIP revisions in light of the protections afforded by the North Carolina SIP as a whole.

The withdrawal of the SIP Call cannot be an unlawful revision to the North Carolina SIP because this withdrawal does not revise the SIP. In this action, Region 4 is not taking action to approve 15A NCAC 2D .0535(c) and .0535(g) into the North Carolina SIP. These provisions were previously approved by EPA into the North Carolina SIP [90] and have not been removed from the North Carolina SIP. In this action, Region 4 is making a finding that these two provisions are not substantially inadequate to meet CAA requirements and thus withdrawing the SIP Call previously issued to North Carolina that directed the state to provide a SIP revision to address the substantial inadequacy caused by these provisions. We acknowledge that Region 4's finding with respect to the adequacy of 15A NCAC 2D .0535(c) and .0535(g) has changed, but this change, in and of itself, does not constitute a revision of the SIP. On the basis of this change in interpretation for the North Carolina SIP, Region 4 is approving a revision to 15A NCAC 2D .1423 submitted by the state of North Carolina on June 5, 2017, under CAA 110(k)(3). The SIP revision was initiated by the North Carolina Division of Air Quality, and therefore this action cannot be construed as an ''EPA-initiated revision of the SIP.''

As stated in NC DAQ's June 5, 2017, letter, the State provided redline/strikeout versions of six rules for the purpose of administrative review at EPA's request. The letter stated that it had enclosed ''the revised text for rules .1401, .1403, .1406, .1413, .1414, and .1423 that we are requesting your review and approval.'' Region 4 agrees with the commenter that, while the submittal includes the entire text of 15A NCAC 2D .1423, paragraph (g) is not among the *revised* subsections of 15A NCAC 2D .1423. However, as indicated in the NPRM, 15A NCAC 2D .1423(d), which is being revised, includes a meaningful reference to .1423(g).[91] Therefore, because paragraph (d) is, in part, dependent on paragraph (g), it was appropriate for Region 4 to assess the adequacy of paragraph (g) in order to assess whether the revisions to paragraph (d) were approvable under the CAA. Region 4's resultant review of North Carolina's SIP, including the SIP-called provisions, 2D .0535(c) and .0535(g), led to the proposal of an SSM policy for North Carolina that is an alternative to the national SSM policy but that is still consistent with the requirements of the CAA.

In addition, Region 4 disagrees with the comment that NC DAQ's June 5, 2017, submittal fails to meet the applicable completeness requirements prescribed under appendix V. Paragraph 1.2 of appendix V to part 51 provides that if a completeness determination is not made by six months from receipt of a submittal (which EPA did not for NC DAQ's June 5, 2017, submittal), the submittal shall be deemed complete by operation of law on the date six months from receipt. Thus, NC DAQ's June 5, 2017, has been deemed complete, and EPA must act upon it in accordance with CAA section 110(k)(2).

Commenters also misinterpret part 51, appendix V, 2.1(a) to require the signatory on the submittal to be acting at the Governor's request. This provision requires that a SIP revision submittal include a letter ''from the Governor or his designee, requesting EPA approval of the plan or revision thereof . . . .'' Thus, the cover letter on a SIP revision request submitted to EPA must be signed by either the Governor or the Governor's designee, and a designee is not required to be acting at the Governor's request on a particular submittal. In this case, the Director of NC DAQ has been delegated authority to administer the regulatory provisions of state law relating to air pollution control.[92]

3. Comments That EPA Has Not Sufficiently Explained Why the Interpretation of ''emission limitation'' Under Section 110 Might Be Different From the Interpretation Under Section 112

Comment 3: Commenters assert that EPA should articulate what meaning it gives ''emission limitation'' under CAA section 110 versus CAA section 112 and why that alternative interpretation is reasonable. Commenters suggest that EPA could explain relevant terminology such as ''other control measures, means, or techniques'' in lieu of referring to the rules at issue as ''emission limitations,'' and point out that the CAA does not require those other measures to apply continuously as it does emission limitations.

Commenters state that EPA does not explain how continuous emission limits are not applicable to CAA section 110 or, therefore, why the decision related to CAA section 112 in *Sierra Club* is not applicable to SIPs. The commenters add that EPA's analysis regarding CAA section 110 versus CAA section 112 and the *Sierra Club* decision in the June 5, 2019, NPRM restates arguments that were discussed and rejected in the 2015 SSM SIP Call Action.

Other commenters state that EPA is wrong to propose that it may be reasonable to interpret the concept of continuous ''emission limitations'' in a SIP to not be focused on implementation of each, individual limit, but rather whether the approved SIP, as a whole, operates continuously to ensure attainment and maintenance of the NAAQS. Commenters argue that the CAA section 302(k)'s definition of ''emission limitation'' and ''emission standard'' applies to those terms in section 110 SIPs and that the definitions in 42 U.S.C. 7602 are preceded by statutory language noting that the ensuing definitions apply ''[w]hen used in this chapter,'' that is, across the CAA. Commenters add that EPA may not construe a statute in a way that completely nullifies textually applicable provisions meant to limit its discretion and that the June 5, 2019, NPRM completely ignores statutory language and the limit on EPA's discretion. Commenters also state that while EPA correctly notes that ''the court did not make any statement explicitly applying its holding beyond CAA section 112,'' it did not need to because, as relevant here, *Sierra Club* focused on section 302(k), not section 112.

Response 3: Region 4 acknowledges that commenters disagree with the interpretation offered in the June 5, 2019, NPRM and finalized in the current action, but the proposed action and this final action contain extensive explanation supporting the alternative interpretation regarding the interplay of CAA section 302(k) and CAA section 110 and why this alternative interpretation is reasonable for the North Carolina SIP. Region 4 directs commenters to Section III of the June 5, 2019, NPRM and this final action for a thorough explanation of its interpretation of CAA section 302(k) in the contexts of CAA section 110 compared to CAA section 112.

[90] *See* 51 FR 32073 (September 9, 1986) and 62 FR 41277 (August 1, 1997), respectively.

[91] *See* 84 FR at 26040 (''Rule .1423(d)(1) of the State's current federally approved SIP provides that the owner or operator of a subject internal combustion engine shall determine compliance using 'a [CEMS] which meets the applicable requirements of Appendices B and F of 40 CFR part 60, *excluding data obtained during periods specified in Paragraph (g) of this Rule.'* . . . Paragraph (g) of Rule .1423 provides that the emission standards therein do not apply during periods of '(1) start-up and shut-down periods and periods of malfunction, not to exceed 36 consecutive hours; (2) regularly scheduled maintenance activities.' '') (emphasis added).

[92] *See* letter from the Secretary of the North Carolina Department of Environment and Natural Resources to the Director, NC DAQ, June 28, 2010, included in the docket for this rulemaking.

As discussed in Section III of the proposed action and of this final action, Region 4 focused on the flexibility given under section 110, *i.e.,* 110(a)(2)(A), in contrast to section 112. Region 4 noted that the definition of ''emission limitation'' at CAA section 302(k), when read in the 110 context, could provide flexibility to states for providing exemptions at times ''when it is not practicable or necessary for such limits to apply, so long as the SIP contains other provisions that remain in effect and ensure the NAAQS are protected.'' [93] In the context of CAA section 110, it is reasonable to interpret the term ''emission limitation'' differently from how that term is interpreted in CAA section 112 because of the distinct purposes and requirements of the two provisions. CAA section 110 focuses on the attainment and the maintenance of the NAAQS, which is achieved through numerous provisions, adopted by the state and applied to sources throughout the state (or relevant jurisdiction), working together to meet the statutory requirements. CAA section 112, however, requires an exacting analysis to establish requirements for the regulation of hazardous air pollutants (HAP) from specific source categories. CAA section 112 standards only address the regulation of HAP emissions from each respective source category; they do not address attainment or maintenance of the NAAQS, nor do they have the benefit of backstops and overlapping, generally applicable provisions. Further, Region 4 evaluates the SIP comprehensively to determine whether the SIP as a whole meets the requirement of attaining or maintaining the NAAQS under subpart A.[94]

The North Carolina SIP includes general SIP provisions and overlapping planning requirements. In Section IV of the June 5, 2019, NPRM, as reiterated in Section III of this final action, Region 4 has identified generally protective provisions (at 15A NCAC 2D .0501(e), 2D .0510(a), 2D .0511(a), and 2D .0512) as well as specific emission limitations of the North Carolina SIP where appropriate.

Commenters incorrectly assert that the June 5, 2019, NPRM fails to explain why continuous emission limitations are not applicable to CAA section 110 and the rationale for distinguishing the *Sierra Club* decision. A thorough explanation of Region 4's interpretation of CAA section 302(k) in the context of evaluating the North Carolina SIP pursuant to CAA section 110(a)(2)(A), including a discussion of why the *Sierra Club* decision is not applicable in the Section 110 context, is provided in the June 5, 2019, NPRM at 84 FR at 26034–36, and Region 4 refers the commenter to that explanation, together with the discussion of this issue included in Section III of this final action.

Regarding commenters' statement that the arguments made in support of the alternative policy were explicitly discussed and rejected in the final 2015 SSM SIP Call Action, Region 4 is unable to respond because commenters did not specifically identify which arguments they are referencing. In the 2015 SSM SIP Call Action, EPA stated that *Sierra Club* supported the policy position outlined in that document, but EPA did not say that the *Sierra Club* decision compelled that policy position. In fact, the 2015 SSM SIP Call Action acknowledged that the ''decision turned, in part, on the specific provisions of section 112.'' [95] As explained above in the response to Comment 2, the U.S. Supreme Court has expressly provided that administrative agencies may change an interpretation.[96] Consistent with the U.S. Supreme Court's decision, in its June 5, 2019, NPRM Region 4 acknowledged the Agency's prior position, provided statutory authority for the new interpretation, explained its rationale for the change, and explained why it believes the new interpretation is the better policy in this circumstance.[97] Commenters' disagreement with the interpretation does not preclude Region 4 from having authority to change its policy when it has met the required conditions.

Region 4 acknowledges that CAA section 110(a)(2)(A) uses the term ''emission limitation,'' however given how EPA and state agencies have worked cooperatively to implement CAA section 110, Region 4 does not concede that the term must be interpreted exactly the same in the context of CAA section 110 as it was interpreted by the D.C. Circuit in the context of CAA section 112. A thorough rationale for the alternative interpretation is included in Section III of the proposed action and this final action.

Although CAA section 302(k) instructs that an emission limitation limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, emission limitations are merely one of numerous measures that can be used by a state to limit emissions pursuant to CAA section 110(a)(2)(A). While a director may exempt excess emissions which occurred during a period of startup, shutdown and malfunction, assuming an appropriate showing has been made by the source, other ''control measures, means and techniques,'' and potentially other emission limitations, will continue to apply to the source.

Region 4 acknowledges the comment that the presumption of consistent usage dictates that a word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning. Importantly, however, the presumption should be applied pragmatically, and relevant texts indicate that ''this canon is particularly defeasible by context.'' [98] It is appropriate to rely on the *Duke Energy* decision for the proposition that the rule of statutory interpretation calling for words to be defined consistently can be overcome, depending on context.[99] Here, that context is particularly relevant given the different structure and purpose between CAA sections 110 and 112, as described in more detail in Section III of the proposed action and of this final action.

Contrary to commenters' assertion, neither CAA section 110(a)(2)(A) or 302(k) is ''nullif[ied]'' by Region 4's interpretation in the context of this SIP action. Rather, Region 4 offers an alternative interpretation of both provisions, which focuses on the purpose of SIPs, consistent with CAA section 110, and the concept proffered by CAA section 302(k), as interpreted by the D.C. Circuit that some standard, but not necessarily the same standard, apply at all times.[100]

Commenters acknowledge that in the *Sierra Club* decision, ''the court did not make any statement explicitly applying its holding beyond CAA section 112.'' However, Region 4 disagrees with the commenters' characterization that *Sierra Club* must apply beyond CAA section 112, since the court consistently referred to ''112-compliant standards'' [101] and the requirements that ''sources regulated under section 112 meet the strictest standards.'' [102] It is fair

[93] *See* 84 FR at 26035.

[94] *See* 84 FR at 26035.

[95] *See* 80 FR at 33893.

[96] *See Fox,* 556 U.S. 502.

[97] *Id.* at 515.

[98] Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 171 (Thompson/West) (2012).

[99] *See* Valerie C. Brannon, Cong. Research Serv., R45153, Statutory Interpretation: Theories, Tools, and Trends 23 (April 5, 2018) (quoting *Envtl. Def.* v. *Duke Energy Corp.,* 549 U.S. 561, 574 (2007)) (''A given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different implementation strategies'').

[100] *See Sierra Club,* 551 F.3d at 1021.

[101] *Id.* at 1027.

[102] *Id.* at 1028.

for Region 4 to give weight to the language used by the court and to not expand the decision in this context.

4. Comments That the 302(k) Definition of ''Emission Limits'' and ''Emission Standards'' Requires Continuous Emission Limits and That the North Carolina SIP Does not Provide Protections That are Equally Stringent to Continuously Applicable Emission Limits

Comment 4: Commenters generally argue that EPA's June 5, 2019, NPRM contradicts CAA section 302(k) by allowing ''emission limitations'' to include automatic and discretionary exemptions for SSM events, violating the Act's requirement that emission limitations be ''continuous.'' Commenters note that EPA has read CAA section 302(k) to exclude SSM exemptions from SIPs ''since at least 1982.'' [103] Commenters, citing *Sierra Club,* also state that the D.C. Circuit has held, in a case interpreting the section 302(k) definition of ''emission limitations'' as it appears in the Act's section 112 MACT standards, that an emission limitation does not apply on a ''continuous basis'' when it includes SSM exemptions.

Commenters claim that by using a singular, indefinite article—''*a* requirement''—Congress also makes clear that ''emissions limitation'' must be a discrete, ongoing requirement, not a ''broad range of measures . . . targeted toward attainment and maintenance'' of NAAQS and that CAA 302(k)'s terms apply just as much to emission standards or limitations a state establishes as part of its SIP as to those EPA establishes.

Commenters state that automatic and discretionary exemptions violate the bedrock principles of the Act that SIPs must contain ''enforceable emission limitations'' (CAA section 110(a)(2)(A)), which must apply on a ''continuous basis'' (CAA section 302(k)). Commenters add that Congress gave states no authority to relax emission standards on a temporal basis. Commenters also quote the Court in *U.S. Sugar Corp.* v. *EPA* as stating, ''exempt[ing] periods of malfunction entirely from the application of the emissions standards . . . is [not] consistent with the Agency's enabling statutes,'' [104] and ''EPA had no option to exclude these unpredictable periods.'' [105]

Commenters state that even if there are instances where automatic exemptions from emission limits for SSM events in a SIP do not preclude attainment and maintenance of the NAAQS, EPA must issue a SIP call if a state's SIP is substantially inadequate to maintain the NAAQS or otherwise comply with CAA requirements. Commenters also state that EPA's broader point about states' discretion is also flawed because the cases it selectively relies upon hold that SIPs must not only provide for timely attainment and maintenance of NAAQS but also satisfy CAA section 110's other general requirements.

Commenters state that in the final SIP call, EPA noted several cases, including *Mich. Dep't of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000), and *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157 (10th Cir. 2012), where courts upheld EPA action finding that SSM exemptions in SIPs are inappropriate and point to EPA's prior statement characterizing these decisions as confirming the requirement for continuous compliance and prohibiting exemptions for excess emissions during SSM events.

Commenters state that none of the June 5, 2019, NPRM's policy or structural arguments about a ''fundamentally different regime'' in section 110 SIPs grapples with the plain language of CAA section 302(k). Commenters believe Congress expressly requires both emission standards and emission limitations to apply ''on a continuous basis,'' citing the definition at CAA 302(k), and that EPA is not entitled to substitute its judgment for the plain intent of Congress. Commenters state that EPA itself understands that the section 302(k) definition of ''emission limitation'' extends to section 110 SIPs and cite to an action [106] in which EPA references that definition to support the position that an emission limitation is not required to be in numerical form to qualify as a reasonably available control technology (RACT) requirement in the Pennsylvania SIP. Commenters add that the relevant statutory definition is not ''general enough'' to allow EPA to depart from what Congress has specifically stated that the terms ''emission limitation'' and ''emission standard'' mean and that the interpretation EPA proposes has not been made available by the statute. Commenters also state the requirement for ''continuous'' emission limitations means that ''temporary, periodic, or limited systems of control'' do not comply with the Act, citing *Sierra Club,* 551 F.3d at 1027 (quoting H.R. Rep. No. 95–294, at 92 (1977), as reprinted in 1977 U.S.C.C.A.N. 1077, 1170).

Response 4: Commenters cite both to *Mich. Dep't of Envtl. Quality* v. *Browner* [107] and *US Magnesium, LLC* v. *EPA* [108] and question why the June 5, 2019, NPRM does not discuss the cases. At the outset, Region 4 acknowledges the prior policy position cited by the commenters, and for the reasons discussed thoroughly in the June 5, 2019, NPRM and this final action, Region 4 is adopting an alternative interpretation with respect to the North Carolina SIP.

In *MDEQ* v. *Browner,* the Sixth Circuit Court of Appeals deferred to EPA and found EPA Region 5's disapproval of certain Michigan SIP provisions which exempted excess SSM emissions in specified circumstances for the otherwise applicable regulations to be reasonable.[109] While the court did find that EPA's action was reasonable in light of the Agency's existing SSM guidance, the decision did not squarely speak to the legality of SSM exemptions in SIPs as a general matter. The court was merely reviewing a challenge to a locally applicable SIP action undertaken by one EPA regional office and found that the regional office acted reasonably in disapproving certain provisions.

In *US Magnesium,* the petitioner challenged a SIP call issued to Utah by EPA Region 8 due to an unavoidable breakdown rule included in the Utah SIP. In its analysis, the Tenth Circuit Court of Appeals determined that CAA 110(k)(5) is ambiguous, and then evaluated whether the Region's disapproval action was reasonable.[110] The court found it allowable for an EPA regional office to make a determination regarding the SIP's adequacy based on the Agency's ''understanding of the CAA.'' [111] Similarly, this action is consistent with the understanding of the CAA set forth herein. Further, the Tenth Circuit did not fault the Agency for relying on a policy that had not gone through notice and comment.[112] In fact, the alternative policy being adopted by Region 4 and announced in this action went through a public comment process and the Agency carefully considered all comments received. The Tenth Circuit deferred to EPA's SIP call as being reasonable because it was consistent with the Agency's interpretation of the

[103] *See* 80 FR 33941/1.

[104] No. 11–1108, 2016 WL 4056404, at *14 (D.C. Cir. July 29, 2016).

[105] *Id.* at *15.

[106] *See* 84 FR 20274, 20280 (May 9, 2019).

[107] *See* 230 F.3d 181 (6th Cir. 2000).

[108] *See* 690 F.3d 1157 (10th Cir. 2012).

[109] *See* 230 F.3d at 185.

[110] *See* 690 F.3d at 1167.

[111] *Id.*

[112] *Id.*

CAA at that time, as articulated in the document that accompanied that action.[113] While the court acknowledged that EPA's interpretation of the CAA and application of that interpretation to the Utah SIP were reasonable, like the Sixth Circuit, the Tenth Circuit did not squarely rule on the legality of exemption provisions in SIPs. The commenter also cites to the D.C. Circuit's 2008 *Sierra Club* decision, however Region 4 has provided a thorough discussion of that decision in Section III of the proposed action and this final action.

As discussed in Section III of the June 5, 2019, NPRM and of this final action, Region 4 is adopting an alternative interpretation of the interplay between CAA sections 302(k) and 110 which is supported by our consideration of the generally protective terms and provisions of the North Carolina SIP. As explained above in the response to Comment 2, the U.S. Supreme Court has expressly provided that administrative agencies may change an interpretation.[114] Commenters' disagreement with the interpretation does not preclude Region 4 from having authority to change its policy if it is reasonable to do so.

As discussed in Section III of the June 5, 2019, NPRM and of this final action, Region 4 disagrees with commenters' interpretation of the scope of the *Sierra Club* decision and its application to SIP provisions. The commenters read CAA section 302(k) too narrowly. Further, the decision did not speak to the need for a SIP emission limitation to apply on a ''continuous basis.'' Rather, the Court spoke only regarding CAA section 112-compliant standards: ''When sections 112 and 302(k) are read together, then, Congress has required that there must be continuous section 112-compliant standards. The general duty is not a section 112-compliant standard. . . . Because the general duty is the only standard that applies during SSM events—and accordingly no section 112 standard governs these events—the SSM exemption violates the CAA's requirement that some *section 112 standard* apply continuously.'' [115] Additionally, in *Sierra Club,* the D.C. Circuit acknowledged that 302(k) did not necessarily require applying a single standard continuously.[116] Commenters' assertion that CAA 302(k) mandates that SIP must contain emission limits composed of a single standard that applies continuously is misplaced, impractically narrow, and inconsistent with the plain words of the *Sierra Club* decision.

Contrary to the commenter's allegation, Region 4 is not ''invent[ing]'' statutory authority. Rather, guided by the intent of the provisions at issue, Region 4 has re-examined existing statutory authority and considered the merits of an alternative interpretation. As discussed in Section III of the June 5, 2019, NPRM and this final rule preamble, the U.S. Supreme Court has instructed that states have flexibility to ''adopt whatever mix of emission limitations it deems best suited to its particular situation,'' and the alternative interpretation adopted in this action reflects that flexibility.[117]

Legislative history cited by the commenters (and cited by the D.C. Circuit) specifically says that provisions of section 106 of the committee bill are intended ''to overcome the basic objections to intermittent controls and other dispersion techniques which were discussed in the background section.'' [118] The comment mischaracterizes relevant legislative history. Rather than indicating that a single emission limitation must apply to a source continuously, the legislative history indicates that the definition of emission limitation be implemented through having some constant or continuous emission reduction measures, but notably does not indicate an intent for a single discrete measure.[119]

Comments regarding the decision in *U.S. Sugar Corp.* v. *EPA* are inapposite because the case was interpreting the *Sierra Club* decision and both decisions deal with standards set pursuant to CAA section 112's strict requirements (and *U.S. Sugar Corp.* also addressed a CAA section 129 rule which has a standard setting structure more similar to CAA section 112 than section 110). As discussed in depth in section III of the June 5, 2019, NPRM and of this final action, in this instance, it is appropriate to distinguish those decisions from application to SIPs under CAA section 110.

Further, Region 4 disagrees that the definition in CAA section 302(k) is not general enough to have different meanings in different contexts, as is explained in the discussion of the *Duke Energy* decision in Section III of the June 5, 2019, NPRM and this final action.

As explained in Section III.A., the automatic exemption provisions in the North Carolina SIP do not relax an existing emission standard during specified time periods. Rather, Region 4 interprets CAA section 110(a)(2)(A) to mean that a state may provide exemptions from emission limits, during which times a source may be exempt from the emission limit, because the SIP contains a set of emission limitations, control means, or other means or techniques, which apply continuously and, taken as a whole, meet the requirements of attaining and maintaining the NAAQS.

Region 4 disagrees that the alternative policy articulated in Section III of the proposed action and this final action does not engage with the terms in the definition of emission limitations in CAA section 302(k). Rather, as explained in the NPRM and this document, the alternative policy focuses on the purpose and context on the statutory terms and provisions. Region 4 disagrees with commenters' contention that the alternative interpretation adopted is contrary to the plain language of CAA section 302(k). Depending upon context, the concept of continuity may be applied differently in different situations. For example, CAA section 402(7) defines the term ''continuous emission monitoring system'' (CEMS) to mean equipment that provides a permanent record of emissions and flow ''on a continuous basis.'' Yet CEMS methods are required to provide such data at periodic intervals, not for every moment of a unit's operation.[120]

Regarding rules 15A NCAC 2D .0535(c) and .0535(g), Region 4 disagrees with the commenters' assertion that a potential exemption for SSM events means the emission limitations themselves are not continuous. In fact, except for the exemption provided at 15A NCAC 2D .1423(g) (as discussed elsewhere in this document), the SIP emission limitations do apply at all times. Although the SIP provides, under 15A NCAC 2D .0535(c) and .0535(g), that the Director may determine that a particular instance of excess emissions is not a violation because it was unavoidable, as demonstrated by the source, this does not mean that the emission limit in question ceased to apply during the event. Furthermore,

[113] *Id.* at 1170.

[114] *See Fox,* 556 U.S. 502.

[115] *See* 551 F.3d at 1027–28 (emphasis added).

[116] *See id.* (interpreting CAA sections 302(k) and 112 together to mean ''that *some* section 112 standard apply continuously'') (emphasis added).

[117] *Train* v. *Natural Res. Def. Council, Inc.,* 421 U.S. 60, 79 (1975).

[118] H.R. Rep. No. 95–294, at 94 (1977).

[119] *Id.* at 92.

[120] *See* 40 CFR 60.13(e)(1)–(2), 63.8(c)(4)(i)–(ii) (requiring the minimum data collection frequency under the NSPS and NESHAP to be once every 10 seconds for systems measuring opacity and once every 15 minutes for systems measuring other types of emissions).

the fact that the NC DAQ Director might determine, after an instance of excess emissions has occurred, that the event was unavoidable and thus not a violation of a rule is unlikely to lessen a source's efforts to comply with the standard in the first place. This argument is supported by the facts that (1) 15A NCAC 2D .0502 requires all sources to be provided with the ''maximum feasible control,'' which applies at all times, including periods of startup and shutdown; (2) excess emissions are generally emission limit violations, and facilities do not know in advance whether any particular instance will be deemed by the State not to be a violation, so the prudent course of action would be for sources to try to avoid or limit any excess emission events; (3) 15A NCAC 2D .0535(c) requires the Director, in making a malfunction determination, to consider, among other things, whether all equipment has been maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions; and (4) 15A NCAC .0535(g) directs facilities, during startup and shutdown, to operate all equipment in a manner consistent with best practicable air pollution control practices to minimize emissions and to demonstrate that excess emissions were unavoidable when requested to do so by the Director.

Region 4 also disagrees with commenters that the interpretation Region 4 proposed is not available under the statute. The House Report language referenced by commenters comes from a section headed as ''2B. Committee Proposal-*Intermittent Controls and Tall Stacks.*'' [121] The need for ''continuous controls'' is discussed in several places in the report, but always in the context of intermittent controls, tall stacks, and other dispersion enhancement techniques.[122] Thus, it is reasonable to interpret the phrase ''on a continuous basis'' in 302(k) as intending to prevent intermittent controls,[123] tall stacks, and other dispersion techniques from being used as a means of emissions control because those techniques do not actually reduce pollutant emissions. As discussed above, the SSM exemption provisions in the North Carolina SIP do not actually prevent the applicable limits from applying continuously, and Region 4's interpretation is consistent with the intent and language of CAA section 302(k).

The comment regarding the Pennsylvania RACT SIP is beyond the scope of this action. Region 4's announcement of its alternative policy with respect to SSM provisions in the North Carolina SIP is limited in scope to North Carolina and does not impact or govern Region 3's evaluation of SIPs within that Region's jurisdiction.

5. Comments That the Action is not an Appropriate Use of EPA's Regional Consistency Process

Comment 5: Commenters state that Region 4's process for the June 5, 2019, NPRM, including the memo for regional consistency and EPA's accompanying FAQ document, do not support the ability to apply the alternative policy to the North Carolina SIP or other Region 4 SIPs and that EPA's action sets a dangerous precedent for approving exceptions to national consistency. Commenters point out that EPA's national action disapproved the same SIP provision that Region 4 proposed to approve using regional guidance. Commenters state that the Region 4 memo request for concurrence and other materials in the rulemaking docket do not contain any explanation for the basis for the alternative interpretation and how such an alternative policy could apply in Region 4 while a contrary interpretation would apply to the rest of the country. Commenters assert that EPA obviously wants to revise its national policy, and should have to do so at the national level and address the detailed explanations for the existing policy in so doing. Commenters also assert that the Regional SIP action implicitly establishes a new national policy on SSM in SIPs and, ''on the heels'' of the April 29, 2019, Region 6 proposed action in Texas, shows a clear strategy by EPA to reverse a national policy by using Regional decisions. Commenters state that it would be nearly impossible to justify the Regional action overruling the national 2015 SSM SIP call with respect to regional consistency and that Region 4's alternative interpretation, combined with the alternative interpretation used in the Region 6 NPRM, effectively deteriorates national consistency.

Commenters state that the June 5, 2019, NPRM fails to meet the high bar to justify alternative treatment from other Regions with respect to SSM. One commenter asks how many states have made changes to SIPs in response to the SSM SIP call, how many of those revised SIPs EPA has approved, and what communications EPA has had with states about its intent to act on pending SIP revisions or entertain further changes from those states.

Commenters state that Congress has granted EPA no authority to authorize inconsistent interpretations of the Clean Air Act among regions based on a signed concurrence memo from Headquarters. Commenters state that the June 5, 2019, NPRM, and EPA Region 4's pretense to be acting pursuant to EPA's ''consistency'' regulations, in fact contradict 40 CFR 56.5(a) by proposing actions that are flatly inconsistent with the Act and Agency policy. Commenters conclude that Region 4 cannot use regulations addressing inconsistency with ''national policy'' to license violating the CAA. Commenters state that the action would open the door to virtually any exception from national policy on SSM and could therefore lead to increased emissions as well as unnecessary legal proceedings when exceptions are challenged.

Commenters state that EPA's proposed use of its regional consistency regulations is both inconsistent with the plain meaning of those regulations and not entitled to judicial deference under the *Auer-Kisor* line of cases and that no deference would prevent a court from applying the plain meaning of EPA regulations to overturn the Agency's contrary interpretation. Commenters state that EPA misinterprets § 56.5(b) as allowing EPA Regions to take actions that interpret the CAA in a manner inconsistent with national policy when the Region seeks and obtains concurrence from the relevant EPA Headquarters office. Commenters state that Region 4 cannot use regulations addressing inconsistency with ''national policy'' to license violating the Clean Air Act, contradicting and reversing a national EPA rulemaking, and contravening the controlling D.C. Circuit court decision. Commenters

[121] H.R. Rep. No. 95–294, at 91 (1977) (emphasis added).

[122] *See, e.g.,* H.R. Rep. No. 95–294, at 6 (1977) (''Continuous Controls.—The amendments would also affirm the decisions of four U.S. court of appeals cases that the act requires continuous emission reduction measures to be applied. Thus, intermittent control measures (to be applied only in case of adverse weather conditions), increasing stack heights, or other pollution dispersion techniques would not be permitted as final compliance strategies.'') and 190 (''Continuous Reduction—To make clear the committee's intent that intermittent or supplemental control measures are not appropriate technological systems for new sources . . ., the committee adopted language clearly stating that continuous emission reduction technology would be required to meet the requirements of this section.'').

[123] ''Intermittent control'' is a concept in which emissions are tailored to avoid violating ambient air quality standards under meteorological conditions that inhibit pollutant dispersion but without significantly reducing total pollutant emissions. Power plants could accomplish this, at least in theory, by practices such as shifting the electrical load to another power plant or using a temporary supply of low sulfur fuel. *See, e.g.,* EPA, National Strategy for Control of Sulfur Oxides from Electric Power Plants at 11, (July 10, 1974), included in the docket for this rulemaking.

state that § 56.5(b) is not ambiguous for the purposes of this action and does not permit EPA to concur with interpretations that explicitly diverge from the Clean Air Act, a national EPA rulemaking, and controlling court decision. Commenters state that § 56.5(b) does not allow regional offices to create inconsistency of their own accord by approving a SIP that otherwise violates EPA's 2015 SSM SIP Call. Commenters state that EPA may not simply issue a § 56.5(b) concurrence for any region that requests it—to contradict plain statutory language, a national EPA rule, and controlling D.C. Circuit court decision—as Regions 4 and 6 both have proposed. Commenters also reference § 56.3(b) as obligating EPA to ''correct[ ] inconsistencies by standardizing'' the nationally-applicable policies that must be employed by the EPA regional offices implementing and enforcing the Act. Commenters conclude that EPA proposes a contrived application of the regional consistency regulations it hopes will allow it to undo the 2015 SSM SIP Call and circumvent both national rulemaking to reverse the SIP Call and national review of this unlawful action in the D.C. Circuit.

Commenters add that, assuming for the sake of argument that the June 5, 2019, NPRM could be approved under EPA's consistency regulations, it would have to proceed under an additional provision, 40 CFR 56.5(c), which EPA has neither invoked nor fulfilled. Commenters state that ''where proposed regulatory actions involve inconsistent application of the requirements of the act, the Regional Offices *shall* classify such actions as special actions,'' and ''*shall* follow'' the Agency's guidelines for processing state implementation plans, including EPA's guidance document ''State Implementation Plans—Procedures for Approval/Disapproval Actions,'' OAQPS No. 1.2–005A or revisions.[124] Commenters add that compliance with EPA's consistency regulations and guidance is required to give meaning and effect to Congress's ''mandate to assure greater consistency among the Regional Offices in implementing the Act.'' [125]

Commenters also state that, despite an April 29, 2019, letter captioned ''Regional Consistency Concurrence Request'' and a ''concurrence'' signed by the Director of Air Quality Planning and Standards, there is no record evidence that EPA has, in fact, complied with its consistency regulations and mandatory guidance documents in proposing to exempt North Carolina and the rest of Region 4 from the national SSM policy and, therefore, EPA cannot lawfully withdraw its SSM SIP Call for North Carolina or approve the State's previously submitted plan.

Response 5: Comments challenging EPA's general authority to authorize inconsistent interpretations of the Clean Air Act among regions are outside the scope of this action. To the extent commenters are raising concerns with the action taken by EPA Region 6 concerning SSM SIP provisions in Texas, that is outside the scope of this action and Region 4 provides no response.

With respect to the concerns raised regarding this Region 4 action, which is limited in scope to North Carolina, Region 4 did follow the procedures outlined in the regional consistency regulations at 40 CFR 56.5(b), both at proposal as explained in the June 5, 2019, NPRM and acknowledged by commenters, and at final. Specifically, before proposing this action, the Region 4 Acting Regional Administrator at the time, Mary S. Walker, sought and received EPA headquarters concurrence to deviate from the national policy announced in the 2015 SSM SIP Call Action.[126] Also, before finalizing of this action, the Region 4 Regional Administrator sought and received EPA headquarters concurrence to deviate from national policy in this final action.[127] The commenters allege that Region 4 failed 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). 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; EPA has updated its procedures for approving and disapproving SIPs many times since then. Region 4 did follow the most recent iteration of EPA's internal SIP review process for ensuring national consistency, which is EPA's 2018 SIP Consistency Issues Guide (included in the docket for this rulemaking).

The commenters also argue that Region 4 failed to provide justification for deviating from the national policy outlined in the 2015 SSM SIP Action. Nothing in EPA's regional consistency regulations or CAA section 301(a)(2) require a justification to underpin regional deviation from national policy. All that is required by the applicable regulations 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. However, EPA's Office of Air and Radiation did review a draft of this final action and determined that the circumstances and rationale set forth in this action provide a reasonable basis to concur on Region 4's deviation from the national policy outlined in the 2015 SSM SIP Call Action.

Region 4 disagrees with commenters' position that this action is inconsistent with the regional consistency regulations at 40 CFR 56.5 and with the implication that the Agency has run afoul of 40 CFR 56.3. The regulations in 40 CFR part 56 promote consistency but also clearly contemplate that a regional office may seek to deviate from Agency policy and provides a process and framework for doing so, which Region 4 has followed.[128] Commenters assertion that Region 4's interpretation of these regulations is not entitled to deference under *Auer* or *Kisor* is similarly misplaced since Region 4 followed the process set forth in the regulations. Commenters are reiterating their concerns regarding the substance of Region 4's alternative policy for the North Carolina SIP and couching it in a challenge to Region 4's application of the regulatory provisions at 40 CFR 56.5.

Region 4 acknowledges that the 2015 SSM SIP Call Action articulated a different interpretation of the relevant statutory provisions. However, as explained in Sections III and IV of the June 5, 2019, NPRM and Section III of this final action, Region 4 has determined that an alternative interpretation is warranted for the North Carolina SIP. This action only outlines an alternative policy that applies to North Carolina, based on the Agency's evaluation of air quality in North Carolina and the North Carolina SIP. Region 4 is not, in this action, establishing an alternative policy for any other states within its jurisdiction. Application of an alternative policy in any other state other than North Carolina would require a separate rulemaking action subject to APA public comment requirements. To the extent the comments discuss potential Agency actions beyond this action relating to the North Carolina SIP, or precedent for

[124] *See* 40 CFR 56.5(c) (emphasis added).

[125] *See* 44 FR 13043, 13045 (March 9, 1979).

[126] *See* Document ID No. EPA–R04–OAR–2019–0303–0011, available at *www.regulations.gov.*

[127] The concurrence request memorandum, signed March 19, 2020, is included in the public docket for this action.

[128] *See, e.g.,* 80 FR 56418, 56420 n.4 (September 18, 2015), 82 FR 3234, 3239 n.10 (January 11, 2017), and 82 FR 24621, 24624 n.7 (May 30, 2017) (citing 40 CFR 56.5(b) consistency requirements in proposing actions inconsistent with Agency interpretation).

future Agency approaches to actions, such comments are out of scope for this rulemaking.

The comments that this action reverses a national policy or establishes a new national policy overstates the scope of this action, which only announces an alternative policy for analysis of the North Carolina SIP and does not revise or otherwise alter the national policy on SSM. Region 4 lacks authority to issue a policy beyond the states included in the Region. Both the June 5, 2019, NPRM and this action provide a detailed explanation for the basis for the alternative policy and this action.

In response to comments that refer to a controlling D.C. Circuit court decision, Region 4 notes that there is no controlling D.C. Circuit decision because, as discussed in the June 5, 2019, NPRM and in Section III of this final action, *Sierra Club* does not, on its face, apply to SIPs and actions taken under CAA section 110. Region 4 acknowledges that, if there were a directly controlling decision of the U.S. Court of Appeals for the D.C. Circuit, Region 4 would be bound by such a decision pursuant to 40 CFR 56.3(d).

In response to the numerous questions posed by the commenters regarding actions taken by other states with respect to SSM provisions and actions taken by EPA with respect to any such state actions, the present action is a state-specific action and any actions EPA has or has not taken with respect to SIP submittals from other states in other regions are not relevant to this action, and Region 4 provides no response.

6. Comments That EPA Has Not Sufficiently Explained the Rationale Behind the Action

Comment 6: Commenters generally assert that EPA's explanation for the proposed action is inadequate and conclusory and fails to meet Agency standards for decision-making. The commenters claim that EPA has not explained why the alternative interpretation of SSM policy is warranted and that EPA's analysis regarding other provisions in the North Carolina SIP, such as control requirements, maintenance, limitations on the duration of SSM emissions, and general obligations to comply with the NAAQS, only restates arguments that were discussed and dismissed in the 2015 SSM SIP Call. Commenters state that EPA has not supplied a reasoned analysis of why this change in course is necessary, why it is especially necessary in Region 4 (and Region 6) but nowhere else, or even why it might be good policy and that EPA is therefore acting well outside the zone of deference *State Farm* and later cases afford to agencies reversing course in this manner.

Commenters state that EPA has not attempted to show that its prior conclusions were flawed and that it is arbitrary and capricious for the Agency to now rely on legal arguments it had exposed as faulty without explaining why it was wrong to reject those arguments in the first place. Commenters claim that EPA does not now disavow the policy arguments it advanced in support of its plain-text reading of the CAA in the 2015 SSM SIP Call and that EPA has advanced no policy rationale beyond passing mentions of ''flexibility'' to address why allowing SIPs to exempt SSM pollution would advance the goals of the CAA, much less do so better than the status quo. Commenters state that ''[t]he Act's purpose and policy is to protect air quality and the public welfare, not to give states or polluters 'flexibility' embodied, as here, by exemptions that do not hold polluters directly accountable for excess emissions.'' Commenters state that EPA's SSM SIP Call disapproval of automatic exemptions rested, in part, on the correct conclusion that even a single emission event could cause a NAAQS violation and that EPA's reversal of that position is not accompanied by a reasoned explanation for it.

Commenters add that EPA's new vision of how the Act operates ignores the history of failures that led to multiple amendments and the plain statutory requirements of the Act as presently constructed, stating that Congress's unwillingness to rely on the ''old ends-driven approach that had proven unsuccessful'' is reflected in the specific minimum requirements added throughout the 1990 CAA Amendments. Commenters add that, while EPA is not precluded from adopting a different approach to venue under the CAA, the Agency must at least ''display awareness that it is changing position'' and ''show that there are good reasons for the new policy.'' [129]

Response 6: Region 4 disagrees that it has not adequately explained its rationale for this action. Section III of the proposed action and this final action, as well as Section IV of the June 5, 2019, NPRM extensively explain the rationale for this action and why Region 4 believes it is warranted and is the appropriate approach in this circumstance. Specifically, Section III of the June 5, 2019, NPRM and this final rule preamble explain that the U.S. Supreme Court has instructed that states have flexibility to ''adopt whatever mix of emission limitations it deems best suited to its particular situation'' [130] and the alternative interpretation adopted in this action reflects that flexibility. Region 4 does not disagree with the Commenters' assertion that the purpose of the CAA is to protect air quality and public welfare.[131] However, this action does not run afoul of this purpose for numerous reasons, including that the North Carolina SIP contains overlapping protective provisions and, as discussed further in response to Comment 8, the fact that air quality in North Carolina has continued to improve over the years even though exemption provisions have been included in the SIP. No areas of North Carolina are currently designated nonattainment for any NAAQS.[132]

EPA has a statutory obligation to approve SIPs that meet all applicable CAA requirements. Region 4 has evaluated the North Carolina SIP in light of the alternative SSM policy interpretation set forth in the proposed and final actions—a policy which as explained above is consistent with the CAA—and has determined that the submitted SIP revision meets all applicable CAA requirements. Due, in part, to Region 4's adoption of an alternative policy for the North Carolina SIP, Region 4 has approved the June 5, 2017, SIP revision before EPA.

Commenters challenge Region 4's deviation from the national policy without explaining why that national policy is wrong, but commenters fail to recognize that no such explanation is required. The appropriate standard for evaluating an agency change in position was set forth in *Motor Vehicle Mfrs. Ass'n of United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.*[133] and clarified in *FCC* v. *Fox Television Stations, Inc.*[134] The *Fox* Court explained that a change in position does not require a heightened showing and that an agency ''need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one.'' [135] Rather, ''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, which the conscious change of course adequately indicates.'' [136]

[129] *Fox,* 556 U.S. at 515.

[130] *Train,* 421 U.S. at 79.

[131] *See* 42 U.S.C. 7401(b)(1).

[132] *See https://www3.epa.gov/airquality/greenbook/ancl3.html.*

[133] *See* 463 U.S. 29 (1983).

[134] *See* 556 U.S. 502 (2009).

[135] *Id.* at 515 (emphasis original).

[136] *Id.* (emphasis original).

Region 4's June 5, 2019, NPRM acknowledged this change in position by explaining the Agency's historical approach with respect to SSM exemption provisions in SIPs. As articulated in the June 5, 2019, NPRM and reiterated and expanded on in this final action, Region 4 explains how this alternative interpretation is consistent with the statutory text. North Carolina's exemption provisions are reasonably bounded and provide backstop protections of instructing sources to limit excess emissions and maintain pollution control equipment in good working order, among other things. For example, as discussed in more detail in the June 5, 2019, NPRM, the exemption at 15A NCAC 2D .0535(g) requires that owners or operators use best available control practices when operating equipment to minimize emissions during startup and shutdown periods, and the exemption provided at 15A NCAC 2D .0535(c) outlines seven criteria that provide additional protections of the NAAQS during a malfunction by requiring consideration of, among other things, whether sources have minimized emissions and have limited the extent of emissions which could occur to the greatest extent practicable and by prohibiting the Director from excusing excess emissions from a source due to malfunctions for more than 15 percent of a source's operating time.

Moreover, North Carolina's SIP includes numerous additional provisions protecting against NAAQS exceedances or otherwise causing excess emissions. As discussed in more detail in the proposal, 15A NCAC 2D .0502 requires ''maximum feasible control'' on all sources at all times, including periods of startup and shutdown; 15A NCAC 2D .0501(e) directs all sources to operate in a manner that does not cause any ambient air quality standard to be exceeded at any point beyond the premises on which the source is located; 15A NCAC 2D .0535(d) requires utility boilers (and any source with a history of excess emissions, as determined by the Director) to have a malfunction abatement plan approved by the Director and identifies the minimum requirements for such a plan; 15A NCAC 2D .0510(a), 15A NCAC 2D .0511(a), and 15A NCAC 2D .0512 prohibit emissions from sand, gravel, or crushed stone operations, lightweight aggregate operations and wood products finishing plants from causing exceedance of ambient air quality standards beyond facility property lines; 15A NCAC 2D .0521(g), for sources that operate COMS, prohibits any exempted excess opacity emissions from causing or contributing to a violation of any emission state or Federal standard; and the North Carolina Clean Smokestacks Act (NCCSA), codified at 40 CFR 52.1781(h), limits NO_X and SO_2 emissions from coal-fired power plants to utility-wide caps designed as part of North Carolina's comprehensive plan for improving air quality in the State. Region 4 also notes that 15A NCAC 2D .0535 (Excess Emissions Reporting and Malfunctions), including the exemption provisions at 2D .0535(c) and .0535(g), does not apply where sources are subject to Federal standards.[137]

Finally, as previously mentioned, North Carolina currently does not have any areas designated non-attainment under any NAAQS. Together with the goal of providing states with adequate flexibility to address air quality issues, Region 4 has good reason to change the policy position for North Carolina. Region 4 believes this is the better course of action in this case and is thus pursuing this change in policy for North Carolina.

7. Comments That the Notice of Proposed Rulemaking Fails to Demonstrate Compliance With CAA Section 110(l)

Comment 7: Commenters state that, in the event of a SIP element's substantial inadequacy, CAA section 110(*l*) provides that EPA must not approve a SIP containing that element. Commenters state that EPA has failed to show compliance with CAA 110(*l*) and that the June 5, 2019, NPRM failed to address or even mention it. Commenters also state that EPA is wrong to point to ''redundancies'' in the North Carolina SIP to justify its proposed approach because overlapping protections are deliberately implemented to ensure air quality and public welfare are robustly protected, not to provide wiggle room for later deregulatory actions.

Commenters also state that demonstrating compliance with the national standards is not the sole measure for approval of a SIP revision. SIPs in nonattainment areas must also ''meet the applicable requirements of part D.'' In addition, commenters note that CAA section 107(d)(3)(E) provides that EPA cannot redesignate a nonattainment area as an attainment area unless it finds not only that the area has attained the NAAQS, but also that ''the State containing such area has met all [the] requirements applicable to the area under section 7410 of this title and part D of this subchapter.''

Response 7: Region 4 disagrees that it failed to address or to show compliance with CAA section 110(*l*), which provides that ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with an applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this chapter.''[138] The decision to withdraw the SIP Call for the exemption provisions at 15A NCAC 2D .0535(c) and 15A NCAC 2D .0535(g) does not implicate CAA section 110(*l*) because it does not constitute a revision to an implementation plan; the provisions were approved into the North Carolina SIP in 1986[139] and 1997,[140] and have been in the North Carolina SIP ever since. Additionally, although Region 4 did not directly cite CAA section 110(*l*) in the June 5, 2019, NPRM, we proposed to find that the exemption included in the revised SIP provision, ''when considered in conjunction with other elements in the North Carolina SIP, [is] sufficient to provide adequate protection of the NAAQS'' and to determine that the SIP changes ''are consistent with CAA requirements.''[141] As explained in Section IV of the June 5, 2019, NPRM, that proposed determination was explicitly conditioned upon adoption of, as well as based upon, the alternative policy outlined in Section III of the proposed action. The alternative policy was supported by a number of considerations explained in the proposal, including that the North Carolina SIP, as a whole, is protective of the NAAQS. Furthermore, the exemption included in the revised SIP provision is already in the current North Carolina SIP, and no changes are being made to that exemption through this action.

The comment that EPA cannot redesignate a nonattainment area under CAA section 107(d)(3)(E) is not within scope for this rulemaking because EPA is not redesignating any areas previously classified as nonattainment areas in this action; in addition, we note that North Carolina does not currently

[137] See 15A NCAC 2D .0535(b), which provides that 15A NCAC 2D .0535 does not apply to sources subject to North Carolina regulations adopting EPA's NSPS or NESHAP at 40 CFR parts 60, 61 and 63, except where such sources are subject to a SIP provision that is more stringent than Federal requirements.

[138] *See* 42 U.S.C. 7410(*l*).

[139] EPA approved 15A NCAC 2D .0535(c) into the North Carolina SIP on September 9, 1986 (51 FR 32073).

[140] EPA approved 15A NCAC 2D .0535(g) into the North Carolina SIP on August 1, 1997 (62 FR 41277).

[141] *See* 84 FR at 26040.

have any nonattainment areas for any NAAQS.

8. Comments That Region 4 has not Shown That the North Carolina SIP is Protective of the NAAQS

Comment 8: Commenters state that if EPA believes each SIP should be evaluated to determine whether automatic or discretionary SSM exemptions are compatible with the NAAQS, the risk analysis must be more direct. EPA must acknowledge the uncertainty around NAAQS protection given how discretion with subjective terms might be applied. Commenters claim that EPA should have done an analysis of the sources in North Carolina and how these exemptions would not impact the State's ability to attain and maintain the NAAQS and that EPA in fact tried to obscure an accurate characterization of the risk in the June 5, 2019, NPRM. Commenters assert that EPA did not provide adequate legal or technical justification that the SIP is adequate to protect public health or that it is consistent with the CAA as interpreted in EPA's national rulemakings (such as the 2015 SSM SIP Call). Commenters state that the June 5, 2019, NPRM and accompanying supporting documents fail to provide sufficient analysis on how the North Carolina SIP, even with the SSM exemptions, ensures protection of the NAAQS or increment or any other substantive requirement. Commenters also state that EPA's proposal is not clear on whether there is little risk or no risk that the NAAQS and Prevention of Significant Deterioration (PSD) increments will be exceeded in North Carolina as a result of the SIP approval and withdrawal of the SSM SIP Call.

Commenters also disagree that limiting malfunctions to 15 percent of a source's operating time, as required by 15A NCAC 2D .0535(f), will reasonably minimize the risk that excess emissions during these periods will contribute to NAAQS exceedances or violations. In addition, regarding an example SIP provision highlighted in the June 5, 2019, NPRM, commenters assert that annual emissions budgets for electricity generating units (EGUs) in North Carolina are insufficient constraints for short-term periods of exempted excess emissions, which could cause NAAQS exceedances and contribute to violations.

Response 8: The commenters' statements imply that the discretionary criteria of the North Carolina SSM provisions do not meet the requirements of the CAA or protect against violations of the NAAQS. To the extent that commenters may be suggesting that this action must be supported by a risk analysis, Region 4 notes that risk analysis is a requirement of CAA section 112, not CAA section 110. For example, CAA section 112(o) requires the EPA Administrator to conduct a review of risk assessment methodology used to determine the carcinogenic risk associated with exposure to hazardous air pollutants. CAA section 112(f) requires EPA to investigate and report on the risks to public health from sources of hazardous air pollutants that remain, or are likely to remain, after application of the emission standards promulgated by EPA under CAA section 112(d). CAA section 110 requires states to adopt, and EPA to approve, plans for achieving and maintaining compliance with the NAAQS, but ''risk analysis'' is not a required element for SIP submissions (under section 110(A)(2) or any other SIP-related sections). This highlights another difference in purpose and approach between CAA section 110 and CAA section 112.

Regarding the Commenter's concern about uncertainty around NAAQS protection given how discretion with subjective terms might be applied, Region 4 notes that a SIP does not provide complete certainty around NAAQS protection, regardless of whether it contains SSM exemptions. For this reason, the Act requires that remedial measures be taken in any area designated as nonattainment with respect to a NAAQS (CAA section 172(b)) and, if such area fails to make reasonable further progress or to attain the NAAQS by the date required, the Act requires that specific contingency measures will take effect automatically (CAA section 172(c)(9)). Further, given the limitations on the NC DAQ Director's discretion, as discussed in Section III of this final action, and the State's responsibility to implement a program that achieves and maintains compliance with the NAAQS, Region 4 believes the Director would exercise that discretion in a manner that supports protection of air quality.

Region 4 assumes the commenter's reference to North Carolina SIP ''provisions that apply to EGUs that are more protective than the provisions applying to other types of sources'' is to the NCCSA, a State law which, as noted above and in the proposal, imposes limits on NO_X and SO_2 emissions from public utilities operating coal-fired power plants that may not be met by purchasing emissions credits.[142] Those NO_X and SO_2 limits were incorporated into the North Carolina SIP [143] and resulted in permanent emission reductions that helped nonattainment areas in the State achieve attainment of the 1997 Annual $PM_{2.5}$ NAAQS.[144] Region 4 did not suggest in the June 5, 2019, NPRM that the NCCSA limits are, per se, totally protective of the short-term NAAQS, but rather that they serve as some of the several overlapping requirements that, together, are sufficient to ensure attainment and maintenance of the NAAQS.[145]

As Region 4 has thoroughly explained above in section 6 of the response to comments, the alternative policy being adopted for North Carolina conforms with *FCC* v. *Fox Television Stations, Inc.,* as the policy ''is permissible under the statute, . . . there are good reasons for it, and . . . the agency *believes* it to be better, which the conscious change of course adequately indicates.'' [146] Based on Region 4's analysis of the North Carolina SIP, and for the reasons articulated in the June 5, 2019, NPRM and this final action, Region 4 is deviating from the policy outlined in the 2015 SSM SIP Action in this action limited to North Carolina.

Region 4 believes that the withdrawal of the SSM SIP call will not affect North Carolina's ability to attain or maintain the NAAQS, nor will it affect North Carolina's PSD increments. This is because the SSM exemption provisions of the SIP, 15A NCAC 2D .0535(c) and 15A NCAC 2D .0535(g), have been in the approved SIP for many years and are not being revised by this action and because, as discussed in response to Comment 10 below, any excess emissions from large internal combustion engines exempted by 15A NCAC 2D .1423(g) are expected to be a small fraction of those units' overall emissions. In fact, even with the SSM exemptions included in the North Carolina SIP, the State currently has no areas designated nonattainment for any NAAQS.[147] Moreover, historic ambient air quality monitoring data collected in the State show decreasing overall trends in NAAQS pollutant concentrations over time, as demonstrated in the graphics included in the docket for this rulemaking.[148]

[142] *See* 84 FR at 26038.

[143] *See* 76 FR 59250 (September 26, 2011).

[144] *See* 76 FR 58210, 58217 (September 20, 2011); 76 FR 59345, 59352 (September 26, 2011).

[145] *See* 84 FR at 26037–38.

[146] *See* 556 U.S. 502, 515 (2009) (emphasis original).

[147] *See https://www3.epa.gov/airquality/greenbook/ancl3.html.*

[148] *See* document titled ''NC NAAQS Trends Figures'' prepared by Region 4 and included in the docket for this rulemaking.

Likewise, Region 4 does not have evidence indicating PSD increments [149] will be exceeded in North Carolina as a result of the withdrawal of the SIP Call. PSD increments are protected in the State in the same way that the NAAQS are. Further, Region 4 notes that in 2002 EPA revised the PSD program and clarified that for purposes of determining emissions from an emissions unit, ''a unit is considered operational not only during periods of normal operation, but also during periods of startup, shutdown, maintenance, and malfunction, even if compliance with a non-PAL emission limitation is excused during these latter periods.'' [150] The rulemaking added new provisions that specifically require consideration of emissions during SSM events in PSD construction projects.[151]

Region 4 disagrees with the commenter's criticism of the Agency's recognition of the restriction on the amount of time a source may be deemed to have experienced a malfunction and believes that limiting malfunctions to 15 percent of a source's operating time per year establishes a reasonable constraint on the Director's exercise of discretion pursuant to 15A NCAC 2D .0535. Further, evidence that North Carolina is not currently designated nonattainment for any NAAQS indicates that the SIP, as a whole, is ensuring attainment and maintenance of the NAAQS and that the SSM exemption provisions are appropriately bounded and are not a source of nonattainment issues in the State.

9. Comments That the Provisions Relied Upon are not Practicably or Legally Enforceable

Comment 9: Commenters state that in the pending D.C. Circuit litigation in *Walter Coke Inc.* v. *EPA,* No. 15–1166, Petitioners have argued that exempting SSM events from numerical limits is appropriate and lawful because ''general duty'' SIP provisions provide continuous control during all modes of source operation. Commenters argue that not only do such generic provisions fail to meet the level of control required by the applicable stringency requirements, such as reasonably available control technology in nonattainment areas, best available control technology for certain sources in attainment areas, and best available retrofit technology for sources impacting regional haze, but also that general duty provisions are not legally or practically enforceable, as required by the Act. Commenters state that EPA is also wrong to claim that SIP provisions are approvable so long as they do not preclude attainment of the NAAQS and a ''general duty'' provision remains in effect.

Commenters state that, as part of the enforcement scheme, the CAA provides for citizens to have easy access to courts to improve the efficacy of the protections established under it, but that Congress carefully cabined citizen suits to violations of clear standards, requiring plaintiffs to allege a violation of ''a specific strategy or commitment in the SIP.'' Commenters argue that since general duty provisions are not quantifiable or objective, they run afoul of these limitations and thus conflict with congressional intent that citizens be able to enforce emission limitations contained in SIPs. Commenters state that because courts refuse to enforce unquantifiable CAA standards, attempts to enforce general duty and other work practice provisions in SIPs have been unsuccessful, thus concluding that vague and unenforceable general duty provisions are no substitute for continuous emission limitations that apply during all phases of operation.

Commenters state that *Sierra Club* broadly rejects EPA's proposal that SSM exemptions are allowable because a continuous ''general duty'' would satisfy section 302(k)'s continuity requirement that some section 112 standard apply continuously. Commenters also state that *Sierra Club's* holding relied on a determination that the general duty provision (or other general guarantees) may not satisfy 302(k)'s continuity requirement, which is the argument EPA made in proposal.

Response 9: Commenters' references to the *Sierra Club* court's interpretation of general duty provisions is inapposite. As discussed in Section III of both the proposal and this final action, the court in *Sierra Club* was explicitly evaluating whether a general duty provision met the strict framework of CAA section 112. As quoted by the commenters, the court specifically stated that ''[t]he general duty is not a section 112-compliant standard.'' [152] As discussed in the proposal and above, on its face, the *Sierra Club* decision is limited to CAA section 112 and does not extend to CAA section 110. Therefore, commenters' citation to the *Sierra Club* decision with respect to general duty provisions does not govern this action taken pursuant to CAA section 110.

Region 4 disagrees with commenters' contention that general duty provisions are, writ large, not legally or practicably enforceable. Region 4 acknowledges that in some instances general duty provisions may present unique enforcement challenges; that alone does not mandate a conclusion that such provisions are wholesale unenforceable. The interpretation advanced in this document does not preclude citizens or the United States from enforcing SIP provisions, as appropriate. Region 4 disagrees with commenters' narrow characterization of its position being that a SIP provision is approvable provided a general duty provision serves as a backstop. This interpretation oversimplifies the alternative policy. As articulated in Sections III and IV of the proposal and Section III of this final action, the alternative policy is predicated on a holistic evaluation of the North Carolina SIP. While the NPRM identifies numerous general duty provisions that serve as backstops ensuring NAAQS attainment and maintenance, those are not necessarily the only considerations contributing to our determination that it is appropriate to withdraw the SIP call previously issued to North Carolina.

Contrary to commenters' assertion, Region 4 does not advocate general duty provisions ''substituting'' for continuous emission limitations. Rather, the alternative policy provides that the North Carolina SIP may contain SSM exemption provisions because the SIP, as a whole, is protective of the NAAQS. One component of protection is that the SIP includes general duty provisions. However, as discussed in the proposal and above, the analysis does not end there. North Carolina's SIP includes numerous additional provisions protecting against NAAQS exceedances or otherwise causing excess emissions.

10. Comments on Environmental and Health Impacts

Comment 10: Commenters state that reinstating North Carolina's automatic exemptions for SSM emission events would be a ''free pass to pollute with impunity.'' Commenters state that so long as excess emissions from SSM

[149] PSD is the federally required pre-construction permitting program that applies to new major sources or major modifications at existing sources for pollutants in areas that are not designated as nonattainment with the NAAQS. The PSD increment is the amount that the ambient pollutant concentration is allowed to increase in an area to allow for economic growth but also prevent the air quality from deteriorating to the level set by the NAAQS.

[150] *See* 67 FR 80186, 80213 (December 31, 2002).

[151] For example, the definitions of ''baseline actual emissions'' (the average annual rate that a unit actually emitted a relevant pollutant in recent years) and ''projected actual emissions'' (the maximum annual rate at which an existing emission unit is projected to emit the relevant pollutant after modification) require the inclusion of ''emissions associated with startups, shutdowns, and malfunctions.'' *See* 40 CFR 51.166(b)(40)(ii)(*b*), (b)(47)(i)(*a*), and (b)(47)(ii)(*a*).

[152] *Sierra Club* v. *EPA,* 551 F.3d 1019, 1027 (D.C. Cir. 2008).

events escape regulation, polluters have little incentive to invest in fixing known plant issues or improving the equipment necessary to avoid breakdowns and reduce the need for ''unscheduled maintenance'' because they know they will not face consequences for illegal pollution released during these events, which is a problem because emission events and pollution released during ''unauthorized maintenance'' is a major threat to public health and the environment. Commenters also state that allowing excess emissions from SSM events to escape regulation would undermine North Carolina's obligations to protect and maintain safe air quality, both within the state and for downwind neighbors.

Commenters state that approval of the North Carolina SIP revision would ''sanction emissions of potentially substantial amounts of unhealthy air pollution'' which would be emitted during periods of SSM in amounts that cannot be determined in advance and therefore cannot assure protection of the NAAQS. Commenters claim that SSM events release ''huge amounts'' of pollution that can cause exceedances and violations of the NAAQS and cite to an example in which ''one known event released 165,000 pounds of sulfur dioxide.''

Commenters claim that reviving SSM exemptions in North Carolina and in Region 4 would frustrate the attainment efforts of nearby states and regions along the east coast, particularly in the ozone and SO_2 nonattainment zones around Washington, DC, and Baltimore and surrounding counties in Virginia and Maryland. Commenters also state that Sullivan County, Tennessee, near the North Carolina border, is currently also a nonattainment area for SO_2 and that North Carolina itself has consistently faced pollution from neighboring states, and that Mecklenburg County, North Carolina, is close to violation of the 2015 ozone standard.

Commenters state that EPA's approval of attainment and maintenance plans for certain NAAQS did not consider excess emissions that may occur and that, for some pollutants, approval of the plan relied on a monitoring network that did not cover the land area of the state. Commenters also state that, because of the limited air quality monitoring network, violations of the NAAQS may escape official notice, but the harmful effects of SSM events nonetheless burden the neighboring communities.

Commenters note that a study, provided as an attachment to the comments,[153] provides information about the frequency and magnitude of excess emissions in the State of Texas and claim that SSM emissions can undermine CAA protections if state rules exclude them from regulation. Commenters state that neither EPA nor North Carolina has done any analysis to evaluate the extent of excess emissions that could be authorized by the SIP revision. Commenters state that exempting SSM events from regulation threatens not only maintenance of those standards (as discussed above) but also human lives by allowing high concentrations of deadly fine particulate matter to form. Commenters also state that the Act's requirement for continuously enforceable emission limitations is vitally important for protecting public health. In support of this statement commenters quote a 2016 EPA brief in litigation regarding the 2015 SSM SIP Call,[154] which quotes the 2015 action,[155] which quotes the House Report on the 1977 CAA Amendments as stating, ''Without an enforceable emission limitation which will be complied with at all times, there can be no assurance that ambient standards will be attained and maintained.'' [156]

Commenters also note that in EPA's 2015 action, it acknowledged it was particularly concerned about the potential for serious adverse consequences for public health in the interim period during which states, EPA and sources were to make adjustments to rectify deficient SIP provisions and take steps to improve source compliance. Commenters state that EPA has not explained in this rulemaking why those concerns are no longer justified or relevant to this action and that EPA has not addressed or even mentioned the health effects of the action in qualitative or quantitative terms.

Response 10: Region 4 clarifies that no provisions are being reinstated into the North Carolina SIP. In this action, Region 4 is approving changes to existing rule 15A NCAC 2D .1423, as requested by North Carolina. The State's provisions that were subject to the SSM SIP Call, 15A NCAC 2D .0535(c) and .0535(g), were approved by EPA on September 9, 1986,[157] and on August 1, 1997,[158] respectively, and have never been removed from the SIP. Withdrawal of the SSM SIP Call for North Carolina only means that the State is not required to provide a SIP revision responsive to the SIP Call for 15A NCAC 2D .0535(c) and .0535(g).

Region 4 disagrees with the comment that these rules provide sources throughout Region 4 a ''free pass to pollute with impunity.'' As an initial matter, this action is limited in scope to the North Carolina SIP and does not cover sources throughout Region 4. Additionally, as discussed in the June 5, 2019, NPRM, 15A NCAC 2D .0535(c) and .0535(g) themselves (and other provisions of the SIP) direct sources, to the extent practicable, to minimize emissions at all times, including periods of SSM. These rules also provide that only excess emissions that were *unavoidable* by the source may be considered not to be violations of applicable rules. Under 15A NCAC 2D .0535(c), excess emissions that occur at any time other than a period of startup or shutdown are violations of the applicable SIP limit unless the owner or operator demonstrates, to the degree required by the Director's judgment, that the emissions are the result of a malfunction (*i.e., unavoidable* failure of air pollution control equipment, process equipment, or process, as defined at 15A NCAC 2D .0535(a)(2)). To determine whether excess emissions are the result of a malfunction, the Director shall consider, among other factors listed in the rule, whether the air cleaning device, process equipment, or process have been maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions. Thus, a determination by the Director that these criteria have not been met would mean that excess emissions are not the result of a malfunction and, therefore, are a violation of the appropriate rule.

Likewise, 15A NCAC 2D .0535(g) requires that excess emissions that occur during periods of startup and shutdown are violations of the appropriate rule if the owner or operator cannot demonstrate that the emissions were *unavoidable,* when requested by the Director to do so. Any determination by the Director that the owner or operator has not, to the extent practicable, operated the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during

[153] The study, titled ''The health consequences of weak regulation: Evidence from excess emissions in Texas,'' appears to be an unpublished document downloaded from the internet at *https://www.ssrn.com/index.cfm/en/.*

[154] *Walter Coke Inc.* v. *EPA,* No. 15–1166 (and consolidated cases) (D.C. Cir.).

[155] *See* 80 FR at 33901.

[156] H.R. Rep. No. 95–294, at 92 (1977).

[157] *See* 51 FR 32073.

[158] *See* 62 FR 41277.

startup or shutdown would mean that any excess emissions are a violation of the appropriate rule.

Commenters' statements are unclear as to what is meant by the terms ''unscheduled maintenance'' and ''unauthorized maintenance.'' ''Maintenance'' may be defined as the work of keeping something in a suitable condition [159] and therefore consists of normal, periodic equipment upkeep activities that help to prevent equipment failures. Region 4 understands the commenters' intent to be that if SSM events are unregulated, sources lack incentive to maintain their equipment or improve emission controls. The comment seems to presume, without evidence, that source owners and operators conduct their processes and operate their facilities with reckless disregard for the environment and without regard for other SIP provisions requiring control of emissions and protection of the NAAQS, as discussed above. Region 4 is not aware of reasons to suspect this to be the case. Region 4 disagrees with the commenters' conclusion that sources will not face consequences for illegal pollution released during SSM events. As described above, SSM events that result from a failure to address known plant issues or conduct routine maintenance would likely not meet the criteria outlined for the Director's consideration regarding when excess emissions are not considered a violation.

Region 4 also notes that the action approving 15A NCAC 2D .0535(c) into the North Carolina SIP specifically stated that EPA retains authority to pursue enforcement of any particular case: ''it should be noted that EPA is not approving in advance any determination made by the State under paragraph (c) of the rule, that a source's excess emissions during a malfunction were avoidable and excusable, but rather is approving the procedures and criteria set out in paragraph (c). Thus, EPA retains its authority to independently determine whether an enforcement action is appropriate in any particular case.'' [160] Moreover, North Carolina has already stated its position that ''[n]othing in the existing SIP provisions prohibits or restricts in any way the ability of the EPA and/or a citizen to file an action in federal court seeking enforcement of the SIP provisions.'' [161]

As described in the preceding paragraphs, Region 4 disagrees that 15A NCAC 2D .0535(c) and .0535(g) allow pollutant emissions to escape regulation and that the State's implementation plan lacks regulatory incentive for sources to maintain their equipment and upgrade emission controls when possible. Further, regular source maintenance activities are essential to avoiding excess emision events and are incentivized by the regulatory requirements to submit excess emission reports under 15A NCAC 2D .0535(f), which provides that all instances of excess emissions which last for more than four hours, regardless of whether due to malfunction or any other abnormal condition, must be communicated to the Director or designee within 24 hours of the occurrence. The SIP does not automatically require such reports for excess emission events lasting less than four hours; however, 15A NCAC 2D .0605 requires that all monitoring records be retained by the owner or operator and made available for inspection for a period of two years. In addition, all sources subject to the title V permitting program, including all major sources of pollutants subject to regulation, must submit to the State semiannual monitoring reports and annual compliance certifications that clearly identify all instances of deviations from permit requirements.[162]

The SIP revision being approved through this action is limited to 15A NCAC 2D .1423, the State's rule regulating emissions of NO_X from ''large internal combustion engines.'' North Carolina's June 5, 2017, SIP revision includes several changes to this rule. Among the provisions being revised is 15A NCAC.1423(d)(1), ''Compliance determination and monitoring.'' North Carolina modified 15A NCAC.1423(d)(1) to ensure that CEMS data used for determination of compliance with this rule meet applicable SIP requirements as well as Federal requirements. Section 2D .1423(d)(1) of the State's current federally-approved SIP provides that the owner or operator of a subject internal combustion engine shall determine compliance using ''a [CEMS] which meets the applicable requirements of Appendices B and F of 40 CFR part 60, excluding data obtained during periods specified in Paragraph (g) of this Rule.'' [163] Paragraph (g) of Section 2D .1423, which is already included in the current federally approved SIP, provides that the emission standards therein do not apply during periods of ''(1) start-up and shut-down periods and periods of malfunction, not to exceed 36 consecutive hours; (2) regularly scheduled maintenance activities.'' As proposed in Section IV of the NPRM, Region 4 finds that the provisions of 15A NCAC 2D .1423(g), when considered in conjunction with other elements in the North Carolina SIP, are sufficient to provide adequate protection of the NAAQS [164] and that the exclusion of emission standards during periods of SSM and regularly scheduled maintenance activities will not have any adverse impact on air quality. Indeed, 15A NCAC 2D .1423, including paragraph (g) thereof, has been in the federally-approved North Carolina SIP for seventeen years,[165] and there is no evidence that it has caused or contributed to any interference with attainment or maintenance of the NAAQS. Certainly, North Carolina's adoption of 15A NCAC 2D .1423, which required significant reductions in NO_X emissions from large internal combustion engines, was a SIP strengthening measure even though the State chose not to apply its limits during SSM events and scheduled maintenance activities. In fact, Region 4 notes that much of the text of 15A NCAC 2D .1423, including paragraph (g), is the same as the text of part of a FIP that EPA proposed but did not need to finalize in order to meet NO_X SIP call emission budgets.[166] In other words, EPA itself proposed the same SSM and maintenance exemptions for NO_X emissions from stationary reciprocating internal combustion engines in 1998 that North Carolina adopted in 2002.

Furthermore, Region 4 observes that numerical emission limits generally cannot be enforced during internal combustion engine startup because measurement of emissions from this type of unit during startup is technically infeasible using currently available field

[159] *See Webster's II New Riverside University Dictionary* 717 (Anne H. Soukhanov, Senior Editor, The Riverside Publishing Company, 1984) (defining ''maintenance'').

[160] *See* 51 FR 32073, 32074 (September 9, 1986.)

[161] Letter from Sheila C. Holman, Director, NC DAQ, to EPA, May 13, 2013, page 3, Docket ID No. EPA–HQ–OAR–2012–0322–0619, available at *www.regulations.gov.*

[162] *See* 15A NCAC 2Q .0508(f), .0508(n); 40 CFR 70.6(a)(3)(iii), (c)(5)(iii)(C).

[163] The rule revision inserts ''and .1404 of this Section'' following the word ''Rule'' in this text to ensure that the CEMS used to obtain compliance data must meet the applicable requirements specified in Rule .1404 (in particular, Paragraphs (d)(2) and (f)(2) of Rule .1404) as well as the applicable part 60 requirements since those provisions specify additional Federal requirements for obtaining CEMS data.

[164] North Carolina has bounded the time during which a source can employ this exemption, minimizing the potential that any excess emissions during these periods would cause or contribute to a NAAQS exceedance or violation. Therefore, the exemption, which allows for emission standards of the rule to not apply during periods of startup, shutdown, and malfunction of up to 36 consecutive hours, or maintenance, is not inconsistent with the requirements of the CAA section 110.

[165] *See* 67 FR 78987 (December 27, 2002).

[166] *See* 63 FR 56394, 56427 (October 21, 1998).

testing procedures.[167] In addition, internal combustion engines start up rapidly, typically requiring about 15 minutes to 30 minutes of operation for the emission control systems to reach an effective operating temperature.[168] Likewise, because internal combustion engines are typically shut down in a matter of minutes,[169] emissions during shutdown are also a minor contribution to overall emissions. Regarding malfunctions, Region 4's understanding is that any malfunctions by internal combustion engines generally will not cause violations of applicable emission standards because in most cases these units shut down immediately or with very little delay.[170] Maintenance activities are required to ensure units operate at peak efficiency during normal operation and that the potential for equipment failure is minimized. Region 4 is aware of no reason to expect that regular maintenance activities might cause increased pollutant emission rates. In conclusion, far from sanctioning unhealthy air emissions as claimed by commenters, North Carolina's exclusion of periods of SSM and regularly scheduled maintenance from the emissions standards of 15A NCAC 2D .1423 is appropriate because internal combustion engine emissions cannot be accurately measured during such events and because such events comprise a small fraction of overall unit operating time. The existing rule, as revised, illustrates a practice on the part of North Carolina of making informed, reasonable choices, based on knowledge of the sources they regulate, when developing SIP requirements and is consistent with the State's overall plan for improving air quality. Consistent with the U.S. Supreme Court's direction in *Train,* Region 4 finds that North Carolina can determine whatever mix of emission limitations it deems best suited for a situation, and Region 4 is approving the SIP revision after finding it complies with the CAA.[171]

Region 4 also disagrees with the comment that SSM exemptions in the North Carolina SIP would frustrate the ozone and SO_2 attainment efforts of nearby states. First, as discussed in the proposal and elsewhere in this final action, the North Carolina SIP contains numerous provisions that work in concert and provide redundancy to protect against a NAAQS exceedance or violation, even if an SSM exemption provision also applies. Therefore, Region 4 has concluded that it is reasonable for the NC DAQ Director to be able to exclude qualifying periods of excess emissions during periods of SSM without posing a significant risk to attainment or maintenance of the NAAQS. Based on the same rationale, these same provisions of the State's implementation plan help protect against contribution to air quality issues outside the State as well. Second, as discussed below, commenters provide no support for their assertions regarding the significance of pollutant emissions during any SSM events in North Carolina and the contribution of those emissions to downwind air quality issues.

Regarding the specific concerns raised by the commenter regarding ozone nonattainment in neighboring states, EPA's recent transport analyses have demonstrated that emissions from North Carolina do not significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in downwind states. In the 2011 Cross-State Air Pollution Rule (CSAPR), EPA determined that emissions from North Carolina were not linked, and therefore did not contribute, to any downwind nonattainment receptors (*i.e.,* ambient air quality monitoring sites) and were linked to two downwind maintenance receptors for the 1997 8-hour ozone NAAQS in its 2012 analytic year.[172] However, EPA's analysis in a subsequent action on remand from the D.C. Circuit demonstrated that those air quality problems would be resolved in 2017 and thus that North Carolina would no longer interfere with maintenance of the 1997 ozone NAAQS at these receptors.[173] Moreover, in the 2016 CSAPR Update, EPA determined that North Carolina does not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS because the State's impact on downwind receptors was well below the threshold used to identify contributing states.[174]

Regarding the concerns raised by the commenter regarding SO_2 nonattainment in neighboring states, North Carolina does not currently have any nonattainment areas, as noted earlier in this document, and commenters provide no specific support for their assertion that SO_2 emissions from North Carolina have an impact on SO_2 attainment issues in downwind states that would be impacted by the provisions being approved into the SIP. Because emissions of this pollutant are transformed in the atmosphere into fine particles (*i.e.,* $PM_{2.5}$) relatively quickly,[175] violations of the SO_2 NAAQS are generally found in areas having sources that emit SO_2 in quantities large enough, prior to transformation into fine particles, to cause issues in the local area.

Regarding commenters' statement that Sullivan County, Tennessee, near the North Carolina border, is a nonattainment area for SO_2, the commenters have not explained how this action may lead to relevant emissions increases in North Carolina likely to affect this area. The primary SO_2-emitting point source located within the Sullivan County SO_2 nonattainment area (Sullivan County Area) is the Eastman Chemical Company.[176] The Sullivan County Area consists of that portion of Sullivan County encompassing a circle having its center at this facility's B–253 power house and having a 3-kilometer radius.[177] North Carolina, on the other hand, has no large sources of SO_2 emissions within 50 km of the Sullivan County Area. Accordingly, the commenters have not identified any sources of emissions in North Carolina likely to increase as a result of this action which would impact the Sullivan County Area.

In response to commenters' concern that Mecklenburg County, North Carolina, is close to violation of the 2015 ozone NAAQS, Region 4 notes that Mecklenburg County has not violated the 2015 ozone NAAQS. For North Carolina, in 2012 only the Charlotte-Rock Hill Area (which includes Mecklenburg County) was designated nonattainment for the 2008 ozone standard of 75 parts per billion (ppb). In 2015, this Area was redesignated to attainment for that standard. In 2017, the entire State was designated attainment/unclassifiable for the more protective 2015 ozone standard of 70

[167] *See, e.g.,* 75 FR 9648, 9665–66 (March 3, 2010) and 75 FR 51570, 51576–77 (August 20, 2010).

[168] *See, e.g.,* 74 FR 9698, 9710 (March 5, 2009).

[169] *Id.*

[170] *Id.*

[171] *Train* v. *Natural Res. Def. Council, Inc.,* 421 U.S. 60, 79 (1975).

[172] *See* 76 FR 48208, Tables V.D–8 and V.D–9 (August 8, 2011).

[173] *See* 81 FR 74504, 74523–524 (October 26, 2016).

[174] *See* 81 FR 74504, 74506, 74537, Table V.E–1 (October 26, 2016).

[175] For example, in SO_2 transport analyses, EPA focuses on a 50 km-wide zone because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that drop off with distance. *See, e.g.,* 84 FR 72278, 72280 (December 31, 2019).

[176] *See* Technical Support Document (TSD), Tennessee Area Designations For the 2010 SO_2 Primary National Ambient Air Quality Standard, at 8–10, available at *https://www.epa.gov/sites/production/files/2016-03/documents/tn-tsd.pdf* and in EPA's docket for the Round 1 Air Quality Designations for the 2010 Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard, 78 FR 47191 (August 5, 2013).

[177] *See* 40 CFR 81.343.

ppb.[178] Region 4 has recently reviewed preliminary data which indicates the Charlotte-Rock Hill Area will likely still be attaining the 2015 ozone NAAQS when the 2019 data are certified. While commenters are correct that ozone concentrations in the Area are near the 2015 ozone standard, this is expected to be due primarily to meteorological conditions (hotter summers) over the past two years and other factors, such as increasing mobile emissions. Any increases in ozone design values in North Carolina cannot reasonably be attributed to SSM exemptions in 15A NCAC 2D .0535(c) and .0535(g) because those provisions have been in the SIP for many years and thus have not been a source of change since that time.

In response to comments that EPA's approval of attainment and maintenance plans for certain NAAQS did not consider excess emissions that may occur, Region 4 agrees that it had no reason to suspect that excess emissions exempted under Rules 2D .0535(c), 2D .0535(g) and 2D .1423(g) would be frequent enough or of great enough magnitude to prevent approval of those plans, and commenters have provided no such evidence either in this action or in our prior actions approving those attainment and maintenance plans. North Carolina has an ambient monitoring network plan that meets or exceeds the requirements of 40 CFR part 58 and is subject to public comment, with the objective of long-term assessment of air quality. To operate monitors that measure air pollutant concentrations over the entire State would not be feasible.

The State evaluates whether excess emissions qualify for the exemptions outlined in 15A NCAC 2D .0535(c). For example, over the 5-year period 2015–2019, Region 4 has received information from North Carolina indicating 26 malfunction determinations were made by the State.[179] Six of those determinations were made on demonstrations that facilities were required to submit, in accordance with 15A NCAC 2D .0535(f), because malfunction events resulted in excess emission that lasted for more than four hours. While North Carolina evaluated all of the malfunction determinations submitted, NC DAQ determined that twenty of those submissions were not required to be submitted either because the excess emission event lasted less than four hours or because no applicable emission rate limit was exceeded. Also relevant, the State issued an average of about 300 notices of violation per year for various operating permit deviations during the same time period.[180] In addition, as discussed above, the SIP requires that all monitoring records be retained by the owner or operator and made available for inspection for a period of two years but does not require automatic reports to the State for excess emission events that last less than four hours. In accordance with 15A NCAC 2D .0535(c), no exemption from violation status is provided for any excess emission event unless the owner or operator of the source demonstrates to the Director's satisfaction that the excess emissions are the result of a malfunction. Such determinations appear to be an infrequent occurrence, having been made an average of only about five times per year over the past five years in the State, which has about 300 sources holding title V operating permits [181] and over 1,600 sources holding non-title V operating permits.[182]

Region 4 acknowledges the study cited by commenters regarding excess emissions in Texas. However, the study is specific to emissions in Texas and does not speak to this action, which is focused on and limited to an evaluation of the North Carolina SIP, and, as a corollary, emissions in North Carolina. Region 4 points out that the referenced study is not from a peer-reviewed journal article and does not attempt to show a relationship between the occurrence of excess emissions in Texas and that State's treatment of SSM events. Region 4 also observes that a cursory review of the air emission event reports [183] which the study is based upon shows that most of the excess emissions resulted from industrial flaring events at crude oil and natural gas production facilities.[184] This is a circumstance of particular significance to Texas, which leads the nation in the production and refining of crude oil and the production and processing of natural gas.[185] North Carolina, however, has none of these types of operations,[186] and therefore the study is of little relevance the State's air quality control program. Commenters have provided no information suggesting that excess emission events exempted under the North Carolina SIP have been associated with significant adverse impacts on air quality or human health, and Region 4 is aware of none.

Commenters state that neither EPA nor North Carolina has done any analysis to evaluate the extent of excess emissions that could be authorized by the SIP revision, but the SIP revision at issue does not add or otherwise alter the SSM exemption provisions which are already in the North Carolina SIP. Further, excess emission events are difficult to quantify, but Region 4 has evaluated the air quality in North Carolina and the actual occurrence of such excess emission events, as explained above. Even though the North Carolina SIP contains the SSM exemption provisions discussed in this action, air quality in the State has steadily improved over the years, as discussed in response to Comment 8, and North Carolina does not currently have any non-attainment areas.

Commenter's quote from page 92 of H.R. Rep. No. 95–294 excludes the context that adds clarity to the intended meaning of the passage. The statement ''Without an enforceable emission limitation which will be complied with at all times, there can be no assurance that ambient standards will be attained and maintained'' is immediately followed by four more sentences explaining that any emission limitation under the Act ''must be met on a constant basis, not an 'averaging' basis such as, for example, would be the case if averaging sulfur content of coal was allowed'' [187] (as might happen when coals of low-sulfur and high-sulfur content are combusted at different times). The paragraph explains that the ''averaging'' method is not allowable because it cannot provide assurances that an emission limitation will be met at all times (since inherent to the averaging method is the fact that the emission limitation would sometimes be

[178] In 2015 EPA revised the primary and secondary levels of the ozone standard to 0.070 parts per million to provide increased public health and welfare protection for the reasons described in the final published action. *See* 80 FR 65292 (October 26, 2015).

[179] *See* email and attached spreadsheet from Steve Hall, NC DAQ, to Joel Huey, EPA, January 9, 2020, included in the docket for this rulemaking.

[180] Obtained from ''NC Air Quality Update,'' Mike Abraczinskas, Director, NC DAQ, April 11, 2019, slides 25 and 27, included in the docket for this rulemaking.

[181] *Id.,* slide 22.

[182] *Id.*

[183] According to the researchers, only Texas, Oklahoma, and Louisiana maintain systematic data on excess emissions events that is usable for research, and Texas publicly posts details regarding emissions events on its website at *https://www2.tceq.texas.gov/oce/eer/.*

[184] For example, a search on emissions events in all areas during the period January 1, 2020–January 10, 2020, results in 48 reports filed, at least 75 percent of which were flaring events at facilities in the crude refining and gas production industries.

[185] U.S. Energy Information Administration (EIA), Texas Profile Data, Reserves, and Supply & Distribution, *https://www.eia.gov/state/analysis.php?sid=TX* (accessed January 14, 2020).

[186] U.S. EIA, North Carolina Profile Data, Reserves, and Supply & Distribution, *https://www.eia.gov/state/analysis.php?sid=NC* (accessed January 14, 2020).

[187] H.R. Rep. No. 95–294, at 92 (1977).

exceeded). In other words, Congress was explaining that an effective emission limitation is one that reduces emissions continually and is not one that simply calculates a long-term average of emissions. The SSM exemptions of the North Carolina SIP provide sources no relief from their obligation to utilize emission control devices and work practices to the extent practicable, and they are not an emission averaging scheme.

Regarding the commenters' statement that ''one known event released 165,000 pounds of sulfur dioxide,'' Region 4 observes that the referenced event occurred in Louisiana in October 2011.[188] A report about this specific event, completed by the Louisiana Department of Environmental Quality Inspection Division, states the incident was preventable and ''will be referred as an AOC on LAC 33:111.905.A'' (*i.e.,* an Administrative Order on Consent for violating Louisiana Administrative Code 33:111.905.A, which requires proper use of emission controls). Thus, the referenced event, which occurred almost nine years ago in a state other than North Carolina, was not exempted by that state but instead was identified as requiring an administrative order to correct the problem that caused the exceedance. While Region 4 acknowledges that air pollutant emissions can be higher than normal during SSM events, commenters have provided no viable evidence supporting their contention that excess emissions which are exempted from violation status release ''huge amounts'' of pollution or that they have a significant impact on attainment and maintenance of the NAAQS, particularly not from the State of North Carolina, and Region 4 is aware of none.

Region 4 also disagrees that this action exempts excess emission events from regulation. The SIP-called provisions do not automatically exempt emissions during SSM; they provide for use of Director's discretion, which Region 4 expects would exempt fewer excess emission events than an automatic exemption. This action will not cause an increase in emissions because the SIP-called provisions were approved by EPA in 1986 and 1997 and have been in effect, without interruption, since those approvals. Similarly, as referenced above, the automatic exemption in 15A NCAC 2D .1423 has been in the North Carolina SIP since 2002, and that approval is also not impacted by this action. Therefore, this action is not expected to have any adverse impact on air quality. While EPA stated in the 2015 SSM SIP Action that the Agency was concerned about the potential for serious adverse consequences for public health during the interim period in which states, EPA and sources took measures necessary to respond to the SSM SIP call, the Agency made no finding of actual harm, in qualitative or quantitative terms, from the provisions called for revision. Rather, EPA discussed at length the assertion that ''EPA does not interpret section 110(k)(5) to require proof that a given SIP provision caused a specific environmental harm or undermined a specific enforcement action in order to find the provision substantially inadequate.'' [189] EPA did not make a specific factual finding regarding actual harm in North Carolina when it issued the SIP call in 2015, and no factual finding is required for Region 4 to adopt an alternative interpretation of the statutory provisions at issue. The proposal and this final action provide a comprehensive rationale for Region 4's alternative policy and its change in interpretation.

As explained in the June 5, 2019, NPRM, the NAAQS have been set to provide requisite protection, including an adequate margin of safety, for human health.[190] The purpose of the SIP is to ensure compliance with the NAAQS, *e.g.,* attainment and maintenance. EPA has an obligation to approve SIP revisions if the Agency does not determine it will negatively impact a state's ability to attain or maintain the NAAQS. Region 4 views the various overlapping planning requirements of the North Carolina SIP as sufficient to meet the requirements of CAA section 110. Commenters have not provided sufficient evidence to suggest that the SIP revisions approved in this action would prevent North Carolina from attaining or maintaining the NAAQS.

11. Comments on Director's Discretion Provisions

Comment 11: Commenters state that EPA cannot reasonably conclude the NAAQS will be protected if NC DAQ's Director can exempt SSM emissions from being violations. Commenters argue that SIP-called provisions list seven criteria for the Director to consider, but does not limit consideration to those criteria and notes that the terms are open to subjective interpretation and that the Director may abuse discretionary authority, which can lead to NAAQS violations. Commenters claim that even if all of the conditions required to qualify as a malfunction under the North Carolina SIP have occurred, the criteria rely on subjective terms. The one mandatory provision, commenters state, relies on the subjective term ''as practicable.'' Commenters also state that even if applied stringently, start up and shut down emissions could be ''minimized'' but still be high enough to cause a NAAQS exceedance and that such events could occur often enough to cause a violation of the NAAQS.

Response 11: Based on review of the information Region 4 has regarding malfunction determinations made by the Director of the NC DAQ from 2015 through 2019, as discussed above in Response 10, we believe that the Director has employed the discretionary authority provided by North Carolina's 15A NCAC 2D .0535(c) in circumstances that are narrower than an exemption that would apply automatically during such events. Also, Region 4 anticipates that, going forward, emissions exempted by the Director pursuant to 15A NCAC 2D .0535(c) will continue to apply to a narrower scope of emissions than would be exempt through an automatic exemption. Additionally, as discussed above, 15A NCAC 2D .0535(g) directs facilities, during startup and shutdown, to operate all equipment in a manner consistent with best practicable air pollution control practices to minimize emissions and to demonstrate that excess emissions were unavoidable when requested to do so by the Director. Therefore, based on the evaluation of the North Carolina SIP in Section III of this final action and Sections III and IV of the proposal, Region 4 reasonably concludes that the Director's discretion provisions in the North Carolina SIP are not inconsistent with CAA requirements because the North Carolina SIP, when evaluated as a whole, provides for attainment and maintenance of the NAAQS.

Further, the federally-approved North Carolina SIP has contained a provision providing Director's discretion for malfunction exemptions for over 30 years; [191] the commenter has not provided any evidence to demonstrate that the existence of such provisions interfered with North Carolina's attainment or maintenance of any NAAQS. In fact, as discussed in response to Comment 8, air quality in North Carolina has continued to improve over time and there are not

[188] *See* ''Louisiana Department of Environmental Quality Intra-Agency Routing Form'' (December 8, 2011) included in the docket for this rulemaking.

[189] *See* 80 FR at 33932–34.

[190] *See* 84 FR at 26034.

[191] 15A NCAC 2D .0535(c) was approved on September 9, 1986 (51 FR 32073), and 15A NCAC 2D .0535(g) was approved on August 1, 1997 (62 FR 41277).

currently any nonattainment areas in the state. Commenters have not pointed to evidence of abuse of Director's discretion in North Carolina. Region 4 cannot respond to unsubstantiated claims regarding abuses of discretionary authority by the Director of the State air agency. Region 4 is not aware of any evidence of such abuses since the introduction of the Director's discretion provision into the North Carolina SIP.

Region 4 acknowledges that a Director's determination of whether emissions are excusable pursuant to 15A NCAC 2D .0535(c) or .0535(g) may be somewhat subjective [192] but maintains that the Director will be acting in accordance with approved SIP provisions. Further, as discussed in Section III of this final action, the provisions do not prevent the United States or citizens from enforcing the underlying provisions. The exercise of authority under the Director's discretion provisions of 15A NCAC 2D .0535 shall not be construed to bar, preclude, or otherwise impair the right of action by the United States or citizens to enforce a violation of an emission limitation or emission standard in the SIP or a permit where the demonstration by a source or a determination by the Director does not comply with the framework and authority under 15A NCAC 2D .0535. Failure to comply with such framework and authority would invalidate the Director's determination. EPA and citizens' ability to enforce the underlying provisions is another element contributing to Region 4's conclusion that the SSM exemption provisions do not interfere with NAAQS attainment and that the SIP is consistent with the CAA.

12. Comments on Enforcement

Comment 12: Commenters state that the North Carolina SIP provisions relied upon in the proposal are mere platitudes and have very little probability of being effective in practice. Commenters state that the cited SIP provisions that prohibit violations of the NAAQS are not practicably enforceable. Commenters identify gaps in information for malfunction events and whether a NAAQS violation occurs, including a general statement that NAAQS monitoring stations are not generally located around most sources. Commenters further assert that EPA must assume that absence of a documented NAAQS violation will be treated as sufficient proof that a violation did not occur. Commenters conclude that consequently, few exemptions are expected to be denied even if the excess emissions, in reality, caused a violation.

Commenters assert that North Carolina's procedures for obtaining an exemption are generally appropriate for an approach based on enforcement discretion, but point out that EPA and citizen enforcement would be limited. Commenters state that EPA can be assumed to exercise appropriate enforcement discretion and that citizen enforcement does not generally result in unfair outcomes for sources. Commenters conclude that EPA could revisit its national policy and revert to one that applied for decades in which SSM exemptions are not allowed except via enforcement discretion, and all SIP emission limits apply continuously. Commenters state that alternative emission limits could be developed for periods of SSM as well.

Commenters state that Congress required continuously applicable emission limitations to ensure citizens would have meaningful access to the remedy provided by the Act's citizen-suit provision to assure compliance with emission limitations and other requirements of the Act but that exemptions remove citizens' ability to enforce emission limitations and thus contravene the Act.

Response 12: Commenters provide no concrete evidence that the provisions relied upon in the North Carolina SIP have a low probability of being effective in practice. Generally speaking, as discussed in response to Comment 8, North Carolina's air quality has continued to improve in recent years, and no areas of North Carolina are currently designated nonattainment for any NAAQS. Commenters have not provided information indicating that the existence of the SSM exemption provisions in the SIP have precluded enforcement or that the Director in North Carolina has abused his or her discretion. Commenters provide no basis for speculating that they expect the North Carolina Director to deny few exemption demonstrations, even if a violation occurred. Detailed information about historical usage of director's discretion provisions in the North Carolina SIP is included in our response to Comment 10 above.

Region 4 disagrees with the comment that allowing Director's discretion SSM exemption provisions to remain in the North Carolina SIP will hamper citizen enforcement, in contravention of the CAA requirements. As discussed in Section III of this final action, the exercise of authority under the Director's discretion provisions of 15A NCAC 2D .0535 shall not be construed to bar, preclude, or otherwise impair the right of action by the United States or citizens to enforce a violation of an emission limitation or emission standard in the SIP or a permit where the demonstration by a source or a determination by the Director does not comply with the framework and authority under 15 NCAC 2D .0535. Failure to comply with such framework and authority would invalidate the Director's determination. North Carolina's comment letter on the proposed SSM SIP Call [193] similarly indicates that the Director's discretion exemption provisions are not intended to prevent enforcement: ''[n]othing in the existing SIP provisions prohibits or restricts in any way the ability of EPA and/or a citizen to file an action in federal court seeking enforcement of the SIP provisions.'' [194]

Emissions information for sources in North Carolina is available and obtainable, and commenters have not presented information indicating otherwise. As discussed above, the SIP requires that excess emissions lasting more than four hours be reported to the State at 15A NCAC 2D .0535. Additionally, title V permits require semiannual reports to include deviations from applicable requirements as well as annual compliance certifications at 15A NCAC 2Q .0508. This information assists the Director in determining whether a NAAQS violation likely occurred. North Carolina also makes public the inspection reports, compliance reports, and other materials related to emissions compliance at facilities. Further, NC DAQ maintains records of determinations of malfunctions available for public inspection in its compliance database (accessible at *https://deq.nc.gov/about/divisions/air-quality/air-quality-compliance*). This information is available for title V sources, small permitted sources, and small exempt (non-permitted) sources.

In response to the comment regarding the monitoring network, Region 4 notes

[192] Pursuant to various other North Carolina SIP provisions, the Director has authority to exercise his or her judgment with respect to several other types of determinations. *See, e.g.,* 15A NCAC 2D .0501(f)(2) (requiring demonstration ''to the satisfaction of the Director''); 15A NCAC 2D .0530(t)(3) and .0531(m)(4) (requiring demonstrations ''to the Director's satisfaction''); 15A NCAC 2D .0540(h) (requiring correction of facility's fugitive dust control plan where ''the Director finds that the plan inadequately controls fugitive dust emissions''); 15A NCAC 2D .2602(i) (authorizing Director to allow deviations from testing procedures required under the SIP).

[193] *See* 78 FR 12460 (February 22, 2013).

[194] Letter from Sheila C. Holman, Director, NC DAQ, to EPA, May 13, 2013, page 3, Docket ID: EPA–HQ–OAR–2012–0322–0619, available at *www.regulations.gov.*

that the EPA works collaboratively with states and tribes to monitor air quality for each criteria pollutant, as well as air toxics, through ambient air monitoring networks. North Carolina has an ambient monitoring network plan that meets or exceeds the requirements of 40 CFR part 58 and is subject to public comment, with the objective of long-term assessment of air quality. The data collected serve as one of the factors for determining whether an area is attaining the NAAQS, based on the form of the standard and design value calculation for each standard.

Region 4 notes that North Carolina has an approved monitoring network plan, pursuant to 40 CFR part 58.[195] In accordance with EPA regulatory requirements, NC DAQ maintains a network of 40 monitoring stations across the state and measures the concentration of pollutants subject to the NAAQS. Several monitors operated by the State are indeed source-oriented where required by EPA or deemed appropriate by the state due to local impacts of certain types of pollutants. For example, in accordance with EPA's Data Requirements Rule for the 2010 1-Hour SO_2 Primary NAAQS (80 FR 51052, August 21, 2015), the State operates several SO_2 monitors near large sources of SO_2 emissions.[196]

Region 4 acknowledges that alternative emission limits may also be included in the North Carolina SIP. The State has flexibility to adopt ''whatever mix of emission limitations it deems best suited to its particular situation.'' [197] This could include alternative emission limitations, but, as Region 4 has concluded in this document, in the context of North Carolina's entire SIP, North Carolina's exemption provisions are also acceptable.

13. Comments That SIP Submissions Must be Evaluated Independently, not in Context of SIP Overall

Comment 13: Commenters state that section 110 of the Act makes clear that EPA actions on SIPs must also depend on whether a SIP or submittals meet all of the applicable requirements of the Act. Commenters conclude that EPA may not accept a SIP, approve a submission, or withdraw a SIP Call by asserting that the approved SIP, as a whole, operates continuously to ensure attainment and maintenance of the NAAQS if such SIP, submission or withdrawal means the SIP would not meet all of the applicable requirements of the CAA. Commenters conclude that the proposal contradicts the plain language and plain meaning of the CAA by dispensing with the independent legal requirement that SIPs, submissions or withdrawals of a SIP Call ensure compliance with all applicable requirements of the Act.

Response 13: As described in Section III of this final action, Region 4's policy interpretation is not inconsistent with any applicable requirements of the CAA. Section III of this document fully explains Region 4's interpretation of the interplay between sections 110 and 302(k), which provides a reasonable and permissible interpretation of these provisions, even though it differs from prior interpretations. Not only did Region 4 determine to take this action and approve this SIP revision based on an understanding that the SIP will continue to be protective of the NAAQS, this action and SIP approval are consistent with the statutory interpretations offered in this document. Region 4 has a reasonable basis to conclude, upon evaluation and consideration of the protective requirements contained in the SIP as a whole, that the provisions which create exemptions for excess emissions that may occur during periods of SSM events do not preclude approvability of the North Carolina SIP.

The alternative policy announced in this action, which provides an interpretation of CAA sections 110 and 302 that supports Region 4's decision to withdraw the SIP Call, is not inconsistent with the applicable requirements of the CAA, including the provisions cited by the commenters at CAA 110(k)(3), (k)(5), and (*l*). In Section III of this final action, Region 4 withdraws the SIP Call that was issued in the 2015 SSM SIP action with respect to 15A NCAC 2D .0535(c) and 15A NCAC 2D .0535(g), and makes a finding that these SIP provisions are not inconsistent with CAA requirements. Region 4 is approving the changes to 15A NCAC 2D .1423 submitted by the State on June 5, 2017, because it has determined that the change is in compliance with all applicable CAA requirements.

14. Comments of a Miscellaneous or General Nature

Comment 14: Commenters state that, in retrospect, EPA in the 2015 SSM SIP Call should not have concluded that alternative emission limitations during periods of SSM could be established, particularly in the timeframe necessary for the corrective SIPs.

Response 14: This comment is not in scope for this rulemaking. Region 4 cannot address comments received about the referenced June 12, 2015, action.

VI. Incorporation by Reference

In this document, Region 4 is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, Region 4 is finalizing the incorporation by reference of 15A NCAC 2D .1423—''Large Internal Combustion Engines,'' state effective July 15, 2002, which is modified to clarify applicability, correct typos, standardize exclusions, clarify that alternative compliance methods must show compliance status of the engine, clarify by adding the word ''shall'' and revising language to better define ozone season, and clarify that CEMS records must identify the reason for, the action taken to correct, and the action taken to prevent excess emissions. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by Region 4 for inclusion in the SIP, have been incorporated by reference by Region 4 into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of Region 4's approval, and will be incorporated by reference in the next update to the SIP compilation.[198]

VII. Final Action

Region 4 is withdrawing the SIP call issued to North Carolina for 15A NCAC 2D .0535(c) and 15A NCAC 2D .0535(g) pursuant to CAA section 110(k)(5), originally published on June 12, 2015. In connection with this withdrawal, Region 4 finds that these State regulatory provisions included in the North Carolina SIP are not substantially inadequate to meet CAA requirements.

Pursuant to section 110 of the CAA, Region 4 is approving the aforementioned changes to 15A NCAC 2D .1423 and incorporating these changes into the North Carolina SIP. Region 4 has evaluated the changes to 15A NCAC 2D .1423 as included in North Carolina's June 5, 2017, SIP

[195] North Carolina's 2019–2020 monitoring network plan was approved by EPA on February 7, 2020.

[196] *See* North Carolina Div. of Air Quality, 2019–2020 Annual Monitoring Network Plan for the North Carolina Division of Air Quality (October 15, 2019), available at *https://files.nc.gov/ncdeq/Air%20Quality/monitor/monitoring_plan/NC-Network-Plan.pdf.*

[197] *Train,* 421 U.S. at 79.

[198] *See* 62 FR 27968 (May 22, 1997).

revision, and has determined that they meet the applicable requirements of the CAA and its implementing regulations.

VIII. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the 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.

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 June 29, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Mary Walker,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

■ 2. Amend § 52.1770(c)(1), under ''Subchapter 2D Air Pollution Control Requirements,'' by revising the entry for ''Section .1423'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(1) EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
*	*	*	*	*
Section .1400 Nitrogen Oxides				
*	*	*	*	*
Section .1423	Large Internal Combustion Engines	7/15/2002	4/28/2020, [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2020–07512 Filed 4–27–20; 8:45 am]

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Vol. 85, No. 82

Tuesday, April 28, 2020

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18105–18412 1
18413–18856 2
18857–19076 3
19077–19374 6
19375–19640 7
19641–19874 8
19875–20150 9
20151–20384 10
20385–20574 13
20575–20810 14
20811–21072 15
21073–21310 16
21311–21738 17
21739–22008 20
22009–22342 21
22343–22580 22
22581–22952 23
22953–23204 24
23205–23444 27
23445–23730 28

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10000 18847
10001 19361
10002 19363
10003 19365
10004 19367
10005 19369
10006 19375
10007 19641
10008 20385
10009 21309
10010 22943
10011 22945
10012 22947
10013 22949
10014 23441

Executive Orders:
13911 18403
13912 18407
13913 19643
13914 20381
13915 21733
13916 22951

Administrative Orders:
Memorandums:
Memorandum of March 28, 2020 18409
Memorandum of March 30, 2020 18411
Memorandum of March 30, 2020 18849
Memorandum of March 31, 2020 22343
Memorandum of April 2, 2020 .....19637, 19639
Memorandum of April 7, 2020 20383
Memorandum of April 10, 2020 21735
Memorandum of April 13, 2020 21737
Memorandum of April 20, 2020 23203
Notices:
Notice of April 1, 2020 18855
Notice of April 3, 2020 19373

5 CFR

532 19377
831 20575
842 20575
1650 21311

6 CFR

5 22581
37 23205

7 CFR

51 19378
52 19378
205 22664
986 19651
1719 18413
1775 23208
1776 23208
1778 23208
1779 19655
1784 23208
1951 22009
3575 19655
4287 19655

Proposed Rules:
205 22664
800 18155
982 20202
985 23243
1200 23246
1210 23248

8 CFR

214 21739
274a 21739
1003 18105

9 CFR

Proposed Rules:
57 18471
161 18471

10 CFR

72 18857
430 21745
431 22958

Proposed Rules:
Ch. I 18477, 19907
35 20430
50 19701
72 18876
430 .....20886, 21104
431 .....20886, 21104, 22677

12 CFR

3 .....20387, 22923, 22930
34 21312
Ch. II 19077, 23448
204 23445
215 22345
217 .....20387, 20578, 22923, 22930
225 .....18427, 21312
238 18427
323 21312
324 .....20387, 22009, 22923, 22930
600 20586
604 20586
701 22010
702 23212
722 22014
723 23212
1005 23217
1238 23219

Proposed Rules:
5 18728
261a 18156
303 19706
337 19706
704 ..... 19908, 20431
708a 20618
741 20618

13 CFR

120 ..... 18107, 20811, 21747, 23450
121 ..... 20817, 23450
Proposed Rules:
124 23487
125 23487
126 23487

14 CFR

25 18108
39 ..... 18428, 18431, 18435, 18862, 19077, 19080, 19381, 19656, 19875, 20151, 20394, 20396, 20399, 20402, 20405, 20408, 20411, 20586, 20589, 21073, 21318, 21752, 21754, 21757, 21759, 21762, 21764, 22584, 22953, 22956, 23452
61 18110
71 ..... 18869, 18870, 19384, 20413, 20592, 21075, 22586, 23454, 23456, 23458
97 ..... 20414, 20416, 20419, 20420
Proposed Rules:
21 20431
36 20431
39 ..... 18478, 19110, 19113, 19399, 19707, 20203, 20206, 20209, 20211, 20213, 20216, 20447, 20618, 21115, 21334, 21336, 21791, 22684, 22686, 22688, 22970, 23252, 23255, 23257, 23259, 23262, 23489, 23492
71 ..... 20450, 20451, 21793, 22047, 23495
382 20889

15 CFR

732 ..... 18438, 23459
734 ..... 18438, 23459
738 23459
740 23470
742 23459
744 23459
758 23459
774 ..... 23459, 23470
Proposed Rules:
4 18481
740 23496

16 CFR

1228 21766
1232 18111
Proposed Rules:
Ch. I 20889
255 19709
305 20218
453 20453
1015 21118
1112 18878
1130 18878
1240 18878

17 CFR

23 19878
210 21940
229 ..... 19884, 21940
230 ..... 19884, 21940
239 21940
240 ..... 19884, 21940
249 ..... 19884, 21940
Proposed Rules:
Ch. I 22690
23 21339
43 ..... 21339, 21516
45 ..... 21339, 21578
46 21578
49 ..... 21339, 21578

18 CFR

35 20152
375 19384
Proposed Rules:
35 18784

19 CFR

Ch. I 22352, 22353
24 22349

20 CFR

327 19386

21 CFR

5 18439
500 18114
510 18114
520 ..... 18114, 18125
522 ..... 18114, 18125
524 18114
526 ..... 18114, 18125
556 18114
558 18114
801 18439
803 18439
807 18439
814 18439
820 18439
821 18439
822 18439
830 18439
860 18439
862 18444
866 18444
884 18439
900 18439
1002 18439
1300 22018
1304 22018
1306 22018
1308 ..... 19387, 20155, 21320
1310 20822
1311 22018
Proposed Rules:
1 19114
11 19114
16 19114
129 19114
130 21795
133 20891
886 ..... 18483, 18490
1308 19401

22 CFR

121 18445
123 18445
124 18445
126 18445
129 18445
708 20423

26 CFR

1 ..... 19802, 23172
301 19802
602 23172
Proposed Rules:
1 ..... 18496, 19082, 19858, 21129, 22049
300 21126
301 ..... 18496, 21129

27 CFR

4 ..... 18704, 20423
5 ..... 18704, 20423
7 ..... 18704, 20423
19 ..... 18704, 20423

29 CFR

103 ..... 18366, 20156
826 ..... 19326, 20156
1473 21770
4022 20829

30 CFR

56 19391
57 19391
723 20830
724 20830
845 20830
846 20830

31 CFR

501 19884
510 ..... 19884, 20158
535 19884
536 19884
539 19884
541 19884
542 19884
544 19884
546 19884
547 19884
548 19884
549 19884
560 19884
561 19884
566 19884
576 19884
583 19884
584 19884
588 19884
592 19884
594 19884
597 19884
598 19884

32 CFR

114 23473
172 19392
716 18126
Proposed Rules:
68 20893

33 CFR

100 23220
110 21773
117 ..... 19658, 19659
165 ..... 18446, 19087, 20163, 20593, 20596
328 22250
Proposed Rules:
100 ..... 18157, 19709, 22049, 23264
117 20454
165 ..... 20226, 22049

34 CFR

Proposed Rules:
Ch. II 20455
Ch. III 18508, 19908, 22972, 23266, 23270
600 ..... 18638, 20895
668 ..... 18638, 20895

36 CFR

251 19660
Proposed Rules:
1 19711
4 19711
327 20460
1192 20228

37 CFR

201 19666
202 19666
Proposed Rules:
Ch. II 19919
210 ..... 22518, 22549, 22559, 22568

39 CFR

501 21774
Proposed Rules:
3050 21130

40 CFR

9 22587
52 ..... 18126, 18872, 19087, 19089, 19093, 19096, 19668, 19670, 19674, 19888, 20165, 20178, 20424, 20426, 20427, 20836, 21325, 21329, 21777, 22355, 22593, 23700
60 18448
63 ..... 20838, 20855
70 21329
75 22362
81 ..... 19096, 22977
86 22609
110 22250
112 22250
116 22250
117 22250
120 22250
122 22250
127 20873
180 20185
230 22250
232 22250
261 19676
272 20187
300 22250
302 22250
401 22250
711 ..... 19890, 20122
721 22587
Proposed Rules:
30 21340
52 ..... 18160, 18509, 19116, 19408, 20896, 21341, 21351, 21796, 21797, 22378, 22381, 22384, 22693, 22700, 23272, 23274, 23498
63 ..... 19412, 20342
81 ..... 18509, 20896, 21351, 21797, 23274
147 ..... 20621, 20909
180 ..... 20910, 22065
257 20625
320 21366
721 ..... 18173, 18179, 21366

42 CFR

24 21780

84 20598
400 19230
405 19230
409 19230
410 19230
412 19230
414 19230
415 19230
417 19230
418 19230
421 19230
422 19230
423 19230
425 19230
440 19230
482 19230
510 19230
Proposed Rules:
409 20914
412 ....20625, 22065
413 20914
418 20949
431 21811
433 21811
435 21811
441 21811
482 20625
483 21811
510 22978
1003 22979
1005 22979

43 CFR

Proposed Rules:
420 20463
8340 20229

44 CFR

64 ....18129, 21783
328 ....20195, 22021, 22622

45 CFR

160 ....19392, 22024
164 ....19392, 22024
1168 22025
Proposed Rules:
1610 20648
1630 20648

46 CFR

30 21660
150 21660
153 21660
401 20088
403 20088
404 20088
530 23227

47 CFR

1 ....18131, 22028, 22622, 22804, 23486
2 ....18131, 22804
15 18131
18 18131
22 18131
24 18131
25 ....18131, 22804
27 ....18131, 22804
54 ....19892, 20429
64 ....21785, 22029
73 ....18131, 21076, 23486
76 ....21076, 22642, 22652
90 18131
95 18131
96 22622
97 18131
101 ....18131, 22804
Proposed Rules:
1 ....19117, 20967, 23287
2 ....19117, 20967
4 20649
15 18901
18 ....19117, 20967
27 23287
64 22099
76 ....18527, 20649, 21131

48 CFR

201 19681
202 19681
204 ....19681, 19691
212 ....19681, 19692
229 19698
232 ....19681, 19692, 19699
252 ....19681, 19691, 19692, 19698, 19699
555 19393
Proposed Rules:
5 23299
7 23299
10 21139
12 18181
36 18181
43 18181
52 18181
203 19716
204 19719
205 19716
211 ....19716, 19721, 19722
212 19716
217 19716
219 19716
225 19716
228 19716
232 19719
236 19716
237 19716
246 19716
250 19716
252 ....19716, 19719, 19721, 19722
802 21811
809 21811
841 21811
842 21811
852 21811

49 CFR

Proposed Rules:
190 21140
191 21820
192 21820
194 21140
195 21140
273 20466
299 21159
382 23670
383 23670
384 23670
390 23670
392 23670
1548 20234

50 CFR

10 21282
17 22653
92 18455
217 ....18459, 20201
229 21079
622 ....19396, 20611, 22043
635 ....18152, 18153, 18812, 21789
648 ....18873, 20615, 22046, 22374, 23229, 23240
679 19397
Proposed Rules:
17 ....20967, 23302, 23608
20 18532
27 19418
32 20030
36 20030
71 20030
622 ....20970, 22118
635 23315
648 ....19126, 19129
660 21372
679 ....20657, 22703

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 27, 2020

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