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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9882]

RIN 1545–BP19; 1545–BK55; 1545–AC09

Foreign Tax Credit Guidance Related to the Tax Cuts and Jobs Act, Overall Foreign Loss Recapture, and Foreign Tax Redeterminations; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9882, which was published in the **Federal Register** on Tuesday, December 17, 2019. Treasury Decision 9882 contained final and temporary regulations that provide guidance relating to the determination of the foreign tax credit under the Internal Revenue Code.

DATES: These corrections are effective on May 15, 2020 and applicable December 17, 2019.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Cowan, (202) 317–4924 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9882) that are the subject of this correction are under sections 861 and 904 of the Internal Revenue Code.

Need for Correction

As published December 17, 2019 (84 FR 69022), the final and temporary regulations (TD 9882; FR Doc. 2019–24848) contained errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.861–8 is amended by revising the second and third sentence in paragraph (c)(4) and revising the first sentence in paragraph (e)(6)(i) to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities

* * * * *

(c) * * *

(4) * * * In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned by application of section 1563(e)(1), and stock owned by application of section 267(c). In determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned by application of section 267(e)(3).

* * * * *

(e) * * *

(6) * * *

(i) * * * The deduction for foreign income, war profits and excess profits taxes allowed by section 164 (including with respect to a controlled foreign corporation) is allocated and apportioned among the applicable statutory and residual groupings under the principles of § 1.904–6(a)(1)(i), (ii), and (iv). * * *

* * * * *

■ **Par. 3.** Section 1.861–17 is amended by revising the first sentence in paragraph (e)(3) to read as follows:

§ 1.861–17 Allocation and apportionment of research and experimental expenditures.

* * * * *

(e) * * *

(3) * * * A taxpayer otherwise subject to the binding election described in paragraph (e)(1) of this section may change its method (on an original or an amended return) either for all taxable years beginning after December 31, 2017, and before January 1, 2020, or for its last taxable year beginning before January 1, 2020, without the prior consent of the Commissioner. * * *

* * * * *

§ 1.904–4 [Amended]

■ **Par. 4.** Section 1.904–4(c)(6)(iii) is amended by removing the language ''deemed paid or accrued'' and adding the language ''deemed paid'' in its place.

§ 1.904–5 [Amended]

■ **Par. 5.** Section 1.904–5 is amended by removing paragraph (c)(1)(ii).

§ 1.904(g)–0 [Amended]

■ **Par. 6.** Section 1.904(g)–0 is amended by adding ''the'' in the heading for § 1.904(g)–3 before the word ''recapture''.

Martin V. Franks,

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

[FR Doc. 2020–08995 Filed 5–14–20; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe certain interest assumptions under the regulation for plans with valuation dates in June 2020. These interest assumptions are used for paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation,

1200 K Street NW, Washington, DC 20005, 202–326–4400 ext. 3829. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminated single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefit payments regulation to provide the rates for June 2020 measurement dates.

The June 2020 lump sum interest assumptions will be 0.00 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for May 2020, these assumptions represent a decrease of 0.50 percent in the immediate rate and are otherwise unchanged.

PBGC updates appendices B and C each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available for plans that rely on our publication of them each month to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during June 2020, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, rate set 320 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
320	6–1–20	7–1–20	0.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, rate set 320 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
320	6–1–20	7–1–20	0.00	4.00	4.00	4.00	7	8

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–10075 Filed 5–14–20; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3045

[Docket No. RM2019–13; Order No. 5407]

Reorganization of Postal Regulatory Commission Rules; Correction

AGENCY: Postal Regulatory Commission.

ACTION: Correcting amendment.

SUMMARY: On April 20, 2020, the Postal Regulatory Commission revised Commission rules. That document incorrectly listed a cross-reference. This document corrects the final regulations by removing the incorrect cross-reference.

DATES: Effective on May 15, 2020.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The rule published on April 20, 2020 (85 FR 9614), incorrectly listed a cross-reference in § 3045.18(d)(2)(i)(B), and this document corrects the final regulations by removing that incorrect cross-reference.

List of Subjects in 39 CFR Part 3045

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 3045 is corrected by making the following correcting amendment:

PART 3045—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

■ 1. The authority for part 3045 continues to read as follows:

Authority: 39 U.S.C. 503; 3641.

■ 2. Amend § 3045.18 by revising paragraph (d)(2)(i)(B) to read as follows:

§ 3045.18 Request to add a non-experimental product or price category based on an experimental product to the product list.

* * * * *

(d) * * *

(2)(i) * * *

(B) The market test is expected to exceed any authorized limitation specified in §§ 3045.15 and 3045.16 during any fiscal year, whichever is earlier.

* * * * *

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–09023 Filed 5–14–20; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0694; FRL–10008–56–Region 3]

Air Plan Approval; Virginia; Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (Virginia). The revision provides Virginia's certification that its existing emissions statement program satisfies the emissions statement requirements of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standard (NAAQS). EPA is approving Virginia's emissions statement program certification for the 2015 ozone NAAQS as a SIP revision in accordance with the requirements of the CAA.

DATES: This final rule is effective on June 15, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0694. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Erin Malone, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2190. Ms. Malone can also be reached via electronic mail at *Malone.Erin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 10, 2020 (85 FR 7496), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of Virginia's certification that Virginia's emissions statement regulation meets the emissions statement requirement of section 182(a)(3)(B) of the CAA for the 2015 ozone NAAQS. The formal SIP revision was submitted by Virginia, through the Virginia Department of Environmental Quality (VADEQ), on July 30, 2019.

II. Summary of SIP Revision and EPA Analysis

In Virginia's July 30, 2019 SIP revision submittal, Virginia states that the emissions statement requirements of CAA section 182(a)(3)(B) are contained under 9VAC5–20–160 (Registration) of the Virginia Administrative Code and are SIP-approved under 40 CFR 52.2420(c). According to Virginia, these provisions mandate that facilities emitting more than 25 tons per year (tpy) of nitrogen oxides (NO_X) or volatile organic compounds (VOC) must submit emissions statements to Virginia while those emitting less than 25 tpy must comply with inventory requirements.

EPA's review of the Commonwealth of Virginia's submittal finds that Virginia's existing, SIP-approved emissions statement program under 9VAC5–20–160 satisfies the emissions statement requirements of CAA section 182(a)(3)(B) for stationary sources located in nonattainment areas in Virginia, including such sources in the Virginia portion of the Washington, DC–MD–VA nonattainment area, for the 2015 ozone NAAQS. Pursuant to CAA section 182, Virginia is required to have an emissions statement program for sources located in nonattainment areas. EPA finds the provisions under 9VAC5–20–160 satisfy the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS because they apply to the Northern Virginia Emissions Control Area, which includes the Virginia portion of the Washington, DC–MD–VA 2015 ozone NAAQS nonattainment area (*i.e.* Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City). EPA also finds Virginia's emissions thresholds for sources that are required to submit an emissions statement meet the requirements of CAA section 182(a)(3)(B)(ii). As stated previously, 9VAC5–20–160 requires the owner of any stationary source located in an emissions control area that emits 25 tpy or more of VOC or NO_X to annually submit an emissions statement. This 25 tpy threshold is equivalent to the threshold required by CAA section 182(a)(3)(B)(ii). As previously mentioned, per CAA section 182(a)(3)(B)(ii), states may waive this requirement for sources that emit less than 25 tpy of NO_X or VOC if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182. Virginia provides emissions inventories for nonattainment areas as required by CAA section 172(c)(3).[1] Therefore, EPA

[1] See, *e.g.* "Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2011 Base Year Emissions Inventories for the Washington DC–MD–VA Nonattainment Area for the 2008 Ozone National

Continued

has determined that 9VAC5–20–160, which is currently in the Virginia SIP, is appropriate to address the emissions statement requirements in section 182(a)(3)(B) for the 2015 ozone NAAQS.

III. Final Action

EPA is approving, as a SIP revision, the Commonwealth of Virginia's July 30, 2019 emissions statement certification for the 2015 ozone NAAQS as approvable under CAA section 182(a)(3)(B). Virginia's emissions statement certification certifies that Virginia's existing SIP-approved emissions statement program under 9VAC5–20–160 satisfies the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

Ambient Air Quality Standard,'' 80 FR 27255 (May 13, 2015).

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 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 approving Virginia's emissions statement certification for the 2015 ozone NAAQS 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.

Dated: April 17, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

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 VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e)(1) is amended by adding an entry for ''Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard.	Virginia portion of the Washington, DC–MD–VA nonattainment area for the 2015 ozone NAAQS (*i.e.* Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City).	7/30/19	5/15/20, [insert **Federal Register** citation].	Certification that Virginia's previously SIP-approved regulations at 9VAC5–20–160 meet the emissions statement requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS.

[FR Doc. 2020–08743 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0666; FRL–10008–62-Region 7]

Air Plan Approval; Nebraska; Lincoln-Lancaster County Health Department (LLCHD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the State of Nebraska that addresses the authority of the Lincoln-Lancaster County Health Department (LLCHD). This action will amend the Nebraska SIP by removing a portion of the SIP that addresses the authority of LLCHD regarding the Prevention of Significant Deterioration (PSD) Program; specifically: Article 2. Section 19. Prevention of Significant Deterioration of Air Quality (PSD) Lincoln-Lancaster County Health Department (LLCHD). This SIP revision will have no impact to air quality and eliminate confusion regarding the authority to issue PSD permits in Lancaster County.

DATES: This final rule is effective on June 15, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0666. All documents in the docket are listed on the https://www.regulations.gov website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Will Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7714; email address *stone.william@epa.gov*

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

Table of Contents

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. The EPA's Response to Comments

IV. What action is the EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The EPA is approving a revision to Nebraska's SIP received from the State of Nebraska on July 23, 2019. Specifically, the EPA is amending the Nebraska SIP by removing a portion of the SIP as follows: Article 2. Section 19. Prevention of Significant Deterioration of Air Quality (PSD) Lincoln-Lancaster County Health Department (LLCHD).

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

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided a public comment period for this SIP revision from May 20, 2019 to June 21, 2019, and at the same time, offered an opportunity for a public hearing. No comments or request for public hearing were received.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened January 3, 2020, the date of its publication in the **Federal Register** and closed on February 3, 2020. (85 FR 274, January 3, 2020.) During this period, EPA received two comments. The comments are not adverse and can be found in the docket. The comments are addressed below.

Comment 1

I believe that it would be in the public's best interest to eliminate the confusion regarding the permits in Lancaster County, and have the local authorities be responsible for issuing the permits.

Response 1

This action eliminates confusion regarding the authority to issue PSD permits in Lancaster County. As noted in the proposal, all PSD permits issued in the State of Nebraska, including those issued in Lancaster County, are issued pursuant to the authority of the State of Nebraska under title 129, chapter 19 PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY (PSD). However, under the delegation agreement between the State of Nebraska and LLCHD, LLCHD issues PSD permits in Lancaster County under the state's authority. Nothing in this action changes this delegation agreement, which is included in the docket for this action. The SIP revision removes a redundant regulation from the SIP and will have no effect on air permitting or air quality in Lancaster County, Nebraska.

Comment 2

This comment noted that the State submission was not provided in the docket to allow the reviewer the ability to fully evaluate EPA's proposed action.

Response 2

As a result of this comment, we provided the State's submission in the docket and reopened the public comment period from March 5, 2020 to April 6, 2020 to afford stakeholders an opportunity to comment on the proposed SIP revision (85 FR 12876, March 5, 2020). No additional comments were received during this period.

IV. What action is the EPA taking?

The EPA is taking final action to amend the Nebraska SIP by removing LLCHD Article 2. Section 19. Prevention of Significant Deterioration of Air Quality (PSD). The removal of this portion of the SIP will not impact air quality because the regulation duplicates the State's regulation, which applies in the same jurisdiction.

V. Incorporation by Reference

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

VI. Statutory and Executive Order Reviews

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

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

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

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

is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 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.

Dated: April 21, 2020.

James Gulliford,

Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—CC Nebraska

§ 52.1420 [Amended]

■ 2. In § 52.1420, the table in paragraph (c) is amended by removing the entry ''Section 19'' under the headings ''Lincoln-Lancaster County Air Pollution Control Program'', ''Article 2—Regulations and Standards''.

[FR Doc. 2020–08760 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2020–0036; FRL–10008–54-Region 7]

Air Plan Approval; Nebraska; Approval of State Implementation Plan and Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the removal of Nebraska Administrative Code title 129, chapter 8, section 007.06 from Nebraska's State Implementation Plan (SIP) and title V provisions. Nebraska submitted this revision to the EPA on July 19, 2019. Title 129, chapter 8 contains Nebraska's operating permit program and is approved under title V and EPA's regulations. The EPA's approval of this action makes the State rule consistent with Federal regulations and strengthens the SIP and the title V program.

DATES: This final rule is effective on June 15, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2020–0036. All documents in the docket are listed on the https://www.regulations.gov website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7214; email address *kemp.lachala@epa.gov.*

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

Table of Contents

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
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V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The EPA is taking final action to approve the removal of title 129, chapter 8, section 007.06 from the Nebraska Administrative Code of the previously approved SIP. Section 007.06 stated that permits used under title 129 chapter 8 superseded all other previously issued operating or construction permits. This section, which was previously approved in Nebraska's SIP, is inconsistent with the EPA's interpretation of the title V program. Title V permits include all SIP-approved permit terms, but do not supersede, void, replace or otherwise eliminate their legal existence and enforceability. This removal of this provision confirms that construction permits are not vacated when an operating permit is issued. Removal of this provision is appropriate, consistent with Federal regulations and strengthens both the title V program and the SIP. The EPA is taking final action for approval of this revision.

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

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from February 28, 2019 to April 3, 2019 and received one comment from EPA on March 5, 2019, supporting the revision. In addition, as explained above the revision meets the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened February 13, 2020, the date of its publication in the **Federal Register** and closed on March 16, 2020 (85 FR 8240, February 13, 2020). During this period, EPA received one comment. The comment was not substantive or adverse and can be found in the docket.

IV. What action is the EPA taking?

EPA is taking final action to approve the removal of title 129, chapter 8, section 007.06 from the Nebraska title V program and SIP because it is inconsistent with EPA's interpretation of the title V program.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Nebraska Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: April 20, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR parts 52 and 70 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—CC Nebraska

■ 2. In § 52.1420, the table in paragraph (c) is amended by revising the entry ''129–8'' to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
Title 129—Nebraska Air Quality Regulations				
*	*	*	*	*
129–8	Operating Permit Content	6/24/2019	5/15/2020, [insert **Federal Register** citation].	
*	*	*	*	*

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PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Appendix A to part 70 is amended by adding paragraph (q) under ''Nebraska; City of Omaha; Lincoln-Lancaster County Health Department'' to read as follows:

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

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

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(q) The Nebraska Department of Environment and Energy submitted revisions to NDEQ Title 129 Chapter 8 ''Operating Permit Content'' on July 19, 2019. The State effective date is June 24, 2019. The revision effective date is June 15, 2020.

* * * * *

[FR Doc. 2020–08654 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2016–0137; FRL–10008–15–Region 5]

Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Muncie, Indiana Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the April 14, 2016, request from the Indiana Department of Environmental Management (IDEM) to redesignate the Muncie nonattainment area to attainment for the 2008 national ambient air quality standards (NAAQS) for lead. EPA is also approving the State's maintenance plan and attainment year emission inventory for lead. EPA is approving these actions in accordance with the Clean Air Act (CAA) and EPA's implementation regulations and guidance regarding the 2008 lead NAAQS.

DATES: This final rule is effective on May 15, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2016–0137. 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Mary Portanova at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov.*

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

I. What is being addressed by this document?
II. What comments did we receive on the proposed action and what are EPA's responses to those comments?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is being addressed by this document?

On May 30, 2017 (82 FR 24553), EPA issued a direct final approval and associated proposed rulemaking (82 FR 24635) addressing Indiana's April 14, 2016 submittal of a redesignation request, maintenance plan, and attainment year lead emissions inventory for the Muncie lead nonattainment area. The main source of lead emissions in the Muncie area is the Exide Technologies secondary lead smelter. See the direct final action for the full discussion of our basis for approval. Because we received adverse comments on the direct final approval, we withdrew the direct final approval on July 10, 2017 (82 FR 31722). Below, we address the comments that we received, and finalize our proposed rulemaking action.

II. What comments did we receive on the proposed action and what are EPA's responses to those comments?

EPA received a set of comments from one party during the public comment period on the May 30, 2017 action. The comments, and EPA's response to each comment, are as follows:

Comment: The commenter stated that the proposal ''incorrectly states that the 2015 ambient monitoring data is the most recent available. That is not true and it wasn't even true when the Acting Regional Administrator signed the rule. EPA has a legal and moral obligation to not provide false information in **Federal Register** notices. Thus, EPA should publish a supplemental proposal that includes the 2016 ambient monitoring data which was final by no later than May 1, 2017.''

EPA Response: Indiana submitted its redesignation request to EPA on April 14, 2016. The State included Muncie lead monitoring data from 2013–2015 in its submittal. At the time of Indiana's submittal, these data represented the most recent available full three years of monitoring data, and EPA used them in evaluating Indiana's redesignation request.

Indiana is required to certify and submit to EPA each year of air quality monitoring data by May 1 of the following year. For 2016 data, the deadline for state certification was May 1, 2017. The Regional Administrator signed the proposal to redesignate the Muncie area on May 4, 2017. During the time that EPA staff were reviewing Indiana's submittal and preparing the notice of proposed rulemaking, monitoring data for 2016 was not yet certified, and the ''most recent'' fully certified data during this time was the data through 2015, which showed attainment of the 2008 lead NAAQS. The 2008 lead NAAQS are met when the maximum arithmetic three-month mean concentration for a three-year period is less than or equal to 0.15 micrograms per cubic meter (μg/m^3). See 40 CFR 50.16. The maximum three-month average lead concentration over three years is also known as the design value. Although the 2016 data was certified a few days before EPA's notice of proposed rulemaking was signed, the 2015 monitor data was clearly the most recent certified, quality-assured data available at the time of the State's redesignation request and during EPA's review process, and the 2013–2015 design value was the appropriate measure for evaluating the State's redesignation request and proposing action. As the preliminary 2016 data continued to show attainment of the 2008 lead NAAQS, EPA did not delay its action on the redesignation.

Moreover, air quality monitoring data at the Muncie lead monitor continues to show that the area is attaining the 2008 lead NAAQS, providing further support for EPA's finding that the area has attained the NAAQS under CAA section 107(d)(3)(E)(i). Table 1 below includes all fully certified and preliminary data available for the area and shows that the area's lead design value is well below the level of the NAAQS.

EPA does not agree that a supplemental proposal is required under these circumstances. The CAA contemplates that EPA publish a

proposed and final rule in order to effectuate redesignations. CAA section 107(d)(2). It is not reasonable to require additional supplemental proposals every time additional data becomes available, given that new preliminary and certified data are continually updated, nor is it necessary. Where an area has violated the NAAQS such that EPA can no longer find that the area is attaining, EPA has disapproved redesignations. *See Southwestern Pa. Growth Alliance* v. *Browner,* 121 F.3d 106 (3rd Cir. 1997) (upholding EPA's disapproval of a redesignation and stating in dicta, ''The use of the term ''has attained'' . . . may be interpreted as suggesting that the attainment must continue until the date of the redesignation.''); *Kentucky* v. *EPA,* No. 96–4274, 1998 U.S. App. LEXIS 21686, at *11–12 (6th Cir. Sept. 2, 1998) (affirming EPA's disapproval of a redesignation and finding that ''[a]s the EPA interprets the CAA, the CAA requires the EPA to determine attainment based on all data available at the time the EPA issues its ruling.'').

TABLE 1—THREE-MONTH ROLLING LEAD AVERAGES AND DESIGN VALUES FOR MUNCIE, INDIANA
[2012–2019]

Three-Month Rolling Lead Averages (μg/m³) for Muncie-Mt. Pleasant Blvd. (18–035–0009)												Three-Year Design Values
2012												
Nov 2011–Jan 2012	Dec 2011–Feb 2012	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	3-Year Design Value Period (years)
0.30	0.34	0.29	0.17	0.12	0.11	0.09	0.05	0.06	0.05	0.05	0.05	DV (μg/m3)
2013												
Nov 2012–Jan 2013	Dec 2012–Feb 2013	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	
0.05	0.06	0.04	0.03	0.03	0.03	0.03	0.04	0.04	0.05	0.04	0.04	
2014												
Nov 2013–Jan 2014	Dec 2013–Feb 2014	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2012–2014
0.03	0.04	0.04	0.04	0.04	0.05	0.05	0.04	0.03	0.03	0.03	0.03	0.34
2015												
Nov 2014–Jan 2015	Dec 2014–Feb 2015	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2013–2015
0.03	0.03	0.04	0.05	0.06	0.06	0.06	0.05	0.03	0.04	0.04	0.11	0.11
2016												
Nov 2015–Jan 2016	Dec 2015–Feb 2016	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2014–2016
0.11	0.10	0.03	0.02	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.11
2017												
Nov 2016–Jan 2017	Dec 2016–Feb 2017	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2015–2017
0.03	0.03	0.02	0.02	0.03	0.03	0.04	0.04	0.03	0.04	0.03	0.04	0.11
2018												
Nov 2017–Jan 2018	Dec 2017–Feb 2018	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2016–2018
0.03	0.03	0.01	0.01	0.02	0.02	0.02	0.01	0.01	0.02	0.02	0.02	0.11
2019												
Not yet certified Nov 2018–Jan 2019	Dec 2018–Feb 2019	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	[1] 2017–2019
0.02	0.02	0.02	0.02	0.02	0.03	0.03	0.03	0.03	0.03	0.02	0.02	0.04

[1] Maximum 3-month value through December 2019; not a valid DV until certified.

Comment: The commenter stated that EPA has not met criterion 3 of the redesignation requirements. The fact that the National Emission Standards for Hazardous Air Pollutants (NESHAP) for secondary lead smelters applies to Exide Technologies does not establish that the implementation of the NESHAP caused the area to come into attainment.

EPA Response: To meet criterion 3, the EPA Administrator must determine that the improvement in air quality is due to permanent and enforceable emission reductions resulting from

implementation of the applicable SIP, Federal air pollution control regulations, or other permanent and enforceable emission reductions. The Exide Technologies facility is subject to the NESHAP as well as to lead emission limits and control requirements in the federally approved Indiana SIP, which are permanent and enforceable at all times. The Indiana SIP limits on emissions units at Exide Technologies and the requirements for total plant enclosure and control of fugitive dust emissions at Exide are contained in 326 Indiana Administrative Code (IAC) 20–13.1. EPA approved 326 IAC 20–13.1 [1] into the Indiana SIP on July 17, 2015 (80 FR 42393). Therefore, EPA finds that the Indiana SIP contains permanent and enforceable limits for Exide Technologies in Muncie.

Indiana has been working to reduce ambient lead concentrations in Muncie over many years. Lead emission control measures were implemented at Exide Technologies over time, both before and after the current NESHAP was implemented. The Muncie area was designated nonattainment for the 2008 lead NAAQS on November 22, 2010 (75 FR 71033). The NESHAP for secondary lead smelters was amended on January 5, 2012 (77 FR 556). At that time, Exide Technologies was already complying with the previous version of the NESHAP. Indiana's SIP rule 326 IAC 20–13.1 contains lead emission standards for some emission units which are more stringent than those in the NESHAP. Exide was required to comply with the SIP limits by October 1, 2013. Indiana informed EPA that some of the physical controls required in the 2012 NESHAP were already in place at Exide Technologies before 2012. Indiana also confirmed that, following inspections in 2012 by IDEM and EPA staff, multiple housekeeping adjustments were made at the plant after the nonattainment designation, which improved the facility's ability to control its fugitive lead emissions and helped to bring the facility operations into full compliance with the NESHAP and the SIP emission limits. For example, Exide Technologies revised its procedures for servicing baghouse control devices to avoid allowing fugitive material to escape the enclosed space; located and sealed gaps and areas of leakage in the enclosed buildings; and installed or upgraded monitors for measuring the negative pressure inside the facility.

Muncie's ambient lead concentrations began to improve in mid-2012, although its three-year design value still showed nonattainment of the 2008 lead NAAQS for 2012–2014. The highest three-month average lead monitor reading in Muncie after its nonattainment designation was for December 2011–February 2012 (0.34 $\mu g/m^3$). Since that time, the three-month rolling average values at the Muncie monitor dropped rapidly, with no further three-month rolling averages exceeding the level of the 2008 lead NAAQS recorded at the site after the February–April 2012 (0.17 $\mu g/m^3$) averaging period. The Muncie area reached full attainment of the 2008 lead NAAQS as of the 2013–2015 design value period. The area has continued to attain the 2008 lead NAAQS for three more years, through the 2016–2018 design value period. Preliminary 2019 data also suggest that the area is still attaining the 2008 lead NAAQS. See Table 1. EPA is satisfied that the imposition of the NESHAP and SIP emission control requirements for Exide Technologies, with full compliance facilitated by Exide Technologies' recently improved housekeeping measures and operating procedures, was, in fact, responsible for the reduction in lead emissions and the improvement in Muncie's monitored lead concentrations since the Muncie lead nonattainment designation.

Comment: The commenter stated that to the extent that the NESHAP for secondary lead smelting ''does not apply during startup, shutdown, and/or malfunction,'' the Exide Technologies facility is not subject to any enforceable emission limits during startup, shutdown, and/or malfunction, and accordingly, criterion 3 is not met.

EPA Response: The commenter is incorrect that the lead standard ''does not apply'' during those periods of startup, shutdown, or malfunction (SSM). The NESHAP for secondary lead smelters does not contain exemptions from emission limits for lead during SSM; the existing exemptions in the NESHAP apply only to emissions of dioxins and furans. *Compare, e.g.,* 40 CFR 63.543(a)–(b) (lead standards for process vents), *with id.* § 63.543(c) (furan and dioxin standards for process vents). Accordingly, for purposes of the Muncie area's attainment of the 2008 lead NAAQS, the permanent and enforceable measure within the secondary lead smelter NESHAP contributing to that attainment applies at all times.

The NESHAP for secondary lead smelters presently contains a provision that purports to allow a source, in limited circumstances, to assert an affirmative defense to civil penalty claims for exceedances caused by a narrow category of malfunctions.[2] *See* 40 CFR 63.552. For two reasons, this narrowly crafted affirmative defense provision is no barrier to redesignation.

First, this affirmative defense does not legally or functionally ''exempt'' covered sources from any emission standards because even with the affirmative defense provision, any exceedance of the emission standard at any time is still a violation. The provision is expressly ''not available for claims for injunctive relief.'' *Id.* Accordingly, even for that narrow category of malfunction-caused exceedances, any exceedance is a violation of the emission standard and the NESHAP can be enforced through suits for injunctive relief by states, EPA, and affected citizens. *See, e.g.,* 42 U.S.C. 7604(a)(1), (f)(3). With respect to lead emissions in Muncie, the ready availability of this injunctive relief ensures that the state and Federal regulators, as well as the public, can effectively enforce the NESHAP at Exide Technologies. This approach is consistent with other EPA redesignations. *See, e.g.,* 79 FR 55645, 55649 (September 17, 2014) (affirmative defense in SIP provision was ''sufficiently enforceable for purposes of redesignation'' because of, *inter alia,* the ''continued availability of injunctive relief'').

Second, regardless of the permanent and enforceable reductions pursuant to the lead NESHAP, Indiana's approved lead SIP contains additional provisions applicable to the Exide Technologies facility. Although some of these provisions are based on the NESHAP for secondary lead smelters, these approved SIP rules do not include any exemptions or affirmative defense provisions for lead or any other pollutants. Pertinent to the issue of startup, shutdown, and malfunction, the Indiana SIP rule for secondary lead smelters states at 326 IAC 20–13.1–1(f), ''Emission standards in this rule apply at all times.'' Additionally, 326 IAC 20–13.1–5(h) requires, ''At all times, the owner or operator of a secondary lead smelter shall operate and maintain any affected emission unit, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.'' Although, as a matter of State law, Indiana's rule 326 IAC 20–13.1–15 contains affirmative

[1] EPA's July 17, 2015 approval excluded certain sections of 326 IAC 20–13.1–1, 20–13.1–5, 20–13.1–10, 20–13.1–11, 20–13.1–12, 20–13.1–13, 20–13.1–14; and all of 326 IAC 20–13.1–15. See 40 CFR 52.770(c).

[2] As a legal matter, this narrowly crafted affirmative defense does not ''exempt'' sources in Muncie or elsewhere from the NESHAP.

defense language for malfunctions similar to that of the NESHAP, the provision is not part of Indiana's approved, federally enforceable lead SIP. *See* 80 FR 42393, 42394 (July 17, 2015) (noting that Indiana expressly asked EPA not to approve 326 IAC 20–13.1–15 into the lead SIP); 40 CFR 52.770(c) (identifying EPA-approved rules). Therefore, regardless of the enforceability of the lead NESHAP, EPA is satisfied that Indiana's federally enforceable lead SIP requirements for Exide Technologies do not contain any exemptions for emissions during SSM, despite the commenter's allegations.

Comment: The commenter stated that the ambient monitoring values are not consistent with a conclusion that the NESHAP caused the area to attain. Specifically, the commenter stated, ''All of the values for 2013–2015 are below 0.06 except in the last quarter, the value almost doubles to 0.11. This seems to indicate that something else was happening during all of the quarters except the last quarter. Was the Exides [sic] plant even operating at full capacity during all of the quarters except last quarter of 2015? If so, was the plant voluntarily operating in a manner to keep the ambient values low? By voluntarily, I mean operating in a manner not required by the NESHAP. Without an answer to these questions, EPA cannot conclude that the NESHAP caused the area to come into compliance.'' The commenter further stated that the 2016 monitoring data, with a three-month maximum high of 0.11 μg/m³, ''once again establishes that something other than the NESHAP caused the 2013–2015 values to be so low. Furthermore, the fact that the First Max and Second Max on Monitor 3 was above the level of the NAAQS indicates that rather than the NESHAP causing attainment of the NAAQS, Indiana DEM just got lucky do [sic] to some random factor like meteorology or the plant is operating in a manner to make voluntary reductions to above [sic] violating the NAAQS. EPA should also review communications between IDEM and Exides [sic] to ensure that they are not working together to use voluntary measures to avoid the monitors' detecting NAAQS exceedances.''

EPA Response: EPA does not agree that the single three-month average cited by the commenter indicates that the area's attainment of the NAAQS cannot be the result of permanent and enforceable measures. The 2013–2015 design value of 0.11 μg/m³ meets the lead NAAQS of 0.15 μg/m³. However, as the commenter pointed out, there appeared to be a sudden rise in the three-month average value at the end of 2015. An elevated air quality monitor value was recorded at the Muncie site on December 14, 2015. Exide Technologies told IDEM that on that date, errors occurring while replacing bags in the baghouse caused eight bags to fall off when the unit undertook its routine mechanical action to remove the sediment which had deposited on the bags. After the bags were properly reinstalled, subsequent monitor readings improved. EPA reiterates that Muncie's monitored design value for 2013–2015 (which represents the highest single three-month average concentration over the three-year period) was below the NAAQS of 0.15 μg/m³. The December 2015 incident at Exide Technologies' baghouse did not cause or contribute to any violation of the 2008 lead NAAQS. EPA is satisfied that Exide Technologies' compliance with its lead SIP requirements, which include proper operation of control technologies, will ensure that monitored air quality in Muncie will remain below the 2008 lead NAAQS.

The commenter was concerned that EPA could be overlooking an upward emissions trend after concentrations appeared to rise at the end of 2015. More monitoring data for Muncie has become available since EPA's proposal. See Table 1. Considering only the data through 2015, it might appear that the lead emissions in Muncie had been low but suddenly climbed at the end of 2015. However, EPA believes that the three-month average concentration of 0.11 μg/m³ for October–December 2015 did not demonstrate a return to routinely high emissions that could lead to violations of the 2008 lead NAAQS, nor does it call into question EPA's conclusion that the permanent and enforceable measures on the facilities at issue are the cause of the area's attainment of the standard. The alleged baghouse incident in December 2015 apparently resulted in a monthly average concentration of 0.2519 μg/m³. Although the monthly monitored lead concentrations for the months surrounding December 2015 were much lower, the three consecutive three-month lead averages which included December 2015 were calculated to be at or near 0.11 μg/m³. The surrounding single-month values were 0.0505 μg/m³ (October 2015) and 0.0347 μg/m³ (November 2015), and 0.0319 μg/m³ (January 2016) and 0.0233 μg/m³ (February 2016). The subsequent three-month averages after the December 2015–February 2016 period were all much lower than 0.11 μg/m³. Because the form of the 2008 lead NAAQS uses the maximum three-month average value over three years as the design value, the design values for 2013–2015, 2014–2016, and 2016–2018 were all 0.11 μg/m³, since those three-year averaging periods all included the three-month average of 0.11 μg/m³ for October–December 2015 and/or November 2015-January 2016.

The monitoring data demonstrate an overall pattern that strongly supports a redesignation to attainment. The Muncie lead three-month average concentrations have typically ranged from 0.01 μg/m³ to 0.06 μg/m³ from June–August 2012 through the present. The only higher three-month averages were the October–December 2015 three-month average value cited by the commenter, and the two three-month average values following it, but these have been shown to be caused by a single month's short-lived emission increase. As shown in Table 1, the remaining 74 certified three-month average values since June–August 2012 have been no higher than 0.06 μg/m³. Considering preliminary monitoring data for 2019, the maximum three-month average lead concentration value from 2017–2019 (specifically, beginning with the three-month average for November 2016 to January 2017 and continuing through October–December of 2019) appears likely to be as low as 0.04 μg/m³. EPA is satisfied that the Muncie lead monitoring data suggest that the December 2015 incident does not represent a return to pre-2012 ambient lead concentrations. Instead, the data indicate that the area is attaining the 2008 lead NAAQS.

The commenter speculates that the Muncie area's monitored attainment may be due to the Exide facility's voluntary operation in a manner that reduces emissions, and that absent proof that the facility is not voluntarily curtailing emissions, EPA cannot conclude that the NESHAP is the cause of the area's compliance. The commenter also suggests that EPA should review all communications between IDEM and Exide Technologies in order to ensure there is no collusion to use voluntary curtailment of emissions to meet the NAAQS. Per EPA's longstanding guidance regarding redesignations to attainment, EPA interprets CAA section 107(d)(3)(E)(iii) to require a showing that the state must be able to ''reasonably attribute'' the improvement in air quality to emission reductions which are permanent and enforceable. Memorandum from John Calcagni, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (Sept. 4, 1992) (''Calcagni Memo''), at 4. The record demonstrates that the State has done so here. In its

redesignation request and maintenance plan submission, Indiana modeled projected ambient lead concentrations for the Muncie area using *allowable* emission limits at the single source of lead in the area, Exide Technologies. See [Maintenance Plan at 21–22]. Given the State's technical demonstration that the area would continue to attain the 2008 lead NAAQS if the source at issue were to emit at allowable levels, there is no record support for commenter's speculation that Muncie's attainment is due to Exide's voluntary curtailment of emissions (*i.e.,* actual emissions that are below the level that would be permitted under the emission limits), rather than the permanent and enforceable limits for Exide Technologies and the NESHAP cited by Indiana. EPA does not agree that given the record evidence, it must prove the negative—that the area's attainment was *not* caused by the emission limits imposed here. There is a single source in the Muncie area, emission limits were imposed on that source, those limits correlate with a measured and sustained drop in ambient lead concentrations (excepting expected short-term variability), and the State has provided additional modeling showing that even if emissions were to go up to permitted levels, the area would still maintain the NAAQS. We therefore disagree that it is necessary to review communications between Indiana and Exide Technologies before we may draw the conclusion that CAA section 107(d)(3)(E)(iii) has been satisfied.

The comment also cited the first and second maximum values of Monitor 3 as evidence that something other than the NESHAP caused the area's attainment of the NAAQS. The May 30, 2017 direct final/proposed action did not publish or discuss first and second maximum monitored values. The commenter did not provide the monitor data reports which formed the basis of these comments, but if the commenter's data source reports were similar to those found in EPA's air quality data website's Monitor Values Report (*https://www.epa.gov/outdoor-air-quality-data*), then EPA notes that the Monitor Values Reports for lead for the individual calendar years do show the first through fourth maximum data points. These are the four highest single-day monitored values at the site. These overall maximum daily values are not intended to be directly compared to the NAAQS. Compliance with the 2008 lead NAAQS is not determined by whether an area's daily maximum concentrations exceed the level of the NAAQS, but rather by whether an area's design value meets the NAAQS. For the 2008 lead NAAQS, the design value for an air quality monitor is defined as the maximum three-month mean concentration at that monitor over three years. See 40 CFR 50.16. An area's design value is based on the monitor in the area which records the highest design value over the three-year period. Muncie has one regulatory air quality monitor for lead, the Mt. Pleasant Boulevard monitor, 18–035–0009. An area attains the 2008 lead NAAQS if the area's design value is equal to or below 0.15 $\mu g/m^3$. The ''first max'' and ''second max'' cited by the commenter do not indicate that the Muncie area is violating the 2008 lead NAAQS. A more relevant value for NAAQS comparison, which can be found in the Monitor Values Report, is the maximum three-month average value for the year reported. The maximum three-month average value at Muncie has been below the level of the NAAQS since 2013.

As for the elevated single-day monitored values cited by the commenter, EPA notes that short-term ambient levels of lead can be affected by short-term variations in lead emissions from industrial sources, or local meteorological conditions that can affect the entrainment of nearby lead-bearing dust or the strength or direction of the dispersion of industrial lead emissions in the atmosphere. The State's modeled attainment demonstration also accounts for the variety of meteorological conditions which can occur in the Muncie area, and the analysis has shown that at allowable emissions, the Muncie area will meet the 2008 lead NAAQS. EPA does not find that the occurrence of occasional elevated daily monitored values, which do not result in three-month averages above the 2008 lead NAAQS, indicate that this area should not be redesignated.

Regarding the comment that random outside factors such as weather may have played a role in the reduced ambient concentrations evident at the monitor in recent years, the monitoring data do not appear to support that conclusion. The monitor has been in the same location for more than ten years and has measured ambient lead concentrations both above and below the NAAQS during that interval. The pattern of ambient monitored levels of lead at the Muncie monitor since 2012 shows a distinct drop below the 2008 lead NAAQS, and then remains generally steady at or near that low level. Three-month ambient lead levels are not as sensitive to weather conditions as pollutants formed in the atmosphere such as ozone. Wind variations or weather events may affect the strength or direction of local dispersion of lead emissions, or the uptake of windblown surface sediments, but these effects would be short-lived and variable. The historical pattern of monitored levels at Muncie is more indicative of emission reductions taking effect while daily variation continues to occur as expected. The monthly and three-month average monitored values have been less variable in recent years than before 2013, which does not seem to indicate that favorable weather conditions have reduced monitored values more than recent emission reductions have done.

Comment: EPA should also review data from monitors 1 and 2 at the Muncie monitoring location. Even if these monitors' data cannot be used for criterion 1, they can be used to evaluate the other criteria.

EPA Response: There is one lead monitor in Muncie (18–035–0009) that is used for comparison to the lead NAAQS. It is located at 2601 W Mt. Pleasant Boulevard. There is another monitor collocated with monitor 18–035–0009, but it is only used to fill in missing data at the main monitor. A third Muncie monitor, known as Exide East (18–035–0008), is an industrial site monitor owned and operated by Exide Technologies and is not used for regulatory purposes. EPA has reviewed the data from all three monitors. Although the data from the Exide East monitor and the Mt. Pleasant Boulevard collocated monitor are not directly used for NAAQS evaluation, EPA notes that for 2013 through 2018, the Exide East lead monitor and the collocated monitor show three-month average values and three-year design values of similar magnitude to those of the Mt. Pleasant Boulevard reporting monitor. Neither monitor reported three-month average values in that period which would exceed the NAAQS.

Comment: The commenter stated that in order to meet criterion 3 as well as criterion 4, EPA must model the ambient levels of lead in all ambient air locations using the maximum allowable emissions under the NESHAP. The commenter suggested that it is extremely likely that such modeling will show violations of the NAAQS and thus require EPA to disapprove the redesignation request and maintenance plan.

EPA Response: The May 30, 2017 action cited Indiana's modeling analysis, included in the docket at EPA–R05–OAR–2016–0137, which demonstrated that the maximum allowable federally enforceable emission limits for Exide Technologies

will provide for attainment of the NAAQS.

Comment: The commenter stated that as to redesignation criteria 1, 3, and 5, EPA has determined that the Indiana SIP is defective because it allows emissions above emission limits during malfunctions even if those emissions cause violations of a NAAQS. In support of this proposition, the commenter cites the final notice for the SSM SIP Call at 80 FR 33840, 33966 (June 12, 2015). The commenter asserts that, accordingly, EPA ''cannot approve this redesignation until Indiana or EPA removes 326 Ind. Admin. Code 1–6–4(a) from the Indiana SIP.''

EPA Response: Criteria 1, 3, and 5, cited by the commenter, appear to refer to CAA sections 107(d)(3)(E)(i), (iii), and (v). The commenter also cites EPA's June 12, 2015 SSM SIP Call concerning how provisions in SIPs treat excess emissions during periods of SSM (80 FR 33840). As the commenter stated, the Indiana SIP rule identified in the SIP Call is 326 IAC 1–6–4(a), approved by EPA in 1984. That rule, however, applies only to non-major sources whose potential emissions are so small that their sole permitting requirement is either a registration permit or minor source permit under 326 IAC 2–1–1 or 326 IAC 2–1–4, respectively. It does not apply to Exide Technologies, the source that Indiana identified as the only contributor to ambient lead concentrations in Muncie. Exide Technologies has a major source operating permit issued by IDEM pursuant to rules approved by EPA under title V of the CAA and 40 CFR part 70. Exide Technologies' part 70 permit states at section B.11(d) that Exide Technologies' permit conditions supersede 326 IAC 1–6.

With respect to commenter's specific allegations regarding the redesignation criteria, we do not agree that the SSM provision at issue in 326 IAC 1–6–4(a) calls into question EPA's finding that the area has attained the NAAQS. The air quality monitoring data clearly show that the area is attaining the NAAQS, and the status of the SSM SIP Call does not alter those factual circumstances. We also disagree that the SSM provision impacts EPA's conclusion that CAA section 107(d)(3)(E)(iii) is satisfied. The permanent and enforceable lead emission reductions at Exide Technologies, which were demonstrated to provide for attainment in Muncie, would not be affected in any way by 326 IAC 1–6–4(a), which plainly does not apply to the single, relevant source. Finally, EPA believes that the SSM provision cited by the commenter is not relevant to the inquiry of whether Indiana has complied with CAA section 107(d)(3)(E)(v), which requires Indiana to have ''met all requirements applicable to the area under section 110 of this title and part D of this subchapter.'' Not every requirement in the CAA is ''applicable'' for purposes of determining whether a nonattainment area may be redesignated, per CAA section 107(d)(3)(E)(v). The provision at issue here does not apply to any lead sources in the Muncie area, and is not ''applicable'' for purposes of evaluating Muncie's request for redesignation.

III. What action is EPA taking?

EPA is redesignating the Muncie lead nonattainment area to attainment of the 2008 lead NAAQS. The Muncie lead nonattainment area in Delaware County, Indiana, consists of a portion of the City of Muncie, Indiana, bounded to the north by West 26th Street/Hines Road, to the east by Cowan Road, to the south by West Fuson Road, and to the west by a line running south from the eastern edge of Victory Temple's driveway to South Hoyt Avenue and then along South Hoyt Avenue. EPA is also approving Indiana's lead maintenance plan for the Muncie area and the 2013 lead attainment year emission inventory for Muncie.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule relieves the State of planning requirements for this lead nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of the geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, 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 it is not a significant regulatory action 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 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of lead NAAQS in tribal lands.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 20, 2020.

Kurt Thiede,

Regional Administrator.

40 CFR parts 52 and 81 are 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.*

■ 2. In § 52.770, the table in paragraph (e) is amended by adding entries for ''Muncie 2008 lead emissions inventory'' and ''Muncie 2008 lead maintenance plan'' following the entry for ''Muncie Hydrocarbon Control Strategy'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * *	*	* *	*
Muncie 2008 lead emissions inventory	4/14/2016	5/15/2020, [insert **Federal Register** citation].	
Muncie 2008 lead maintenance plan	4/14/2016	5/15/2020, [insert **Federal Register** citation].	
* * *	*	* *	*

■ 3. Section 52.797 is amended by adding paragraphs (f) and (g) to read as follows:

§ 52.797 Control strategy: Lead.

* * * * *

(f) Approval—Indiana's 2008 lead emissions inventory for the Muncie area, as submitted on April 14, 2016, satisfying the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Muncie area.

(g) Approval — The 2008 lead maintenance plan for the Muncie, Indiana nonattainment area has been approved as submitted on April 14, 2016.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. Section 81.315 is amended by revising the entry for Muncie, IN in the table entitled ''Indiana—2008 Lead NAAQS'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS [a]	
	Date [1]	Type
Muncie, IN		
Delaware County (part)	May 15, 2020	Attainment.
A portion of the City of Muncie, Indiana bounded to the north by West 26th Street/Hines Road, to the east by Cowan Road, to the south by West Fuson Road, and to the west by a line running south from the eastern edge of Victory Temple's driveway to South Hoyt Avenue and then along South Hoyt Avenue.		
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011, unless otherwise noted.

[FR Doc. 2020–08874 Filed 5–14–20; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0387; FRL–10007–38]

Acequinocyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of acequinocyl in or on the bushberry subgroup 13–07B. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 15, 2020. Objections and requests for hearings must be received on or before July 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0387, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0387 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0387, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 30, 2019 (84 FR 45702) (FRL–9998–15),

EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E8768) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of acequinocyl, 2-(acetyloxy)-3-dodecyl-1,4,naphthalenedione and its metabolite 2-dodecyl-3-hydroxy-1,4-naphthoquinone expressed as acequinocyl equivalents in or on the bushberry subgroup 13–07B at 3 parts per million (ppm). That document referenced a summary of the petition prepared by Arysta LifeScience North America Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

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

On June 7, 2018, EPA published in the **Federal Register** a final rule establishing tolerances for residues of acequinocyl in or on guava and the tropical and subtropical, small fruit, inedible peel, subgroup 24A based on the Agency's conclusion that aggregate exposure to acequinocyl is safe for the general population, including infants and children. *See* (83 FR 26369) (FRL–9978–20). That document contains a summary of the toxicological profile and points of departure, assumptions for exposure assessment, and the Agency's determination regarding the children's safety factor, which have not changed.

EPA's exposure assessments have been updated to include the additional exposure from use of acequinocyl on the bushberry subgroup 13–07B, *i.e.,* reliance on tolerance-level residues and an assumption of 100 percent crop treated (PCT). EPA's aggregate exposure assessment incorporated this additional dietary exposure, as well as exposure in drinking water and from residential sources, although those latter exposures are not impacted by the new use on the bushberry subgroup 13–07B and thus have not changed since the last assessment. Further information about EPA's risk assessment and determination of safety supporting the tolerances established in the June 7, 2018 **Federal Register** action, as well as the new acequinocyl tolerance can be found at *http://www.regulations.gov* in the document titled ''Acequinocyl. Human Health Risk Assessment to Support the Petition for Tolerance for Residues in/on Guava and Tropical and Subtropical, Small Fruit, Inedible Peel, Subgroup 24A.'' dated May 16, 2018, in docket ID EPA–HQ–OPP–2017–0376 and the document titled, ''Acequinocyl. Human Health Risk Assessment to Support the Petition for Tolerance for Residues in/on the Bushberry Subgroup 13–07B'' in docket ID number EPA–HQ–OPP–2019–0387.

Acute dietary risks are below the Agency's level of concern: 58% of the acute population adjusted dose (aPAD) for children 1 to 2 years old, the population group of concern. Chronic dietary risks are below the Agency's level of concern: 54% of the chronic population adjusted dose (cPAD) for children 1 to 2 years old, the group with the highest exposure. There is not expected to be any residential handler exposure, and only post-application dermal exposures are expected from registered uses of acequinocyl in residential areas. Residential post-application oral and inhalation exposures are not expected. Using the exposure assumptions described for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs above the LOC of 100 for all scenarios assessed and are not of concern.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to acequinocyl residues. More detailed information on the subject action to establish a tolerance in or on the Bushberry subgroup 13–07B can be found in the document entitled, ''Acequinocyl. Human Health Risk Assessment to Support the Petition for Tolerance for Residues in/on the Bushberry Subgroup 13–07B'' by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2019–0387.

IV. Other Considerations

A. Analytical Enforcement Methodology

There are adequate residue analytical methods for enforcing tolerances for acequinocyl residues of concern in/on the registered plant and livestock commodities. These methods include two high-performance liquid chromatography methods with tandem mass-spectroscopy detection (HPLC/MS/MS) for determining residues in/on fruit and nut crops and livestock matrices.

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

B. International Residue Limits

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

EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for acequinocyl in or on the bushberry subgroup 13–07B.

V. Conclusion

Therefore, a tolerance is established for residues of acequinocyl, including its metabolites and degradates in or on the bushberry subgroup 13–07B at 3 ppm.

VI. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 1, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.599, amend the table in paragraph (a) by adding in alphabetical order an entry for ''Bushberry subgroup 13–07B'' to read as follows:

§ 180.599 Acequinocyl; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Bushberry subgroup 13–07B	3
* * * * *	

* * * * *

[FR Doc. 2020–09451 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0070; FRL–10001–14]

Isoxaben; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of isoxaben in or on the caneberry subgroup 13–07A and hop, dried cones. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 15, 2020. Objections and requests for hearings must be received on or before July 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0070, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0070 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0070, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 7, 2019 (84 FR 26630) (FRL–9993–93), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8731) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.650 be amended by establishing tolerances for residues of isoxaben, N-[3-(1-ethyl-1-methylpropyl)-5-isoxazolyl]-2, 6-dimethoxybenzamide in or on the raw agricultural commodities Hop, dried cones at 0.01 parts per million (ppm) and Caneberry subgroup 13–07A at 0.01 ppm. That document referenced a summary of the petition prepared by the Dow Chemical Company, the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Isoxaben shows low acute toxicity by all routes. In chronic oral studies, the liver (mouse) and kidney (rat) were target organs, and decreased body weight was observed in the rat, mouse, and dog. There was no indication of neurotoxicity or immunotoxicity. There was no evidence of increased quantitative susceptibility for pre- and/or post-natal effects in the rat and rabbit developmental toxicity studies, nor in the rat multigeneration reproductive toxicity study. Increased qualitative susceptibility was observed in the rat reproductive toxicity study; however, concern for qualitative susceptibility is low because these effects were only observed at the limit dose of 1,000 mg/kg/day in the presence of maternal effects.

Isoxaben is currently classified as having ''suggestive evidence of carcinogenic potential,'' based on the presence of liver tumors in male and female mice. Because the tumors were benign and observed at dose levels exceeding the limit dose of 1,000 mg/kg/day and there was low concern for genotoxicity, the chronic reference dose is considered protective of potential carcinogenicity and a separate quantitative assessment of cancer risk was not conducted.

Specific information on the studies received and the nature of the adverse effects caused by isoxaben as well as the no-observed-adverse-effect-level

(NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Isoxaben. Human Health Risk Assessment to Support Proposed New Uses on Caneberry Subgroup 13–07A and Hops'' on page numbers 32–37 in docket ID number EPA–HQ–OPP–2019–0070.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for isoxaben used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of February 7, 2018 (83 FR 5307) (FRL–9972–75).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to isoxaben, EPA considered exposure under the petitioned-for tolerances as well as all existing isoxaben tolerances in 40 CFR 180.650. EPA assessed dietary exposures from isoxaben in food as follows:

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

No such effects were identified in the toxicological studies for isoxaben; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT).

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

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for isoxaben. Tolerance-level residues and 100 PCT were assumed for all food commodities.

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

Based on the Surface Water Concentration Calculator (SWCC v1.106) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of isoxaben for chronic exposures are estimated to be 43.6 parts per billion (ppb) for surface water and 909 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration value of 909 ppb was used to assess the contribution to drinking water.

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

Isoxaben is currently registered for the following uses that could result in residential exposures: Landscape ornamentals, lawns/turf, and trees. EPA assessed residential exposure using the following assumptions: Isoxaben residential uses constitute short- and intermediate-term exposure scenarios. For residential handlers, since a dermal endpoint was not selected, the only route of exposure quantitatively assessed for adult handlers is through inhalation. For post-application exposures, only intermediate-term incidental oral exposures for children were assessed due to the persistence of isoxaben residues in soil. Neither a short-term dermal nor short-term incidental oral endpoint was selected for children. Although there is potential for post-application inhalation exposure of both adults and children, the estimated exposure is anticipated to be negligible; therefore, a quantitative post-application inhalation assessment was not required.

For the purpose of performing an aggregate assessment, the Agency selected only the most conservative, or worst-case, residential adult and child scenarios to be included in the aggregate, based on the lowest overall MOE (highest exposure estimates). For adults, handler inhalation exposure resulting from applications of isoxaben-treated mulch by hand has been used to estimate adult aggregate exposure. The inhalation exposure was added to background exposure from food and water and compared to the short-term inhalation POD. Post-application risks for adults in residential settings were not assessed due to the lack of a dermal endpoint.

For children, an intermediate-term aggregate assessment was conducted by adding the incidental soil ingestion exposure, and average food and water exposure (chronic dietary exposure). The incidental oral residential exposure value selected for the aggregate analysis is based on children ingesting soil particles containing pesticide residues while playing on treated turf. Due to the persistence of isoxaben in the soil, the Agency used a conservative approach by using the maximum seasonal application rate for estimating soil ingestion by children rather than the standard maximum single application rate. This scenario resulted in the highest calculated exposure levels; therefore, it is protective for all other oral post-application exposure and risk for children in residential settings.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-*

science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased quantitative susceptibility for pre- and/or post-natal effects in the rat and rabbit developmental toxicity studies, nor in the rat multigeneration reproductive toxicity study. Increased qualitative susceptibility was observed in the rat reproductive toxicity study, however, concern for qualitative susceptibility is low because these effects were only observed at the limit dose of 1,000 mg/kg/day in the presence of maternal effects. The NOAEL/LOAEL for these effects is well-defined, and risk assessment PODs were selected to be protective for these effects.

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

i. The toxicity database for isoxaben is complete to allow the Agency to assess the toxicological profile of isoxaben.

ii. There is no indication that isoxaben is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There was no evidence of increased quantitative susceptibility for pre- and/or post-natal effects in the rat and rabbit developmental toxicity studies, nor in the rat multigeneration reproductive toxicity study. Increased qualitative susceptibility was observed in the rat reproductive toxicity study, however, concern for qualitative susceptibility is low because these effects were only observed at the limit dose of 1,000 mg/kg/day in the presence of maternal effects. The regulatory endpoint is protective of the offspring effects.

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

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to isoxaben from food and water will utilize 98% of the cPAD for all infants less than 1-year-old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of isoxaben is not expected.

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

Isoxaben is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to isoxaben.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 10,500 for females 13 to 49 years old. Because EPA's level of concern for isoxaben is a MOE of 100 or below, this MOE is not of concern.

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

Isoxaben is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to isoxaben.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 7,200 for children 1 to 2 years old. Because EPA's level of concern for isoxaben is a MOE of 100 or below, this MOE is not of concern.

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

the U.S. population from aggregate exposure to isoxaben.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical method utilizing liquid chromatography with tandem mass spectrometric detection (LC/MS/MS), GRM 02.26.S.1 (a revision of GRM 02.26), is available for enforcement of isoxaben residues in crop commodities.

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

B. International Residue Limits

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

The Codex has not established any MRLs for isoxaben.

C. Response to Comments

One comment was received that stated in part that isoxaben ''should (sic) not be allowed to be used on hop, etc.'' Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that these isoxaben tolerances are safe. The commenter has provided no information supporting a contrary conclusion.

V. Conclusion

Therefore, tolerances are established for residues of isoxaben in or on the caneberry subgroup 13–07A at 0.01 ppm and hop, dried cones at 0.01 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 3, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.650, add alphabetically the entries ''Caneberry subgroup 13–07A'' and ''Hop, dried cones'' to the table in paragraph (a) to read as follows:

§ 180.650 Isoxaben; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Caneberry subgroup 13–07A.	0.01
* * * * *	
Hop, dried cones	0.01
* * * * *	

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[FR Doc. 2020–08962 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200420–0118]

RIN 0648–XH043

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Revised 2020 and Projected 2021 Black Sea Bass and Scup Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action approves revised 2020 and projected 2021 specifications for the scup and black sea bass fisheries. Changes to the specifications are necessary to better achieve optimum yield within the fishery while controlling overfishing, consistent with recent stock assessment updates and the Magnuson-Stevens Fishery Conservation and Management Act. This rule informs the public of the changes to the specifications for the remainder of the 2020 fishing year and announces projected 2021 specifications.

DATES: Effective May 15, 2020, through December 31, 2020.

ADDRESSES: Copies of the revised specifications, including the Environment Assessment, and other supporting documents for the action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N State Street, Dover, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org*.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission jointly manage the scup and black sea bass fisheries as part of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Scup and black sea bass annual catch and landings limits do not roll over from one year to the next. To meet the FMP objectives and requirements of the Magnuson-Stevens Act, commercial quotas and recreational harvest limits (RHL) must be in place by January 1 of each year. At a joint meeting in October 2019, the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Board adopted interim 2020 catch and landings limits for scup and black sea bass in late 2019 (84 FR 54041, October 9, 2019). The interim limits were identical to 2019 limits and intended to be replaced as soon as possible following operational stock assessments for both species conducted in the fall of 2019. Interim 2020 specifications were necessary because there was not sufficient time to complete the specification development and rulemaking between the stock assessment peer review and January 1, 2020. This action implements the updated 2020 specifications replacing the interim measures and announces projected 2021 specifications for scup and black sea bass.

The Council's Scientific and Statistical Committee (SSC) and the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee (MC) met in October 2019 to review the operational stock assessment results and make recommendations to the Council for revised catch and landings limits. The SSC applied the Council's risk policy and acceptable biological catch (ABC) control rule to derive recommended overfishing limits (OFL) and ABC values for fishing years 2020 and 2021.

The Council and Board reviewed the new operational stock assessment information and the SSC and MC-recommended specifications at their joint meeting in October 2019, and took final action on revised 2020 and projected 2021 specifications. This action implements the Council and Board's preferred alternatives.

This action is being published without prior notice and a formal public comment period. The revised 2020 scup and black sea bass specifications included in this action were anticipated during development of the interim specifications, which were the subject of a notice and comment rulemaking process. Prior to our rulemaking, the Council and Board discussed that the interim measures would be replaced as quickly as possible once the operational stock assessment process was complete. The public was also notified of our intent to publish revised specifications in the proposed and final rules of the interim scup and black sea bass specifications action (84 FR 54041, October 9, 2019).

Revised Specifications

Black Sea Bass Specifications

The Council and Board recommended 2020–2021 black sea bass catch and landings limits are shown in Table 1. The recommendations are based on the averaged 2020–2021 ABCs recommended by the SSC. This approach allows for constant catch and landings limits across both years. The ABCs are based on an SSC-modified OFL and the Council's risk policy for a species with a typical life history and biomass level above B_{MSY}, resulting in a 40-percent probability of overfishing. The final 2020 commercial quota and RHL are 59 percent higher than the interim 2020 limits.

TABLE 1—2020–2021 BLACK SEA BASS CATCH AND LANDINGS LIMITS *

Measure	Mil lb.	Metric ton
OFL	2020: 19.39 2021: 17.68	2020: 8,795 2021: 8,021
ABC	15.07	6,835
ABC Landings Portion	11.39	5,164
ABC Discards Portion	3.68	1,671
Expected Commercial Discards	1.4	637
Expected Recreational Discards	2.28	1,034
Commercial ACL = ACT	6.98	3,167
Commercial Quota	5.58	2,530

TABLE 1—2020–2021 BLACK SEA BASS CATCH AND LANDINGS LIMITS *—Continued

Measure	Mil lb.	Metric ton
Recreational ACL = ACT	8.09	3,668
RHL	5.81	2,634

* All values except OFL are the same for both years.

Scup Specifications

The Council and Board recommended 2020–2021 scup catch and landings limits are shown in Table 2. The recommendations are based on the 2020–2021 ABCs recommended by the SSC. The ABCs are based on an SSC-modified OFL and the Council's risk policy for a species with a typical life history and biomass level above B_{MSY}, resulting in a 40-percent probability of overfishing. The final 2020 commercial quota and RHL are 7 percent lower than the interim 2020 limits.

TABLE 2—2020–2021 SCUP CATCH AND LANDINGS LIMITS

Measure	2020–2021 varying ABC approach			
	2020		2021	
	mil lb	mt	mil lb	mt
OFL	41.17	18,674	35.30	16,012
ABC	35.77	16,227	30.67	13,913
ABC Discards	7.03	3,190	7.26	3,295
Commercial ACL = ACT	27.90	12,657	23.92	10,852
Projected Commercial Discards	5.67	2,574	5.86	2,659
Commercial Quota	22.23	10,083	18.06	8,194
Recreational ACL = ACT	7.87	3,570	6.75	3,061
Projected Recreational Discards	1.36	616	1.40	636
RHL	6.51	2,954	5.34	2,424

The 2020 scup commercial quota is divided into three commercial fishery quota periods, as outlined in Table 3.

TABLE 3—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2020 BY QUOTA PERIOD

Quota period	Percent share	lb	mt
Winter I	45.11	10,027,597	4,548
Summer	38.95	8,658,277	3,927
Winter II	15.94	3,543,336	1,607
Total	100.0	22,229,210	10,083

The current quota period possession limits are not changed by this action, and are outlined in Table 4.

TABLE 4—COMMERCIAL SCUP POSSESSION LIMITS BY QUOTA PERIOD

Quota period	Percent share	Federal possession limits (per trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

The Winter I possession limit will drop to 1,000 lb (454 kg) when 80 percent of that period's allocation is landed. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notice in the **Federal Register**. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 5.

TABLE 5—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF UNUSED SCUP ROLLED OVER FROM WINTER I TO WINTER II

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in Initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0–499,999	0–226,796	0	0	12,000	5,443
12,000	5,443	500,000–999,999	226,796–453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000–1,499,999	453,592–680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000–1,999,999	680,389–907,184	4,500	2,041	16,500	7,484
12,000	5,443	*2,000,000–2,500,000	907,185–1,133,981	6,000	2,722	18,000	8,165

*This process of increasing the possession limit in 1,500 lb (680 kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of this example.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, the national standards and other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the otherwise applicable requirement for notice and an opportunity and comment because it would be contrary to the public interest. Additionally, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule. This action revises the existing 2020 specifications (*i.e.,* annual catch limits) for the scup and black sea bass fisheries to account for new stock assessment results. The black sea bass commercial and recreational harvest limits increase by 59 percent based on the updated stock assessment. A delay in effectiveness would unnecessarily disadvantage fishermen who wish to take advantage of the increased quotas. A delay would be contrary to the public interest for this loss of potential economic opportunity, and it could create confusion in the black sea bass fishery. This rule should be effective as soon as possible to fully realize the intended benefits to the fishery. This action is necessary to adjust the scup quotas based on the newest stock assessment. The commercial scup quota is decreasing by 19 percent, and the recreational quota is being reduced by 18 percent. A delay in its effectiveness would unnecessarily increase the probability of overfishing the stock. This rule should be effective as soon as possible to ensure that the catch limits are consistent with the most recent assessment of the stock.

This action, revising 2020 scup and black sea bass specifications to account for the stock assessment results, was anticipated during development and implementation of the interim specifications put in place to start the fishing year. Because of this, the public was notified of our intent to publish revised specifications in the proposed and final rules on that action (84 FR 54041, October 9, 2019). The information for and development of this action was discussed and subject to public comment following the assessment results at a public monitoring committee meeting in October 2019, and at the joint Mid-Atlantic Council and Board meeting in October 2019.

This rule is being issued at the earliest possible date. The results of the assessment became available in October 2019, and while the Council and Board also took final action on the revised specifications in October, we did not receive the Council's recommendations and supporting analysis until January 2020. A delay in implementing the new catch limits would be contrary to the public interest.

Furthermore, there exists good cause to waive the otherwise applicable requirement of a 30-day delay before this rule becomes effective. Unlike actions that require an adjustment period to comply with new rules, fishery participants will not be required to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this rule simply means adhering to the catch limits and management measures set for the remainder of the fishing year. Fishery stakeholders have been involved in the development of this action and are anticipating this rule. For the reasons explained above any further delay would be contrary to the public interest because it would undermine the intended effect of the rule.

For these reasons, there is good cause to waive the 30-day delay in effectiveness and these specifications shall be made effective on May 15, 2020.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 20, 2020.

Samuel D. Rauch, III,

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

[FR Doc. 2020–08829 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 95
Friday, May 15, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315 and 335

RIN 3206–AN28

Appointment of Current and Former Land Management Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to implement recent statutory changes allowing certain employees and former employees of a land management agency to compete for a permanent position at such agency when the agency is accepting applications from individuals within the agency's workforce under promotion and internal placement (*i.e.,* merit promotion) procedures, or at any hiring agency when the agency is accepting applications from individuals outside its own workforce under merit promotion procedures. These changes arose from enactment of the Land Management Workforce Flexibility Act (''the Act''), as amended by the National Defense Authorization Act for Fiscal Year 2017, and are codified at section 9602 of title 5. The intended effect of this rule is to facilitate the entrance of current and former land management employees into permanent Federal jobs.

DATES: Comments must be received on or before July 14, 2020.

ADDRESSES: You may submit comments, identified by the docket number or Regulation Identifier Number (RIN) for this proposed rulemaking, by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for sending comments.

All submissions must include the agency name and docket number or RIN for this rulemaking. Please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. All comments received will be posted without change, including any personal information provided. Please ensure your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked ''late,'' and OPM is not required to consider them in formulating a final decision. Before acting on this proposal, OPM will consider all comments we receive on or before the closing date for comments. Changes to this proposal may be made in light of the comments we receive.

FOR FURTHER INFORMATION CONTACT: Michelle T. Glynn, (202) 606–1571, by TDD: 1–800–877–8339, or email: *michelle.glynn@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

Federal agencies are authorized to make temporary appointments to fill positions that do not require an employee's services on a permanent basis, specifically positions to perform work which is not expected to last more than one year. Temporary employees are ineligible to compete for vacant positions advertised under promotion and internal placement (*i.e.,* merit promotion) procedures because, by definition, temporary employees are not career or career-conditional employees (see 5 CFR 315.201). Generally, positions filled under merit promotion procedures are open to current or former career or career-conditional employees and certain veterans eligible under the Veterans Employment Opportunities Act of 1998, as amended (see 5 CFR part 335). Because many agencies fill non-entry level jobs using merit promotion procedures qualified temporary employees may never be considered for these jobs. To remedy this circumstance Congress enacted the Land Management Workforce Flexibility Act (''the Act'') to provide a pathway for certain temporary employees in Federal land management agencies to compete for vacant permanent positions under merit promotion procedures.

Land Management Workforce Flexibility Act, as Amended

On August 7, 2015, the President signed the Land Management Workforce Flexibility Act, which was subsequently codified at 5 U.S.C. 9601 and 9602. On December 23, 2016, the President signed the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (''the Act''). Section 1135 of the Act amended section 9602 of title 5, United States Code. Collectively, these provisions established how a current or former employee of a ''land management agency,'' as defined by the Act, serving under a time-limited appointment, may compete for a permanent position in the competitive service—either at such an agency, when the agency is accepting applications from individuals within the agency's workforce under its merit promotion procedures, or at any agency, when the hiring agency is accepting applications from individuals outside its own workforce under the merit promotion procedures of the hiring agency. 5 U.S.C. 9602(a) and (d). In accordance with 5 U.S.C. 9602(e), which confers upon OPM authority to prescribe such regulations as may be necessary to carry out the Act, OPM is proposing that, for these purposes, ''agency'' can refer to either the highest organizational level (*i.e.,* a Department as defined in 5 U.S.C. 105) or a component or major subdivision of a Department (*e.g.,* the National Park Service within the U.S. Department of the Interior). Eligible individuals (referred to in this notice of proposed rule-making as ''land management eligibles'') must have served at an acceptable level of performance throughout the period(s) of time-limited appointment(s), have served under one or more time-limited appointments at a land management agency for a period or periods totaling more than 24 months without a break of two or more years, and the employee was appointed initially under open, competitive examination to the time-limited appointment. *Id.* A former employee of a land management agency who served under a time-limited appointment and who otherwise meets the requirements addressed in the statute, is also deemed to be a land management eligible, for purposes of the statute, if he or she applies for a position covered by these provisions within the period of two years after the individual's most recent separation and such employee's most recent separation was for reasons other than misconduct or performance. *Id.* The Act also waives any age

requirements, unless the requirement is essential to the performance of the duties of the position. *Id.* at 9602(b).

Under the Act, a land management eligible may apply for a permanent position, at his or her current agency (or, in the case of a land management eligible who is a former employee, at the last land-management agency for which the employee worked, provided the employee is otherwise eligible and applies within a 2-year period following separation from that agency) when the hiring agency is accepting applications from individuals within the agency's workforce under merit promotion procedures. A land management eligible may also apply for a permanent position at *any* agency (the agencies are not limited to land management agencies) when the hiring agency is accepting applications from individuals outside its workforce under the merit promotion procedures of the applicable agency. *Id.* at 9602(a). Lastly, the Act provides that individuals appointed under these provisions acquire competitive status upon appointment and become career-conditional employees, unless the individual has otherwise completed the service requirements for career tenure. *Id.* at 9602(c).

As noted above, the Act allows current and former employees of a land management agency who meet the definition of a land management eligible (and are otherwise qualified) to apply and compete for permanent positions in the competitive service when the hiring agency is accepting applications from outside its own workforce under merit promotion procedures. Thus, agencies will be expected to consider land management eligibles under such merit promotion procedures in accordance with 5 CFR part 335 (and may subsequently appoint such an individual, if selected). The Act also allows a current or former employee of a land management agency, who meets the definition of a land management eligible (and is otherwise qualified), to apply and compete for a permanent position at such agency when the agency is accepting applications from individuals within the agency's own workforce under merit promotion procedures. In that case, the employing (or formerly employing) land management agency also will be expected to consider land management eligibles under such merit promotion procedures in accordance with part 335. When considering applicants under the Act, agencies must adhere to their merit promotion procedures and any applicable and enforceable collective bargaining agreement(s) into which the agency may have entered. This means land management eligibles must be rated and ranked with other merit promotion candidates under the same assessment criteria as the other applicants. The appointing official may select any candidate from among the best qualified group of applicants, consistent with the procedures in 5 CFR part 335, and part 330 for displaced employees.

To implement the newly created section of title 5 U.S.C. 9602, OPM is proposing to add a new § 315.613 to subpart F of part 315, title 5, Code of Federal Regulations, and revise part 335, Promotion and Internal Placement. Below is section-by-section description of the proposed provisions.

OPM is proposing to add a new § 315.613, as follows:

Description of the Flexibility

Paragraph (a) of proposed new § 315.613 explains the conditions under which an agency may use this authority to allow a current or former land management eligible initially hired at a land management agency under a time-limited appointment in the competitive service to compete for a permanent position at the land management agency when it is accepting applications from individuals within the agency's workforce under its merit promotion procedures, or at any agency when the hiring agency is accepting applications from individuals from outside its own workforce under merit promotion procedures. As a result of 5 U.S.C. 9602, an agency must consider a land management eligible, as defined by these regulations, who applies for a permanent position pursuant to the provisions of the Act and these regulations.

Definitions

Paragraph (b) of proposed § 315.613 contains four definitions necessary for the administration of this section. OPM is proposing that ''agency'' has a meaning consistent with 5 U.S.C. 105, or means a major subdivision or component of an entity defined in 5 U.S.C. 105 (*e.g.,* the National Park Service within the U.S. Department of the Interior).

For the convenience of the reader, OPM is proposing to include the definition of ''land management agency'' as it is defined in the Act. For these purposes, a ''land management agency'' means the:

- Forest Service of the U.S. Department of Agriculture;
- Bureau of Land Management of the U.S. Department of the Interior;
- National Park Service of the U.S. Department of the Interior;
- Fish and Wildlife Service of the U.S. Department of the Interior;
- Bureau of Indian Affairs of the U.S. Department of the Interior; and
- Bureau of Reclamation of the U.S. Department of the Interior.

OPM is using the term ''land management eligible'' to refer to a Federal employee who would be in a position to take advantage of the opportunity the Act affords certain current or former employees. OPM is defining ''land management eligible'' to mean an individual who is serving or has served in a land management agency and who meets the following conditions:

For current land management employees (*i.e.,* individuals currently employed in a land management agency) the individual:

- must have been initially hired under a time-limited appointment in the competitive service at the land management agency;
- must have served under 1 or more time-limited appointments at a land management agency for a period or periods totaling more than 24 months without a break in service of 2 or more years; and
- must have performed at an acceptable level during each period of service.

For former land management employees (*i.e.,* individuals formerly employed in a land management agency) the individual:

- must have been initially hired under a time-limited appointment in the competitive service at the land management agency;
- must have served under 1 or more time-limited appointments by a land management agency for a total period of more than 24 months without a break in service of 2 or more years;
- must have performed at an acceptable level throughout the service period(s);
- must apply for a position covered by these provisions within 2 years from the end of the most recent date of separation; and
- must have been separated, with respect to the most recent separation, for reasons other than misconduct or performance.

A former land management employee's eligibility for appointment derives from the fact that the employee previously worked in a land management agency. For purposes of this regulation, a former employee who meets the above requirements is treated as if the individual is a current employee of the land management agency from which he or she was most recently separated.

OPM is proposing to define ''time-limited appointment'' as a temporary or term appointment as defined in 5 CFR part 316.

The following graphics summarize who is eligible to apply, to which agencies, and under which conditions (assuming the individual is otherwise eligible):

	Current agency	Any Federal agency
Current land management employee	When the agency is accepting applications from individuals from within its own workforce under merit promotion procedures.	When the agency is accepting applications from individuals outside its own workforce under merit promotion procedures.

	Agency last separated from	Any Federal agency
Former land management employee	When the agency is accepting applications from individuals from within its own workforce under merit promotion procedures.	When the agency is accepting applications from individuals outside its own workforce under merit promotion procedures.

Conditions

Paragraph (c) of proposed § 315.613 specifies, in accordance with the Act, that, for the purposes of this Act, a hiring agency must waive requirements as to age, in determining an applicant's eligibility, unless the hiring agency can prove that the requirement is essential to the performance of the duties of the position being filled.

Acquisition of Competitive Status

For the convenience of the reader, paragraph (d) of new § 315.613 repeats language from the Act which explains that these employees acquire competitive status immediately upon appointment.

Tenure on Appointment

For the convenience of the reader, paragraph (e) of new § 315.613 repeats language from the Act which specifies that an employee appointed under these provisions becomes a career-conditional employee unless the individual has already completed the service requirements for career tenure in accordance with 5 CFR part 315.201.

OPM is proposing to add a new § 335.107 as follows:

Agency Authority

Paragraph (a) of proposed § 335.107 explains the purpose of the Act, which is to allow a land management eligible at a land management agency to apply and compete for a permanent position at any agency, when the hiring agency is accepting applications from individuals from outside its own workforce under merit promotion procedures, or at the eligible's land management agency, when such agency is accepting applications from individuals within the agency's workforce under its own merit promotion procedures.

Definitions

Paragraph (b) of proposed § 335.107 contains one definition for the administration of this section. OPM is proposing that ''land management eligible'' have the same meaning as the definition contained in proposed § 315.613(b)(3).

Regulatory Impact Analysis

OPM has examined the impact of this rulemaking as required by Executive Order 12866 and Executive Order 13563, which directs 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). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. While this rulemaking does not reach the economic effect of $100 million or more under Executive Order 12866, this rulemaking is still designated as a ''significant regulatory action,'' under Executive Order 12866 and has been reviewed by OMB.

Reducing Regulation and Controlling Regulatory Costs

This rule is not an E.O. 13771 regulatory action because this rulemaking is related to agency organization, management, or personnel.

Regulatory Flexibility Act

The Office of Personnel Management certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

Federalism

The Office of Personnel Management has examined this rulemaking in accordance with Executive Order 13132, Federalism, and have determined that this rulemaking will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rulemaking will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rulemaking'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rulemaking does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR 315 and 335

Government employees.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is proposing to amend parts 315 and 335 of title 5, Code of Federal Regulations, as follows:

PART 315—CAREER AND CAREER CONDITIONAL EMPLOYMENT

■ 1. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p.111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2560. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also under E.O. 13473. Sec 315.613 also issued under Pub. L. 114–47, sec. 2(a) (Aug. 7, 2015), amended by Pub.L. 114–328, sec. 1135 (Dec. 23, 2016), as codified at 5 U.S.C. 9602. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1978 Comp. p. 264.

Subpart F—Career or Career Conditional Appointment Under Special Authorities

■ 2. Add § 315.613 to subpart F to read as follows:

§ 315.613 Appointment of current and former land management eligibles serving under time-limited appointments.

(a) *Appointment of land management eligibles.* (1) Any agency—

(i) May appoint a land management eligible who is a current employee of a land management agency to a permanent position provided the land management eligible was selected from among the best qualified following competition under a merit promotion announcement open to candidates outside of the hiring agency's workforce: and

(ii) May appoint a land management eligible who is a former employee of a land management agency to a permanent position provided

(A) The land management eligible applied for that position within the 2-year period following the most recent date of separation from a land management agency; and

(B) Was selected from among the best qualified following competition under a merit promotion announcement open to candidates outside of the hiring agency's workforce.

(2) In addition, a land management agency—

(i) May appoint a land management eligible who is a current employee of that agency to a permanent position provided the land management eligible was selected from among the best qualified following competition under a merit promotion announcement open to candidates within that agency's workforce; and

(ii) May appoint a land management eligible who is a former employee of that land management agency to a permanent position provided—

(A) The land management eligible applied for that position within the 2-year period following the most recent date of separation from a land management agency;

(B) The land management agency from which the land management eligible most recently separated is the same land management agency as the one making the appointment; and

(C) The land management eligible was selected from among the best qualified following competition under a merit promotion announcement open to candidates within that agency's workforce.

(b) *Definitions*—(1) *Agency* has the meaning given in 5 U.S.C. 105, and may also mean a major subdivision or component of an entity defined in 5 U.S.C. 105.

(2) *Land management agency* means any of the following:

(i) The Forest Service of the U.S. Department of Agriculture;

(ii) The Bureau of Land Management of the U.S. Department of the Interior;

(iii) The National Park Service of the U.S. Department of the Interior;

(iv) The Fish and Wildlife Service of the U.S. Department of the Interior;

(v) The Bureau of Indian Affairs of the U.S. Department of the Interior; and

(vi) The Bureau of Reclamation of the U.S. Department of the Interior.

(3) *Land management eligible* means either:

(i) An individual currently serving in a land management agency who:

(A) Was initially hired under a time-limited appointment in the competitive service in accordance with part 316;

(B) Has served under 1 or more time-limited appointments by a land management agency for a period or periods totaling more than 24 months without a break in service of 2 or more years; and

(C) Must have performed at an acceptable level during each period of service; or

(ii) An individual who previously served in a land management agency who:

(A) Was initially hired under a time-limited appointment in the competitive service in accordance with part 316;

(B) Served under 1 or more time-limited appointments by a land management agency for a total period of more than 24 months without a break in service of 2 or more years;

(C) Performed at an acceptable level throughout the service period(s);

(D) Applied for a position covered by these provisions within 2 years after the individual's most recent date of separation from a land management agency; and

(E) Was separated, with respect to the individual's most recent separation, for reasons other than misconduct or performance. For these purposes, an individual under this paragraph is deemed an employee of the land management agency from which the individual was most recently separated.

(4) *Time-limited appointment* means a temporary or term appointment, in accordance with 5 CFR part 316.

(c) *Conditions.* An agency considering a land management eligible must waive any age requirement unless it can prove that the requirement is essential to the performance of the duties of the position.

(d) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires competitive status automatically upon appointment.

(e) *Tenure on appointment.* An appointment under paragraph (a) of this section is career-conditional unless the appointee has already satisfied the requirements for career tenure or is exempted from the service requirement pursuant to § 315.201.

PART 335—PROMOTION AND INTERNAL PLACEMENT

■ 3. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 5 U.S.C. 3304(f); Pub. L. 106–117; Pub. L. 114–47, 2(a) (Aug. 7, 2015), as amended by Pub. L. 114–328, 1135 (Dec. 23, 2016), codified at 5 U.S.C. 9602.

Subpart A—General Provisions

■ 4. Add § 335.107 to subpart A to read as follows:

§ 335.107 Special selection procedures for certain land management eligibles under merit promotion.

A current or former land management employee of a land management agency, who constitutes a land management eligible, as defined in § 315.613(b)(3), may, if otherwise qualified):

(a) Compete for a permanent position at any agency (including, but not limited to, a land management agency) when that agency is accepting applications from individuals outside its own workforce under merit promotion procedures in the competitive service; or

(b) At the land management agency with which it was most recently an

employee, in accordance with the provisions of § 315.613, when the agency is accepting applications from individuals within the agency's workforce under its merit promotion procedures. A land management eligible so selected will be given a career or career-conditional appointment under § 315.613.

[FR Doc. 2020–09444 Filed 5–14–20; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–TP–0037]

RIN 1904–AE83

Energy Conservation Program: Test Procedure for Consumer Boilers

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) is initiating a data collection process through this request for information (RFI) to consider whether to amend DOE's test procedure for consumer boilers. Specifically, DOE seeks data and information pertinent to whether amended test procedures would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product, and not be unduly burdensome to conduct. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI), as well as the submission of data and other relevant information.

DATES: Written comments and information are requested and will be accepted on or before June 15, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–TP–0037 and/or RIN 1904–AE83, by any of the following methods:

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

2. *Email:* to *ConsumerBoilers2019TP0037@ee.doe.gov.* Include docket number EERE–2019–BT–TP–0037 and/or RIN 1904–AE83 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW, Suite 600, Washington, DC, 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *http://www.regulations.gov/docket?D=EERE-2019-BT-TP-0037.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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III. Submission of Comments

I. Introduction

Consumer boilers are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(5) [1] DOE's test procedures for consumer boilers are prescribed at Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix N, *Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers* (Appendix N). The following sections discuss DOE's authority to establish and amend test procedures for consumer boilers, as well as relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority and Background

The Energy Policy and Conservation Act, as amended (EPCA), [2] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B[3] of EPCA, Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include consumer boilers, which are the subject of this RFI. (42 U.S.C. 6292(a)(5))

The energy conservation program under EPCA consists essentially of four

[1] Pursuant to 42 U.S.C. 6292(a)(5), ''furnaces'' are covered products, and the term ''furnace'' is defined in 42 U.S.C. 6291(23) to include electric boilers and low pressure steam or hot water boilers.

[2] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[3] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, the statute sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures in the **Federal Register** and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

EPCA also requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission (IEC), unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*)

In addition, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, amended EPCA to require that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including the consumer boilers that are the subject of this RFI, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A)) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days but may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)). If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this RFI to collect data and information to inform its decision in satisfaction of the 7-year-lookback review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Rulemaking History

As stated, the existing DOE test procedure for consumer boilers is located at 10 CFR part 430, subpart B, appendix N and is used to determine the annual fuel utilization efficiency (AFUE). For gas-fired and oil-fired boilers, AFUE accounts for fossil fuel consumption in active, standby, and off modes, but does not include electrical energy consumption. For electric boilers AFUE accounts for electrical energy consumption in active mode. Appendix N also includes provisions to determine the electrical energy consumption in standby mode ($P_{W,SB}$) and off mode ($P_{W,OFF}$) for gas-fired, oil-fired, and electric boilers.

DOE first established test procedures for consumer boilers in a final rule published in the **Federal Register** on May 10, 1978. 43 FR 20147. In a final rule published in the **Federal Register** on March 28, 1984, DOE incorporated by reference in the DOE test procedure for furnaces and boilers, American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 103–82, ''Methods of Testing for Heating Seasonal Efficiency of Central Furnaces and Boilers'' (ASHRAE 103–82). 49 FR 12148, 12149. DOE subsequently amended the test procedure for consumer boilers on a number of occasions, including an amendment to update the ASHRAE 103 reference. 62 FR 26140, 26157 (May 12, 1997) (incorporating by reference the 1993 version of ASHARE 103, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers'' (''ASHRAE 103–1993'')).[4]

On October 20, 2010, DOE published a final rule in the **Federal Register** to amend its test procedure for consumer boilers to establish a method for measuring the electrical energy use in standby mode and off mode for gas-fired and oil-fired boilers in satisfaction of 42 U.S.C. 6295(gg)(2)(A). 75 FR 64621. The standby mode and off mode test procedure amendments incorporated by reference, and were based primarily on, provisions of the International Electrotechnical Commission (IEC) Standard 62301 (First Edition), ''Household electrical appliances—Measurement of standby power.'' *Id.* On December 31, 2012, DOE published a final rule in the **Federal Register** that updated the incorporation by reference of the standby mode and off mode test procedure provisions to refer to the second (latest) edition of IEC Standard 62301 (IEC 62301 (Second Edition)). 77 FR 76831. On July 10, 2013, DOE

[4] On October 14, 1997, DOE published an interim final rule to revise a provision concerning the insulation of the flue collector box in order to ensure the updated test procedure would not affect the measured AFUE of existing furnaces and boilers. 62 FR 53508. This interim final rule was subsequently adopted without change. 63 FR 9390 (Feb. 24, 1998).

published a final rule in the **Federal Register** that amended its test procedure for consumer boilers by adopting equations that provide manufacturers the option to omit the heat-up and cool-down tests and still generate a valid AFUE measurement. 78 FR 41265.[5]

DOE most recently updated its test procedure for consumer boilers in a final rule published in the **Federal Register** on January 15, 2016 (January 2016 final rule). 81 FR 2628. The January 2016 final rule amended the existing DOE test procedure for consumer boilers to improve the consistency and accuracy of test results generated using the DOE test procedure and to reduce test burden. In particular, the modifications relevant to consumer boilers included: (1) Clarifying the definition of the electrical power term, ''PE''; (2) adopting a smoke stick test for determining whether minimum default draft factors can be applied; (3) allowing for optional measurement of condensate during establishment of steady-state conditions; (4) updating references to the applicable installation and operation (I&O) manual and providing clarifications for when the I&O manual does not specify test set-up; and (5) revising the AFUE reporting precision. DOE also revised the definitions of several terms in the test procedure and added an enforcement provision to provide a method of test for DOE to determine compliance with the automatic means design requirement mandated by EISA 2007. 81 FR 2628, 2629–2630.

II. Request for Information

As an initial matter, DOE seeks comment on whether there have been changes in product testing methodology or new products on the market since the last test procedure update that may necessitate amendments to the test procedure for consumer boilers. Specifically, DOE seeks data and information that could enable the agency to propose that the current test procedure produces results that are representative of an average use cycle for the product and is not unduly burdensome to conduct, and, therefore, does not need amendment. DOE also seeks information on whether an existing private sector-developed test procedure would produce such results and should be adopted by DOE, either entirely or by adopting only certain provisions of one or more private sector-developed tests.

In the following sections, DOE has also identified a variety of issues on which it seeks input to aid in the development of technical and economic analyses regarding whether amended test procedures for consumer boilers would be warranted. More specifically, DOE seeks to determine whether amended test procedures for consumer boilers would more accurately or fully comply with the requirements in EPCA that test procedures: (1) Be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost during a representative average use cycle or period of use, and (2) not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Further, the Department recently published an RFI regarding test procedures across the full range of consumer products and commercial equipment that fall under its regulatory authority pursuant to EPCA. In that RFI, DOE noted that over time, many of DOE's test procedures have been amended to account for products' and equipment's increased functionality and modes of operation. DOE's intent in issuing that RFI was to gather information to ensure that the inclusion of measurement provisions in its test procedures associated with such increased functionality has not inadvertently compromised the measurement of representative average use cycles or periods of use, and/or made some test procedures unnecessarily burdensome. 84 FR 9721 (March 18, 2019). DOE seeks comment on this issue as it specifically pertains to the test procedure for the consumer boilers that are the subject of this current RFI. DOE is also requesting comment on any opportunities to streamline and simplify testing requirements for consumer boilers.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this process that may not be specifically identified elsewhere in this document. In particular, DOE notes that under section 1 of Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. *See* 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its test procedure regulations applicable to consumer boilers consistent with the requirements of EPCA.

A. Scope and Definitions

In the context of ''covered products,'' EPCA includes boilers in the definition of ''furnace.'' (42 U.S.C. 6291(23)) EPCA defines the term ''furnace'' to mean a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which: (1) Is designed to be the principal heating source for the living space of a residence; (2) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour; (3) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and (4) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces. (*Id.*) DOE has codified this definition in its regulations at 10 CFR 430.2.

The scope of the test procedure for consumer boilers is specified in section 1.0 of appendix N, which references section 2 of ASHRAE 103–1993. In relevant part, section 2 of ASHRAE 103–1993 states that the standard applies to boilers with inputs less than 300,000 Btu/h[6]; having gas, oil, or electric input; and intended for use in residential applications. Further, ASHRAE 103–1993 applies to equipment that utilizes single-phase electric current or low-voltage DC current.

Issue 1: DOE requests comment on whether any consumer boilers are available on the market that are covered by the scope provision of ASHRAE 103–1993 but that are not covered by the definition of ''furnace'' as codified by DOE at 10 CFR 430.2. Likewise, DOE requests comment on whether any consumer boilers on the market are covered by DOE's definition of ''furnace'' that are not covered by the scope provision of ASHRAE 103–1993.

DOE has defined several types of consumer boilers, including ''electric boilers,'' ''low pressure steam or hot water boilers,'' ''outdoor boilers,'' and ''weatherized warm air boilers.'' These terms are defined at 10 CFR 430.2 as follows:

1. *Electric boiler* means an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low-pressure steam boiler operates at or below 15 pounds per square

[5] On August 30, 2013, DOE published a correction to the July 10, 2013 final rule in the **Federal Register** which rectified errors in the redesignations of affected subsections within section 10 of appendix N. 78 FR 53625.

[6] Btu/h refers to British thermal units per hour.

inch gauge (psig) steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F water temperature.

2. *Low pressure steam or hot water boiler* means an electric, gas, or oil-burning furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 pounds psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F water temperature.

3. *Outdoor furnace or boiler* is a furnace or boiler normally intended for installation out-of-doors or in an unheated space (such as an attic or a crawl space).

4. *Weatherized warm air furnace or boiler* means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

Issue 2: DOE requests comment on the definitions currently applicable to consumer boilers and whether any of these definitions need to be revised, and if so, how. Please provide justification for why any suggested change is necessary.

In addition to the definitions included in 10 CFR 430.2, section 2.0 of Appendix N incorporates by reference the definitions in section 3 of ASHRAE 103–1993, with modifications and additions as specified in that section of Appendix N. Sections 2.1 through 2.13 of Appendix N provide additional definitions relevant to the consumer boilers test procedure.

Issue 3: DOE seeks comment on whether the definitions for consumer boilers in section 2.0 through section 2.13 of Appendix N, including those from ASHRAE 103–1993 that are incorporated by reference, are still appropriate. If any of the definitions are no longer appropriate, DOE seeks input on how they should be amended and why.

B. Test Procedure

Appendix N includes provisions for scope (section 1.0, as discussed in section II.A of this document), definitions (section 2.0, as discussed in section II.A of this document), classifications (section 3.0), requirements (section 4.0), instrumentation (section 5.0), apparatus (section 6.0), testing conditions (section 7.0), test procedure (section 8.0), nomenclature (section 9.0), and calculations (section 10.0).

Each of the sections in Appendix N references a corresponding section in ASHRAE 103–1993. Many of the sections in Appendix N also include additions and/or modifications to the ASHRAE 103–1993 test method to provide additional specifications and make changes that DOE had previously determined to be otherwise necessary for the Federal test procedure, such as specifying procedures for measuring standby mode and off mode electrical consumption.

1. Updates to Industry Standards

As discussed, ASHRAE 103–1993 is referenced throughout Appendix N for various testing requirements pertaining to determination of the AFUE of consumer boilers. Appendix N also references certain sections of IEC 62301 (Second Edition), related to determining the electrical standby mode and off mode energy consumption, and American Society for Testing and Materials (ASTM) Standard D2156–09 (Reapproved 2013), ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels'' (ASTM D2156–09) for adjusting oil burners.

The following explains the developments to these industry test standards since their incorporation by reference in the DOE consumer boilers test procedure. IEC 62301 (Second Edition), which is currently incorporated by reference, is still the most recent version. ASTM D2156–09 was reapproved in 2018, and, therefore, the most up-to-date version of the standard is ASTM D2156–09 (Reapproved 2018). The 2018 reapproved version does not contain any changes from ASTM D2156–09. ASHRAE 103 has been updated twice since the version presently incorporated by reference (ASHRAE 103–1993) was adopted. Specifically, updated versions of the standard were published in 2007 (ASHRAE 103–2007) and 2017 (ASHRAE 103–2017) and included substantive changes. DOE's initial review of the differences between these versions of ASHRAE 103 are discussed in detail in the following paragraphs.

ASHRAE 103 provides procedures for determining the AFUE of consumer boilers (and furnaces). As mentioned previously, ASHRAE 103–1993 has been updated multiple times since 1993. In the rulemaking that culminated in the January 2016 final rule, DOE initially proposed to incorporate by reference the most recent version of ASHRAE 103 available at the time (*i.e.,* ASHRAE 103–2007), but ultimately declined to adopt the proposal in the final rule based on concerns about the impact that changing to ASHRAE 103–2007 would have on AFUE ratings of products distributed in commerce at that time. 81 FR 2628, 2632–2633 (Jan. 15, 2016). DOE stated that further evaluation was needed to determine the potential impacts of ASHRAE 103–2007 on the measured AFUE of boilers. *Id.* DOE theorized that ASHRAE 103–2007 might better account for the operation of two-stage and modulating products, and stated that the Department may further investigate adopting it or a successor test procedure in the future. *Id.*

After the January 2016 final rule, ASHRAE 103 was once again updated to the current version (*i.e.,* ASHRAE 103–2017). DOE has identified the following substantive differences between ASHRAE 103–1993 and ASHRAE 103–2017 that pertain to consumer boilers:

1. ASHRAE 103–2017 includes calculations for determining the average on-time and off-time per cycle for two-stage and modulating boilers, rather than assigning fixed values as in ASHRAE 103–1993;

2. ASHRAE 103–2017 includes calculations for the part-load efficiency at maximum and reduced fuel input rates of condensing two-stage and modulating boilers when the heat up and cool down tests are omitted as per section 9.10, while ASHRAE 103–1993 does not include these calculations; [7]

3. ASHRAE 103–2017 increases post-purge time from less than 5 seconds in ASHRAE 103–1993 to less than or equal to 30 seconds for determining whether section 9.10, ''Optional Test Procedures for Conducting Furnaces and Boilers that have no OFF-Period Flue Loss,'' is applicable for units with no measurable airflow through the combustion chamber during the burner off-period, and it also makes the application of the default draft factor values in section 9.10 a requirement rather than optional;

4. ASHRAE 103–2017 changes the method for determining national average burner operating hours (BOH), average annual fuel energy consumption (E_F), and average annual auxiliary electrical energy consumption (E_{AE}), especially for two-stage and modulating products, based on a 2002 study from NIST.

Issue 4: DOE requests comment on the differences between ASHRAE 103–1993 and ASHRAE 103–2017. In particular, DOE seeks information on whether any differences not identified by DOE above would impact the consumer boiler test procedure.

Issue 5: DOE requests information on whether the differences identified above would impact the measured AFUE, and if so, DOE requests test data demonstrating the degree of such impact.

Issue 6: DOE is also interested on receiving comment on whether the updates to ASHRAE 103 are appropriate for adoption in the Federal test procedure for consumer boilers, whether the changes allow for more

[7] DOE published a final rule in the **Federal Register** on July 10, 2013 that added equations to Appendix N to calculate the part-load efficiencies at the maximum input rate and reduced input rates for two-stage and modulating condensing furnaces and boilers when the manufacturer chooses to omit the heat-up and cool-down tests under the test procedure. 78 FR 41265. The equations in ASHRAE 103–2017 are identical to those in Appendix N.

representative energy efficiency ratings, and whether the changes would increase test burden.

2. Ambient Conditions

The consumer boilers test procedure specifies that the ambient air temperature during testing must be between 65 °F and 100 °F for non-condensing boilers, and 65 °F and 85 °F for condensing boilers. Section 7.0 of Appendix N and 8.5.2 of ASHRAE 103–1993. In addition, the relative humidity cannot exceed 80 percent during condensate measurement. Section 8.0 of Appendix N and 9.2 of ASHRAE 103–1993. In the January 2016 final rule, DOE addressed concerns regarding the ambient air temperature and humidity ranges allowed by the test method. 81 FR 2628, 2638 (Jan. 15, 2016). In particular, some commenters raised concerns that the wide range of allowable ambient conditions could impact test results, and that the ranges were initially developed based on laboratory conditions that are now outdated, such that more closely controlled conditions may now be achievable. *Id.* In the January 2016 final rule, DOE stated that the impact of ambient conditions on AFUE values warranted further study, but that DOE did not have adequate data to justify changing the test procedure to narrow the ambient temperature or humidity ranges. *Id.*

Issue 7: DOE is requesting comment and data on the effects of ambient temperature and relative humidity on AFUE results. DOE is particularly interested in whether the current ranges of allowable conditions adversely impact the representativeness of AFUE values or repeatability of AFUE testing, and whether a narrower range of allowable ambient conditions would increase testing burden, and if so, what that range should be.

3. Combustion Airflow Adjustment

In the course of the rulemaking for the January 2016 final rule, DOE proposed specifying that the excess air ratio, flue oxygen (O_2) percentage, or flue carbon dioxide (CO_2) percentage be within the middle 30th percentile of the acceptable range specified in the I&O manual. In absence of a specified range in the I&O manual, DOE proposed requiring the combustion airflow to be adjusted to provide between 6.9 percent and 7.1 percent dry flue gas O_2, or the lowest dry flue gas O_2 percentage that produces a stable flame, no carbon deposits, and an air-free flue gas CO ratio below 400 parts per million during the steady-state test described in section 9.1 of ASHRAE 103–2007, whichever is higher. 81 FR 2628, 2635–2636 (Jan. 15, 2016); *see also* 80 FR 12876, 12883, 12906 (March 11, 2015). DOE considered whether such a change could improve consistency in burner airflow settings during testing. However, after considering comments on this proposal, DOE determined that further study was needed to determine how such a change would impact AFUE ratings. 81 FR 2628, 2636 (Jan. 15, 2016).

Issue 8: DOE is requesting comment on whether more specific instructions for setting the excess air ratio, flue O_2 percentage, and/or flue CO_2 percentage should be provided in the consumer boilers test procedure, and if so, what those instructions should entail. DOE is particularly interested in understanding whether such a change would improve the representativeness of the test method, and whether it would impact test burden.

4. Calculation of Steady-state Heat Loss for Condensing, Modulating Units

A determination of AFUE for condensing, modulating boilers using ASHRAE 103–1993 relies on a series of intermediate values and equations. One intermediate value is the steady-state heat loss due to condensate ($L_{C,SS}$). For condensing, modulating units, section 11.5.7.2 of ASHRAE 103–1993 provides instruction for calculating $L_{C,SS}$ for both the maximum and reduced fuel input rates. To determine $L_{C,SS}$ at the maximum and reduced fuel input rates, a number of other values must first be calculated, including the steady-state efficiency at maximum fuel input rate ($Effy_{SS}$), and the steady-state efficiency at reduced fuel input rate ($Effy_{SS,R}$).[8] In following the progression of equations to calculate $L_{C,SS}$, ASHRAE 103–1993 directs $Effy_{SS}$ and $Effy_{SS,R}$ to be calculated according to section 11.4.7 of that document, which in turn references the equation at section 11.2.7 of that document. Section 11.2.7 of ASHRAE 103–1993 provides the calculation of $Effy_{SS}$ for *non-condensing, non-modulating* boilers. (Section 11.2, ''Heating Seasonal Efficiency, Steady-State Efficiency, and AFUE for Noncondensing and Non-modulating Gas or Oil Furnaces and Boilers,'' of ASHRAE 103–1993 provides direction for non-condensing, non-modulating boilers.) As a result, AFUE for condensing, modulating boilers is based on calculations that rely on a $L_{C,SS}$ value that is based on steady-state efficiency values calculated for non-condensing, non-modulating boilers. ASHRAE 103–2017 presents a similar issue.

DOE notes that ASHRAE 103–1993 provides an equation for calculating the $Effy_{SS}$ of *condensing* boilers in section 11.3.7.3 of that document, which relies, in part, on the value of $L_{C,SS}$. As noted, calculating $L_{C,SS}$ at maximum and reduced input rates requires values for the $Effy_{SS}$ at maximum and reduced input rates, which if applying the equation in section 11.3.7.3 of ASHRAE 103–1993, ultimately depend upon the values of $L_{C,SS}$ at maximum and reduced input rates. As such, a circular reference would result from application of section 11.3.7.3 (calculation of $Effy_{SS}$ of condensing boilers) as opposed to application of section 11.2.7 (calculation of $Effy_{SS}$ of non-condensing boilers), as explicitly provided in ASHRAE 103–1993.[9]

Industry developed a computer program to calculate AFUE based on ASHRAE 103–1993—''AFUE v1.2'' (last updated April 2004).[10] When calculating $L_{C,SS}$ for condensing boilers, the computer program uses an approach similar to one discussed in the prior paragraph, in which section 11.3.7.3 of ASHRAE 103–1993 is used for calculating $Effy_{SS}$. To address the circular reference that would result from applying section 11.3.7.3 of ASHRAE 103–1993, AFUE v1.2 appears to apply an iterative process that uses initial reference values to determine the values of $T_{OA,H}$ and $T_{OA,R}$ used in the

[8] Specifically, section 11.5.7.2 of ASHRAE 103–1993 provides instruction to calculate $L_{C,SS}$ as defined in section 11.3.7.2 of ASHRAE 103–1993, for both the maximum and reduced input rates, using the average outdoor air temperature at maximum and reduced input rates (''$T_{OA,H}$'' and ''$T_{OA,R}$,'' respectively). $T_{OA,H}$ and $T_{OA,R}$ are determined according to section 11.4.8.4 of ASHRAE 103–1993 and are based on the balance point temperature (T_C). T_C is determined using an equation in section 11.4.8.5 of ASHRAE 103–1993, and is in part based on the heating capacity at maximum fuel input rate (Q_{OUT}) and the heating capacity at reduced fuel input rate ($Q_{OUT,R}$). Q_{OUT} and $Q_{OUT,R}$ are determined according to sections 11.4.8.1.1 and 11.4.8.1.2 of ASHRAE 103–1993 and are based in part on the $Effy_{SS}$ and $Effy_{SS,R}$, respectively.

[9] Section 11.5.7.2 of ASHRAE 103–1993 provides instruction for calculating $L_{C,SS}$ at the maximum and reduced input rate ($L_{C,SS,H}$ and $L_{C,SS,R}$) using the average outdoor air temperature at maximum input ($T_{OA,H}$) and average outdoor air temperature at reduced input ($T_{OA,R}$), respectively. $T_{OA,H}$ and $T_{OA,R}$ are calculated using section 11.4.8.4 of ASHRAE 103–1993 and are dependent on T_C as calculated in section 11.4.8.5 of ASHRAE 103–1993. T_C is based in part on Q_{OUT} and $Q_{OUT,R}$ as determined in sections 11.4.8.1.1 and 11.4.8.1.2 of ASHRAE 103–1993. Q_{OUT} and $Q_{OUT,R}$ are based in part on the values for $Effy_{SS}$ and $Effy_{SS,R}$. To calculate $Effy_{SS}$ and $Effy_{SS,R}$ according to section 11.3.7.3 of ASHRAE 103–1993, which pertains to the steady-state efficiency for condensing boilers, values for $L_{C,SS,H}$ and $L_{C,SS,R}$ are required.

[10] The computer program was initially developed by the Gas Appliance Manufacturers Association (GAMA). In 2008, GAMA merged with the Air-conditioning and Refrigeration Institute (ARI) to form what is now the Air-conditioning, Heating, and Refrigeration Institute (AHRI).

calculation of $L_{C,SS}$.[11] Use of AFUE v1.2 may produce a different AFUE measurement than use of the test procedure as explicitly provided in ASHRAE 103–1993 (*i.e.,* relying on a $L_{C,SS}$ value that is based on steady-state efficiency values calculated for non-condensing, non-modulating boilers). However, a cursory comparison between the AFUE v1.2 methodology and the wording of ASHRAE 103–1993 as explicitly provided suggests that the variation in final AFUE measurements would be so small as to not affect the rounded AFUE value.

Issue 9: DOE requests comment on the direction in ASHRAE 103–1993 to rely on certain values calculated for non-condensing, non-modulating boilers to determine the AFUE of condensing, modulating boilers. DOE requests comment and information on whether the calculations should be modified to provide results that are more representative of the average use of condensing, modulating boilers, and if so, how the calculations should be modified.

5. Provisions for Testing Step Modulating Boilers

Appendix N includes a number of specific provisions for consumer boilers with step modulating controls. For example, the steady-state test is conducted at both the maximum and reduced inputs (referencing section 9.1 of ASRHAE 103–1993); the cool-down test is conducted after steady-state conditions have been reached at the reduced input rate (referencing section 9.5.2.4 of ASRHAE 103–1993), and the heat-up test is conducted at the reduced fuel input rate (referencing section 9.6.2.1 of ASRHAE 103–1993). In addition, both the optional tracer gas test and the measurement of condensate under cyclic conditions, when conducted, are performed at the reduced input (referencing sections 9.7.5 and 9.8 of ASHRAE 103–1993, respectively). Measurements taken during the testing at maximum and/or reduced inputs (as applicable) for each of the tests are used in the calculation of AFUE. ASHRAE 103–2017 contains similar provisions for modulating boilers as ASHRAE 103–1993, except that (as noted in section II.B.1 of this RFI) calculations are used to determine the average on-time and off-time per cycle, rather than assigning fixed values as is done in ASHRAE 103–1993.

Issue 10: DOE requests comment on whether the existing provisions for testing step modulating boilers appropriately reflect the performance of step modulating boilers. If not, DOE seeks specific recommendations on the changes that would be necessary to make the test procedure more representative for such products.

C. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedures for consumer boilers. As noted, DOE recently issued an RFI regarding covered products and equipment generally, to seek more information on whether its test procedures are reasonably designed, as required by EPCA, to produce results that measure the energy use or efficiency of a product during a representative average use cycle or period of use. 84 FR 9721 (March 18, 2019). DOE seeks comment on this issue as it specifically pertains to the test procedure for the consumer boilers that are the subject of this current RFI.

As noted previously, DOE also requests comments on whether potential amendments based on the issues discussed would result in a test procedure that is unduly burdensome to conduct, particularly in light of any new products on the market since the last test procedure update. If commenters believe that any such potential amendments, if adopted, would result in a procedure that is, in fact, unduly burdensome to conduct, DOE seeks information on whether an existing private sector-developed test procedure would be more appropriate or other avenues for reducing the identified burdens while advancing improvements to the consumer boilers test procedure. DOE also requests comment on the benefits and burdens of adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification. As discussed in section II.B.1 of this RFI, ASHRAE 103–2017 includes procedures for determining the annual fuel utilization efficiency of residential central boilers; however, it does not include procedures for calculating the electrical standby mode and off mode energy consumption.

Additionally, DOE requests comment on whether the existing test procedures limit a manufacturer's ability to provide additional features to purchasers of consumer boilers. DOE particularly seeks information on how the test procedures could be amended to reduce the cost of new or additional features and make it more likely that such features are included on consumer boilers, while still meeting the requirements of EPCA.

DOE also requests comments on any potential amendments to the existing test procedures that would address impacts on manufacturers, including small businesses.

Finally, DOE recently published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886 (Sept. 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data, and information on the issues presented in the emerging smart technology RFI as they may be applicable to the consumer boilers that are the subject of this RFI.

III. Submission of Comments

DOE invites all interested parties to submit in writing by June 15, 2020, comments and information on matters addressed in this document and on other matters relevant to DOE's consideration of amended test procedures for consumer boilers. These comments and information will aid in the development of a test procedure NOPR for consumer boilers, if DOE determines that amended test procedures may be appropriate for these products. After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting analyses as appropriate.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this

[11] The iterative calculation process starts with reference values for the outdoor average air temperatures at $T_{OA,H}$ and $T_{OA,R}$. The program proceeds to calculate all of the other variables in the circular reference based on the reference values until arriving at new values for $T_{OA,H}$ and $T_{OA,R}$. The newly calculated values for $T_{OA,H}$ and $T_{OA,R}$ are compared to the initial reference values, and if they are not within 1 degree of the reference values, the calculations in the circular reference are repeated using the new values for $T_{OA,H}$ and $T_{OA,R}$ as the new reference values. The calculation cycle repeats until the reference values are within 1 degree of the calculated values, at which time the iterations stop and the values for $T_{OA,H}$ and $T_{OA,R}$ from the last round of calculations are used.

information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption, and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on February 25, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 29, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–09416 Filed 5–14–20; 8:45 am]

BILLING CODE 6450–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2018–0142]

Backfitting, Forward Fitting, and Issue Finality Guidance

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment; extension of comment period.

SUMMARY: On March 23, 2020, the U.S. Nuclear Regulatory Commission (NRC) issued for public comment draft NUREG–1409, ''Backfitting Guidelines,'' Revision 1. The public comment period was originally scheduled to close on May 22, 2020. In recognition of the impacts of the current COVID–19 public health emergency (PHE) across the nation, the NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit comments.

DATES: The due date of comments requested in the document published on March 23, 2020 (85 FR 16278) is extended. Comments should be filed no later than July 22, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. The NRC staff will continue to monitor the COVID–19 PHE to determine if an additional extension may be warranted.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0142. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tim Reed, telephone: 301–415–1462, email: *Timothy.Reed@nrc.gov;* or Audrey Klett, telephone: 301–415–0489, email: *Audrey.Klett@nrc.gov.* Both are staff of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0142 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0142.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

B. Submitting Comments

Please include Docket ID NRC–2018–0142 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On March 23, 2020, the NRC issued for public comment draft NUREG–1409, ''Backfitting Guidelines,'' Revision 1 (ADAMS Accession No. ML18109A498). This draft NUREG provides guidance on the implementation of the backfitting and issue finality provisions of the NRC's regulations and the NRC's forward fitting policy in accordance with Management Directive and Handbook 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' dated September 20, 2019 (ADAMS Accession No. ML18093B087). The public comment period was originally scheduled to close on May 22, 2020. In recognition of the impacts of the current COVID–19 PHE across the nation, the NRC has decided to extend the public comment period on this document until July 22, 2020, to allow more time for members of the public to develop and submit comments.

Dated: April 30, 2020.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–09654 Filed 5–14–20; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Semiannual Regulatory Agenda; Withdrawal

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; Withdrawal.

SUMMARY: The Federal Trade Commission (FTC or Commission) is withdrawing the proposed rule titled, ''Semiannual Regulatory Agenda,'' published on May 7, 2020. This agenda will be incorporated in the upcoming government-wide Unified Agenda of Federal Regulatory and Deregulatory Actions.

DATES: The FTC is withdrawing the proposed rule published May 7, 2020 (85 FR 27191) as of May 15, 2020.

ADDRESSES: Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580; telephone number: (202) 326–3355; email address: *rgold@ftc.gov.*

SUPPLEMENTARY INFORMATION: None.

Dated: May 8, 2020.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–10301 Filed 5–14–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–509]

Schedules of Controlled Substances: Placement of para-Methoxymethamphetamine (PMMA) in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing 1-(4-methoxyphenyl)-*N*-methylpropan-2-amine *(para-*

methoxymethamphetamine, PMMA), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle PMMA.

DATES: Comments must be submitted electronically or postmarked on or before June 15, 2020.

Interested persons may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before June 15, 2020.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference ''Docket No. DEA–509'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should be sent to: Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8209.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing or Waiver of Participation in a Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Such requests or notices must conform to the requirements of 21 CFR 1308.44(a) or (b), and 1316.47 or 1316.48, as applicable, and include a statement of the person's interests in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and may include a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

All requests for hearing and waivers of participation must be sent to DEA using the address information provided above.

Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543 as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2–4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention adding a drug or other substance to a specific schedule, the Secretary of the Department of Health and Human Services (HHS),[1] after

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's

consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance. 21 U.S.C. 811(d)(3). If such requirements are not met by existing controls and the Secretary of HHS concurs in the scheduling decision, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to 21 U.S.C. 811(a) and (b). 21 U.S.C. 811(d)(3)(B).

In the event that the Secretary of HHS did not consult with the Attorney General, as provided under 21 U.S.C. 811(d)(3), and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) control. Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of DEA (Administrator). 28 CFR 0.100.

Background

para-Methoxymethamphetamine (PMMA) is a substituted phenethylamine and shares structural similarity to methamphetamine (schedule II) and *para*-methoxyamphetamine (PMA), schedule I. PMMA shares a similar pharmacological profile with 3,4-methylenedioxymethamphetamine (MDMA or ecstasy), a schedule I substance with high potential for abuse. Similar to MDMA, data obtained from preclinical studies show that PMMA's effects are mediated by monoaminergic (dopamine, norepinephrine, and serotonin) transmission, mostly via activation of the serotonergic system. In animals, PMMA mimics MDMA in producing discriminative stimulus effect, indicative of similar subjective effects. Law enforcement has encountered PMMA on the recreational drug market. In this market, PMMA is available and sold as ''ecstasy'' either alone or in combination with MDMA or PMA for oral consumption. For many years, there has been worldwide (mostly in Europe) reporting of non-fatal and fatal cases of overdoses involving PMMA. PMMA has no accepted medical use in treatment in the United States.

Proposed Determination To Schedule PMMA

On March 18, 2016, the Commission on Narcotic Drugs (CND) voted to place PMMA in Schedule I of the 1971 Convention (CND Dec/59/3) during its 59th Session due to its dependence and abuse potential. The United States is a member of the 1971 Convention, and in accordance with 21 U.S.C. 811(b), on April 7, 2017, DEA, after gathering the necessary data, requested from HHS [2] a scientific and medical evaluation and a scheduling recommendation for PMMA. On December 18, 2018, pursuant to 21 U.S.C. 811(b), HHS provided DEA with a scheduling recommendation entitled ''Basis for the Recommendation to Place 1-(4-methoxyphenyl)-*N*-methylpropan-2-amine (para-methoxymethamphetamine, PMMA) in Schedule I of the Controlled Substances Act.''

Upon receipt of the scientific and medical evaluation and scheduling recommendation from HHS, DEA reviewed the documents and all other relevant data, and conducted its own 8-Factor analysis in accordance with 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in the scheduling decision. Please note that both DEA and HHS 8-Factor analyses are available in their entirety under the tab ''Supporting Documents'' of the public docket for this action at *http://www.regulations.gov* under Docket Number ''DEA–509.''

1. *The Drug's Actual or Relative Potential for Abuse:* The term ''abuse'' is not defined in the CSA. However, the legislative history of the CSA suggests that DEA consider the following criteria when determining whether a particular drug or substance has a potential for abuse: [3]

(a) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or

(b) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

(c) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

(d) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

According to HHS, there is currently no approved medical use in treatment for PMMA anywhere in the world, and there is no Food and Drug Administration (FDA)-approved drug product containing PMMA used in treatment in the United States. Evidence demonstrates that PMMA, similar to MDMA, is abused for its stimulant, psychedelic, and empathogenic effects. Over a period of approximately 30 years starting in the 1990s, PMMA has been associated with numerous cases of non-fatal intoxications (n = 31) and fatal intoxications (n = 131) in three continents. PMMA and its metabolites have been positively identified in blood, urine, and hair samples of individuals with a substance use disorder. Evidence posits that PMMA is abused knowingly and/or unknowingly as an MDMA (ecstasy) substitute.

Law enforcement seizure [4] data indicate that individuals have abused and are continuing to abuse PMMA. According to the National Forensic Laboratory Information System (NFLIS) [5] database, which collects drug identification results from drug cases

scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, March 8, 1985. The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[2] Administrative responsibilities for evaluating a substance for control under the CSA are performed for HHS by FDA, with the concurrence of NIDA, according to a Memorandum of Understanding. 50 FR 9518, March 8, 1985.

[3] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); *reprinted in* 1970 U.S.C.C.A.N. 4566, 4603.

[4] While law enforcement data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, December 12, 2011.

[5] NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive information system that includes data from forensic laboratories that handle the Nation's drug analysis cases. NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is currently 98.5%. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, December 12, 2011. NFLIS data were queried October 23, 2019.

submitted to and analyzed by some Federal, State, and local forensic laboratories, there have been 39 reports for PMMA between January 2002 and October 2019, and no reports for PMMA from January 2003 to December 2010, January 2013 to December 2013, and January 2017 to December 2017 (query date: October 23, 2019).[6] The identification of this substance on the illicit drug market is an indication that individuals are taking PMMA in amounts sufficient to create a hazard to public health. In the United States, PMMA is not an approved drug product, and there appears to be no legitimate source for this substance as a marketed drug product.

Based on available data, PMMA is related in its effects to the actions of other substances such as PMA (schedule I) and MDMA (schedule I) that are already listed as having potential for abuse. According to HHS, PMMA has similar pharmacological effects to MDMA, and thus is expected to have a high potential for abuse and high risk to public health.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* According to HHS, PMMA is an empathogenic drug that produces mild stimulant and psychedelic effects. Data obtained from *in vitro* studies show that similar to MDMA, PMMA significantly increased dopamine (DA) and serotonin (5-HT) levels in brain regions associated with abuse liability. Data obtained from an enzymatic assay demonstrate that PMMA inhibited monoamine oxidase A and B. According to HHS, results from the enzymatic study may partially explain the higher levels of monoamines seen with PMMA administration in brain microdialysis studies. High levels of monoamines, especially 5-HT, can lead to a serious medical condition referred to as serotonin syndrome. High doses of PMMA have been associated with symptoms of serotonin syndrome, including increased body temperature (hyperthermia), tremor, and agitation, which can lead to death.

In preclinical studies, high doses of PMMA transiently increased locomotor activity. HHS stated that PMMA's locomotor stimulatory effects are not as robust as that of amphetamine or methamphetamine. In drug discrimination studies, using a test to determine physical or behavioral effects (an interoceptive response) of an unknown drug, the effects of PMMA are different from structural analogs, amphetamine or 2,5-dimethoxy-4-methylamphetamine (DOM). However, in rats trained to discriminate between MDMA or PMMA, MDMA and PMMA cross-substitute for one another. Based on these and additional data, HHS stated that PMMA likely has similar psychoactive effects as MDMA.

There are no clinical studies conducted with PMMA. However, according to HHS, an article described that a self-administered 110 milligram (mg) dose of PMMA resulted in compulsive yawning and increased pulse one hour post-administration. The described effects returned ''back to baseline'' four hours post-administration. A study examined the psychoactive effects of individuals who had taken ''ecstasy.'' The study followed 5,786 individuals who provided the tablets for a chemical analysis and reported on their subjective effects. Out of this sample set, 70 (1.2 percent) ''ecstasy'' tablets were identified as containing PMMA and MDMA together, with PMMA concentrations in a range of 5.0 to 128.0 mg/tablet. It was noted that abusers of the PMMA and MDMA combination experienced hyperthermic seizures, palpitations, agitation, hallucinations, abdominal cramps, nausea, dizziness, and headache.

In summary, PMMA is a psychoactive substance with a mechanism of action similar to that of MDMA. Data from *in vitro* studies show that PMMA increases serotonin levels more than dopamine levels in the brain reward circuitry. In addition, PMMA has an inhibitory effect on monoamine oxidase-A enzyme that further increases monoamine levels and can lead to serotonin syndrome, a dangerous medical condition. Data from animal studies demonstrate that PMMA produced locomotor stimulant effects at high doses with potency of about six times less than that of (+)-amphetamine. In drug discrimination studies, PMMA produces stimulus effect similar to MDMA in rats. Both PMMA and MDMA cross-substitute for one another. There are currently no controlled clinical studies that have evaluated the effects of PMMA in humans. However, anecdotal reports show that similar to MDMA, PMMA produces adverse health effects, such as hyperthermia, seizures, hallucinations, and nausea. Taken together, these data demonstrate that PMMA shares a mechanism of action and discriminative stimulus effects similar to the schedule I substance, MDMA.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* PMMA is a substituted phenethylamine and is a methoxy-derivative of methamphetamine. PMMA is also related to PMA and MDMA, which are schedule I substances.

As stated by HHS, there are several sources describing the synthesis of PMMA either directly or through alternate route by conversion of PMA to PMMA. The precursor substances that can be used for the synthesis of PMMA include methylamine, 4-methoxyphenyacetone, and cyanoborohydride. Additional chemicals and solvents required for PMMA synthesis include methanol, dichloromethane, isopropanol, hydrochloric acid, ethyl chloroformate, trimethylamine, carbamate, formamide, and lithium aluminum hydride.

Pharmacokinetic studies of PMMA in rats showed that after subcutaneous administration, peak PMMA concentration was detected in the plasma within 30 minutes. Brain levels of PMMA were delayed behind the plasma levels for several hours. HHS states that this delay supports user comments that PMMA has a longer onset of effect than MDMA. Most of PMMA and its metabolites were excreted within the first 24-hours post-administration. Metabolites detected were products of *O*-demethylation or *N*-demethylation of PMMA to 4-methoxyamphetamine (PMA), 4-hydroxymethamphetamine (OH-MAM), 4-hydroxyamphetamine (OH-AM), 4-hydroxy-3′-methoxymethamphetamine (HM-MAM), and 4′-hydroxy-3′-methoxyamphetamine (HM-AM). The cytochrome P450 enzyme CYP2D6 was identified as being the only enzyme capable of demethylating PMMA.

PMMA toxicity data in animals demonstrate that toxicity occurs at early stages of administration. In PMMA-dosed animals, prior to lethality, hyperactivity, increased respiration, salivation, and tremor were observed.

4. *Its History and Current Pattern of Abuse:* Abuse of PMMA was first documented in the late 1980s and associated with ''ecstasy'' tablets as this drug was often substituted for MDMA. Abuse of PMMA has been documented worldwide with usage particularly extensive in Europe, Asia, and Canada. PMMA was originally used as a powder with doses ranging around 100 mg or less. PMMA is now most commonly encountered in a tablet form, and PMMA tablets have been seized in Europe, Asia, and the United States.

PMMA tablets are primarily sold as ''ecstasy'' and are sometimes encountered along with amphetamine, methamphetamine, or ephedrine. PMMA tablets may be marked with different logos, including ''E,'' ''Mitsubishi,'' ''Jumbo,'' or ''Superman.'' Street names for PMMA tablets include ''Dr. Death,'' ''Death,'' or ''Killer.'' According to a review of PMMA by the

[6] NFLIS is still reporting data for October–December 2018, due to normal lag time in reporting.

European Monitoring Centre for Drugs and Drug Addition (EMCDDA) in 2003, tablets were reported to contain between 20 and 97 mg of PMMA. PMMA is primarily administered orally in a tablet form. Data indicate that MDMA is often mixed with other substances, one of which is PMMA. It was observed that MDMA mixed with PMMA led to a higher number of adverse events than other MDMA combinations. According to HHS, there is little anecdotal information on the use of PMMA most likely because individuals ingesting this substance in the context of abuse believe they are taking MDMA rather than a mixture of drugs that may include PMMA thus attributing its effects to MDMA.

DEA conducted a search of NFLIS and the System to Retrieve Information from Drug Evidence (STRIDE)/STARLiMS for law enforcement encounters of PMMA. Prior to October 1, 2014, STRIDE collected the analytical results of drug evidence submitted by DEA, other Federal law enforcement agencies, and some local law enforcement agencies to DEA forensic laboratories. Since October 1, 2014, STARLiMS (a web-based, commercial laboratory information management system) has replaced STRIDE as DEA laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS. According to data from STRIDE [7] and STARLiMS [8] between January 2000 and December 2018, DEA laboratories analyzed 41 drug exhibits containing PMMA. NFLIS is a DEA program that collects drug identification results from drug cases analyzed by other Federal, State, and local forensic laboratories. Within the NFLIS database, there have been 39 reports [9] for PMMA between January 2002 and October 2019, and no reports from January 2003 to December 2010, January 2013 to December 2013, and January 2017 to December 2017 from state and local laboratories. The NFLIS database shows there were two reports in 2002 from one state; three reports from two states in 2011; three reports from three states in 2012; 21 reports from one state in 2014; three reports from two states in 2015; two reports from one state in 2016; four reports from two states in 2018; and one report from one state in 2019.

5. *The Scope, Duration, and Significance of Abuse:* PMMA abuse has been associated with ''ecstasy'' tablets and is used as a substitute for MDMA. As a result, most users think they are taking ''ecstasy'' with MDMA and are not intentionally purchasing PMMA on the illicit market. One study reported that tablets containing a combination of MDMA and PMMA resulted in adverse effects, such as hyperthermic seizures, palpitations, agitation, nausea, and hallucinations. Most abusers of PMMA take the drug in combination with other drugs as noted in the PMMA-associated deaths (see Factor 6). Furthermore, there is evidence of PMMA drug seizures or confiscation in the United States, as reported by DEA's STRIDE/STARLiMS or NFLIS databases.

Numerous deaths and overdoses associated with PMMA usage demonstrate that there is a considerable population abusing PMMA, and its abuse is a significant public health concern. Prior to death, individuals exhibit high temperatures, seizures, coma, and respiratory distress. The PMMA-related public health risks, such as deaths and overdoses, led the European Union Member States to control PMMA in 2002.

6. *What, if Any, Risk There is to the Public Health:* According to HHS, there are several risk factors associated with the use of PMMA. The first risk is that individuals inadvertently use PMMA because it is sold as MDMA and such products may contain other drugs. This risk can lead to poly-drug use, which is inherently more dangerous to the individuals who consume such products. The second risk described by HHS is the slow onset of action of PMMA compared to MDMA. The delay in onset of effect for PMMA can make individuals consume more PMMA, and such action can lead to overdose or death. Thirdly, HHS described that the pharmacological actions of PMMA, such as increase in monoamine levels (DA and 5-HT) combined with inhibition of monoamine oxidase-A, an enzyme responsible for degradation of these monoamines, can lead to a serious medical condition known as serotonin syndrome. The symptoms of serotonin syndrome are similar to those seen when high doses of PMMA are used. These include hyperthermia, tremor, agitation, and can result in death.

Over a period of approximately 30 years starting in the 1990s, a total of 131 analytically confirmed PMMA (detected in either blood and/or urine)-associated deaths in Europe (69 deaths), Israel (27 deaths), Canada (27 deaths), and Taiwan (8 deaths) has been reported. Published case reports on PMMA-related deaths occurred mostly in males and ages ranged from 14–59 years with the majority of them under the age of 30. Common symptoms that were observed prior to death were hyperthermia, decreased respiratory rate, seizures, and cardiac arrest. In most of the PMMA-related fatalities, other drugs were detected in the blood or urine.

7. *Its Psychic or Physiological Dependence Liability:* According to HHS, abuse liability of PMMA has only been characterized through drug discrimination studies. The drug discrimination studies do not provide information that can be used to assess the psychic or physiological dependence liability of PMMA, although they provide information on the subjective effects of the drug. Data from drug discrimination studies showed that both PMMA and MDMA share discriminative stimulus effects. Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, indicated that there is evidence of a withdrawal syndrome from MDMA with observations of both psychological and physical dependence. Similarities in the drug discriminative stimulus properties of PMMA and MDMA indicate that the subjective effects of PMMA are similar to that of the schedule I substance, MDMA. As stated by HHS, both PMMA and MDMA also largely share a common mechanism of action. Thus, it is plausible to extrapolate that PMMA has a dependence liability similar to that of MDMA. HHS states some individuals have become tolerant to MDMA resulting in taking high doses of the drug, and these individuals have reported undergoing a withdrawal syndrome, although it is unclear whether they were undergoing withdrawal or adverse effects from high doses of MDMA. Thus, evidence suggests that MDMA causes psychological dependence and may be associated with physical dependence, although not to the same extent as that of cocaine.

HHS concludes that PMMA most likely has a psychic dependence liability similar to that of MDMA, though not as strong as that of cocaine. The use of PMMA may be associated with physical dependence.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* PMMA is not an immediate precursor to any substance already controlled in the CSA as defined by 21 U.S.C. 802(23).

Conclusion: After considering the scientific and medical evaluation conducted by HHS, HHS's scheduling recommendation, and DEA's own 8-Factor analysis, DEA finds that the facts and all relevant data constitute substantial evidence of the potential for

[7] STRIDE data were queried through September 30, 2014, by the date of collection for DEA forensic laboratories.

[8] STRIDE/STARLIMS was queried October 23, 2019, by the date of collection.

[9] NFLIS is still reporting data for October–December 2018, due to normal lag time in reporting.

abuse of PMMA. As such, DEA hereby proposes to schedule PMMA as a schedule I controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all available data, the Acting Administrator of DEA, pursuant to 21 U.S.C. 811(c) and 812(b)(1), finds the following:

(1) The Drug or Substance Has a High Potential for Abuse

PMMA has a mechanism of action similar to that of the schedule I substance MDMA. Similar to MDMA, PMMA increases levels of monoamines, specifically DA and 5-HT, in the brain reward circuitry. Data from animal studies demonstrate that PMMA fully substitutes for the discriminative stimulus effect of MDMA, indicative of similar subjective effects. Although there is currently no data that has directly assessed the psychological or physiological dependence liability of PMMA, its pharmacological similarities to MDMA suggest it likely has low physical dependence liability similar to that of MDMA. Evidence demonstrates that users of PMMA seem to be seeking MDMA, which may be mixed with PMMA. Because PMMA shares a pharmacological mechanism of action and psychoactive effects similar to the schedule 1 substance MDMA, PMMA has a high potential for abuse.

(2) The Drug or Substance Has No Currently Accepted Medical Use in Treatment in the United States

According to HHS, FDA has not approved any marketing application for a drug product containing PMMA for any indication. In addition, there are no clinical studies or petitioners that have claimed an accepted medical use of PMMA in the United States. Thus, PMMA has no currently accepted medical use in treatment in the United States.[10]

(3) There Is a Lack of Accepted Safety for Use of the Drug or Substance Under Medical Supervision

Because PMMA has no approved medical use in treatment in the United States and has not been investigated as a new drug, its safety for use under medical supervision has not been determined. Therefore, there is a lack of accepted safety for use of PMMA under medical supervision.

Based on these findings, the Acting Administrator of DEA concludes that PMMA warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1). More precisely, because PMMA shares a pharmacological mechanism of action and psychoactive effects similar to the schedule 1 substance MDMA, DEA is proposing to place PMMA in 21 CFR 1308.11(d) (the hallucinogenic category of schedule I). As such, the proposed control of PMMA includes the substance, as well as its salts, isomers, and salts of isomers whenever the existence of such isomers and salts is possible, within the specific chemical designation.

Requirements for Handling PMMA

If this rule is finalized as proposed, PMMA would be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, import, export, engagement in research, conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) PMMA, or who desires to handle PMMA, would need to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312, as of the effective date of a final scheduling action. Any person who currently handles PMMA, and is not registered with DEA, would need to submit an application for registration and may not continue to handle PMMA after the effective date of a final scheduling action unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration would be required to surrender all quantities of currently held PMMA or transfer all quantities of currently held PMMA to a person registered with DEA before the effective date of a final scheduling action, in accordance with all applicable Federal, State, local, and tribal laws. As of the effective date of a final scheduling action, PMMA would be required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* PMMA would be subject to schedule I security requirements and would need to be handled and stored in accordance with 21 CFR 1301.71–1301.93 as of the effective date of a final scheduling action.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of PMMA would need to be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302, as of the effective date of a final scheduling action.

5. *Quota.* Only registered manufacturers would be permitted to manufacture PMMA in accordance with a quota assigned, pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303, as of the effective date of a final scheduling action.

6. *Inventory.* Every DEA registrant who possesses any quantity of PMMA on the effective date of a final scheduling action would be required to take an inventory of PMMA on hand at that time, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who becomes registered with DEA on or after the effective date of the final scheduling action would be required to take an initial inventory of all stocks of controlled substances (including PMMA) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant would be required to take an inventory of all controlled substances (including PMMA) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

[10] Although there is no evidence suggesting that PMMA has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated:

i. The drug's chemistry must be known and reproducible;

ii. there must be adequate safety studies;

iii. there must be adequate and well-controlled studies proving efficacy;

iv. the drug must be accepted by qualified experts; and

v. the scientific evidence must be widely available.

57 FR 10499 (1992).

7. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports for PMMA, or products containing PMMA, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, 1312, and 1317, as of the effective date of a final scheduling action. Manufacturers and distributors would be required to submit reports regarding PMMA to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312, as of the effective date of a final scheduling action.

8. *Order Forms.* Every DEA registrant who distributes PMMA would be required to comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305, as of the effective date of a final scheduling action.

9. *Importation and Exportation.* All importation and exportation of PMMA would need to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312, as of the effective date of a final scheduling action.

10. *Liability.* Any activity involving PMMA not authorized by, or in violation of, the CSA or its implementing regulations, would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

This rulemaking is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this proposed rule, and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA proposes placing the substance PMMA (chemical name: 1-(4-methoxyphenyl)-*N*-methylpropan-2-amine), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle PMMA.

According to HHS, PMMA has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no legitimate commercial market for PMMA in the United States. Therefore, DEA estimates that no United States entity currently handles PMMA and does not expect any United States entity to handle PMMA in the foreseeable future. DEA concludes that no legitimate United States entity would be affected by this rule if finalized. As such, the proposed rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (d)(80) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(79) 1-(4-methoxyphenyl)-*N*-methylpropan-2-amine (other names: *para*-methoxymethamphetamine, PMMA), ... (1245)

* * * * *

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2020–09599 Filed 5–14–20; 8:45 am]

BILLING CODE 4410–09–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

21 CFR Part 1401

RIN 3201–AA02

Criteria for Designation of Emerging Drug Threats in the United States

AGENCY: Office of National Drug Control Policy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of National Drug Control Policy is announcing this Advance Notice of Proposed Rulemaking (ANPRM) and requests information relevant to criteria for designating and terminating the designation of emerging drug threats in the United States pursuant to the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act). This ANPRM briefly summarizes the White House Office of National Drug Control Policy's (ONDCP) ongoing work in this area and describes the criteria that ONDCP is considering to monitor and identify emerging drug threats. The ANPRM invites interested parties to submit comments, data, and other pertinent information concerning ONDCP's development of proposed criteria for designating emerging drug threats and terminating such designations.

DATES: Send comments on or before June 30, 2020.

ADDRESSES: You may send comments, identified by RIN number 3201–AA02 and/or docket number ONDCP–2020–0001, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.
- *Email: OGC@ondcp.eop.gov,* Include docket number ONDCP–2020–0001 and/or RIN number 3201–AA02 in the subject line of the message.
- *Mail:* Executive Office of the President, Office of National Drug Control Policy, 1800 G Street NW, 9th Floor, Washington, DC 20006, Attn: Office of General Counsel.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Questions concerning this ANPRM should be directed to Michael J. Passante, Acting General Counsel, Office of General Counsel, Office of National Drug Control Policy, Executive Office of the President, at *OGC@ondcp.eop.gov* (email) or (202) 395–6622 (voice).

SUPPLEMENTARY INFORMATION:

I. Public Participation

ONDCP strongly recommends using electronic means for submitting comments. Due to COVID–19, comments submitted through conventional mail delivery services may not be received in a timely manner. To ensure proper handling, please reference RIN 3201–AA02 on your correspondence. The mailing address may be used for paper, disk, or CD–ROM submissions.

Interested persons are invited to submit written data, views, or arguments on all aspects of this ANPRM. All comments must be submitted in English, or accompanied by an English translation. Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifiable information (such as a person's name, address, or any other data that might personally identify that individual) that the commenter voluntarily submits.

If you want to submit personally identifiable information as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the information for which you seek redaction.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the confidential business information for which you seek redaction. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.* Personally identifiable information and confidential business information provided as set forth above will be placed in the agency's public docket file, but not posted online. To inspect the agency's public docket file in person, you must make an appointment with agency counsel. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for the agency counsel's contact information specific to this rulemaking.

II. Introduction

Through enacting Section 8218 of the SUPPORT Act, 21 U.S.C. 1708, Congress codified its intention for the Federal government to closely monitor emerging drug threats and to take action at the outset of a trend to prevent such threats from reaching levels seen during the opioid crisis. The SUPPORT Act requires ONDCP to promulgate standards for designating an emerging drug threat and terminating such a designation. 21 U.S.C. 1708(c). The SUPPORT Act created the Emerging Threats Committee consisting of representatives from National Drug Control Program Agencies and other agencies, representatives from State, local and Tribal governments, and representatives from other entities designated by the ONDCP Director. 21 U.S.C. 1708(b). The Emerging Threats Committee is responsible for, among other matters, monitoring evolving and emerging drug threats in the United States. One of the Committee's principal responsibilities is to develop and recommend criteria that ONDCP may use to designate and terminate the designation of emerging drug threats. 21 U.S.C. 1708(b)(6).

How best to monitor and identify emerging drug threats in the United States is a question with broad public health implications. Before proceeding, ONDCP intends to benefit from a full airing of the issues through the public comment process. ONDCP's objective is to develop criteria that will enable the United States to be proactive in identifying emerging drug threats and taking action to prevent such drug threats from becoming public health emergencies.

III. ONDCP's Emerging Threats Activities

On May 21, 2019, ONDCP Director James W. Carroll announced the formation of the Emerging Threats Committee to identify and respond to emerging drug threats in the United States. The Committee consists of 13 representatives from Federal, state, local, and Tribal governments and members of non-governmental entities.

The Emerging Threats Committee first met on May 22, 2019, and had several subsequent in-person and telephonic meetings. One of the Committee's responsibilities was to develop standards/criteria that ONDCP may use to identify and designate emerging drug threats and to terminate the designation of such drug threats. In developing proposed standards, the Committee considered various data sources, health statistics, and other indicators that may signal emerging drug threats.

After careful deliberations and discussions, the Committee developed a set of 11 proposed criteria for designating emerging drug threats. The 11 criteria consist of:

(1) The identification of a new drug, class of drugs, or other substance that creates the potential to substantially harm or adversely affect the public.

(2) An increase in morbidity or mortality due to drug overdose.

(3) A new regional or national outbreak of overdoses or other significant health harms associated with a drug, class of drugs, or other substance.

(4) Increased emergency department visits, hospitalizations, or treatment admissions related to the use of a new or evolving drug, class of drugs, or other substance.

(5) An increase in polysubstance use and substance use disorders involving multiple substances.

(6) Increased reporting by health care providers of new or novel clinical illnesses by patients with suspected or known exposure to a drug, class of drugs, or other substance.

(7) An increase in individuals or cohorts (*e.g.,* a particular population or age group) diagnosed with substance use disorder.

(8) An increase in timely surveillance of drug use measures, either regionally or nationwide, that indicates a new or evolving outbreak of illicit drug use or an increase in substance use disorders.

(9) Increased discussion through online drug user sites regarding a new or evolving drug, class of drugs, or other substances.

(10) State, local, tribal, or Federal reports of seizures involving a new or evolving drug, class of drugs, or other substances.

(11) An increase in reports by law enforcement and fire department agencies using tools such as the Overdose Detection Mapping Application Program or other near real-time suspected overdose surveillance data systems.

The Emerging Threats Committee selected these 11 proposed criteria because the Committee believes that these criteria reflect the best available standards for detecting emerging drug threats. The Committee focused on establishing standards that were fairly broad, but with the understanding that a sliding scale would be necessary to determine whether a new drug threat needed to be designated or if an ongoing designated drug threat could be safely terminated such that it no longer requires intensive efforts to prevent it from growing into a public health crisis. The notion of a sliding scale was considered to be applicable for the individual criteria as well as for all 11 evaluated holistically. As the Committee formulated the criteria, they looked at the environment from which an emerging threat would most likely be identified at the earliest possible point given the negative public health and law enforcement impacts of the drug. For example, there is evidence that increases in morbidity and mortality due to drug overdoses and increased emergency department visits, hospitalizations, or treatment admissions related to the use of a new drug or substance are good indicators of emerging drug trends.

IV. Request for Comments

ONDCP requests public comments to assist us in determining the best criteria for designating emerging drug threats and removing such designations. ONDCP also requests that interested parties submit any pertinent public health data not discussed in this ANPRM. We request comments on the following issues relating to the public health impact, the economic impact, and provisions that should be considered for inclusion in emerging drug threats criteria. Specifically, expert analysis and opinion as well as medical, scientific, economic, and technical data are sought on the following issues:

1. *Proposed Criteria:* ONDCP requests comments on whether the 11 proposed criteria listed in Section III of this ANPRM are useful criteria for identifying emerging threats. Should any of the 11 proposed criteria be modified or eliminated? Should other criteria be considered by ONDCP in designating emerging drug threats? In both cases, if so, please explain your rationale for making the recommendation. ONDCP is particularly interested in comments on the issue of how individual criteria should be evaluated to identify emerging drug threats. Should some criteria be given more weight than others? Should a combination of some, but not all, proposed criteria be sufficient to designate an emerging drug threat? ONDCP is also interested in whether the criteria that reference increased occurrences of specific conditions should be held to certain numerical or statistical thresholds. What metrics, if any, should be used for the criteria to evaluate whether an emerging drug threat exists?

2. *Significance of Threat:* How significant should the drug threat be before ONDCP initiates the process of designating an emerging threat? How should significance be determined with respect to assessing whether a drug trend rises to a level that warrants an emerging drug threat classification? Are there any data, such as medical records or clinical research that should be included in ONDCP's decision-making process? How should the danger of the drug threat be determined?

3. *Termination of Emerging Threat Designation:* The SUPPORT Act requires ONDCP to terminate an emerging drug threat designation after the circumstances that gave rise to the designation have been abated. ONDCP is interested in comments that address the point at which an emerging drug threat designation should be terminated. Should termination of the designation be linked to decreases in numerical or statistical benchmarks associated with use of the drug? What criteria should be used to evaluate whether the threat posed by a designated drug has declined to the point that it is no longer considered an emerging drug threat?

4. *Economic impact:* Issuing an emerging drug threat designation under the SUPPORT Act triggers a series of actions that ONDCP and other National Drug Control Program Agencies must take to mitigate the impact of the designated threat. The ONDCP Director is required to publish an Emerging Threat Response Plan within 90 days of the designation and must update the plan each year until the emerging drug threat designation is terminated. That plan is required to include a comprehensive assessment of the drug threat, goals to address the threat, and performance measures related to the plan's goals, among other requirements. 21 U.S.C. 1708(d). The ONDCP Emerging Threats Coordinator is required to facilitate information

sharing and coordination with relevant agencies and entities concerning the implementation or status of emerging threats, monitor implementation of Emerging Threat Response Plans, and coordinate the development and implementation of reporting systems to support performance measurement and adherence to the plan. Agencies identified in an Emerging Threat Response Plan are required to submit a report to the Coordinator on implementation of the plan within 180 days of designation. Upon making an emerging threats designation, the ONDCP Director is required to evaluate whether a media campaign to address the threat is appropriate. If the Director determines that a media campaign is warranted and enough appropriations are available for that purpose, the Director will conduct a national anti-drug media campaign in accordance with the requirements of 21 U.S.C. 1708(f). The Director must ensure that the media campaign is evidence-based and accurate, meets accepted standards for public awareness campaigns, and uses effective strategies.

ONDCP seeks comments about the relative costs and benefits of designating emerging drug threats and implementing response plans to address such threats. What activities would federal agencies, state, local and tribal governments, health care providers and other entities be required to incur as a result of an emerging drug threat designation, and what would those activities cost? What activities would federal agencies, state, local and tribal governments, health care providers and other entities take voluntarily as result of an emerging drug threat designation, and what would those activities cost? What benefits, such as lives saved and improved public health outcomes, would result from an emerging drug threat designation? Information submitted should include any negative or positive economic effects that could result from promulgation.

5. *Effectiveness of Alternative Approaches:* How can ONDCP best accomplish its goal of monitoring and identifying emerging drug threats in the United States? What other approaches to designating emerging drug threats should ONDCP consider in carrying out its responsibilities under the SUPPORT Act?

Interested parties are invited to submit comments on any or all of these and other pertinent issues related to the development of criteria for designating or terminating the designation of emerging drug threats. ONDCP appreciates any and all comments, but those most useful and likely to influence decisions on the proposed criteria will be those that are either informed by medical, public health, or law enforcement research on evidence-based methods for monitoring or identifying drug trends or involve personal experience with drug misuse and addiction.

V. Statutory and Executive Order Review

This ANPRM has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation; Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation; and Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' The Office of Management and Budget (OMB) has determined that this ANPRM is a significant regulatory action under Executive Order 12866, section 3(f), and accordingly this ANPRM has been reviewed by OMB.

Pursuant to guidance issued by OMB, the requirements of E.O. 13771 do not apply to this ANPRM. This action does not propose or impose any requirements. ONDCP is merely collecting information and data on the possible economic impact that may occur as a direct or indirect result of promulgation of emerging drug threats criteria.

The requirements of the Regulatory Flexibility Act (RFA) do not apply to this action because, at this stage, it is an ANPRM and not ''rule'' as defined in 5 U.S.C. 601. Following review of the comments received in response to this ANPRM, when ONDCP decides to proceed with a notice of proposed rulemaking regarding this matter, ONDCP will conduct all relevant analyses as required by statute or Executive Order.

This ANPRM was prepared under the direction of James W. Carroll, Jr., Director, Office of National Drug Control Policy, 1800 G Street NW, 9th Floor, Washington, DC 20006. It is issued pursuant to section 8218(c) of the SUPPORT for Patients and Communities Act, 21 U.S.C. 1708(c).

Michael J. Passante,

Acting General Counsel.

[FR Doc. 2020–09469 Filed 5–14–20; 8:45 am]

BILLING CODE 3280–F5–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–105495–19]

RIN 1545–BP21

Guidance Related to the Allocation and Apportionment of Deductions and Foreign Taxes, Financial Services Income, Foreign Tax Redeterminations, Foreign Tax Credit Disallowance Under Section 965(g), and Consolidated Groups; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–105495–19) that was published in the **Federal Register** on December 17, 2019. The proposed regulations provide guidance relating to the allocation and apportionment of deductions and creditable foreign taxes, the definition of financial services income, foreign tax redeterminations, availability of foreign tax credits under the transition tax, and the application of the foreign tax credit limitation to consolidated groups.

DATES: Written or electronic comments and requests for a public hearing were being accepted and must have been received by February 18, 2020. A telephonic public hearing has been scheduled for May 20, 2020.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jeffrey P. Cowan, (202) 317–4924. Regarding the public hearing Regina Johnson at 202–317–5177 or email *publichearings@irs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 861, 904, and 960 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–105495–19) contains errors which may prove to be misleading and need to be clarified.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–105495–19) that was the subject of FR Doc. 2019–24847, published at 84 FR 69124 (December 17, 2019), is corrected as follows:

1. On page 69130, third column, the last line of the first partial paragraph,

the language ''§ 1.861–17(d)(4)(v)'' is corrected to read ''§ 1.861–17(d)(4)(i)''.

2. On page 69134, first column, the second line from the bottom of the page the language ''245A(g)'' is corrected to read ''245A(d)''.

3. On page 69139, third column, the eighth line of the second paragraph under the caption ''Applicability Dates'', the language ''January 1, 2020,'' is corrected to read ''January 1, 2020 (or taxpayers that are on the sales method only for the last taxable year that begins before January 1, 2020),''.

4. On page 69139, third column, the 10th line of the second paragraph under the caption ''Applicability Dates'', the language ''consistently'' is corrected to read ''consistently with respect to such taxable year and any subsequent year''.

§ 1.861–17 [Corrected]

■ 5. On page 69156, the third column, in § 1.861–17, the third line from the bottom of paragraph (g)(3)(i)(A), the language ''7(b)(1))'' is corrected to read ''7(b)(1)(ii)''.

■ 6. On page 69157, the first column, in § 1.861–17, in the second line of paragraph (g)(3)(ii)(B)(*3*), the language ''(d)(5)(v)'' is corrected to read (d)(4)(v)''.

■ 7. On page 69157, the second column, in § 1.861–17, in the seventh line from the bottom of paragraph (g)(4)(ii)(A), the language ''354'' is corrected to read ''364''.

§ 1.960–1 [Corrected]

■ 8. On page 69177, the second column, in § 1.960–1, third line from the bottom of paragraph (d)(3)(ii)(A), the language ''branch,'' is corrected to read ''branch from the foreign branch owner,''.

Martin V. Franks,

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

[FR Doc. 2020–08994 Filed 5–14–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2020–0074]

Special Local Regulations; Marine Events Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule to establish temporary special local regulations for certain waters of the Choptank River. The rulemaking was initiated to establish a special local regulations during the ''Maryland Freedom Swim,'' a marine event to be held on certain navigable waters of the Choptank River between Trappe, MD, and Cambridge, MD, on May 30, 2020. The proposed rule is being withdrawn because it is no longer necessary. The event sponsor has cancelled the swim event.

DATES: The Coast Guard is withdrawing the proposed rule published January 31, 2020, as of May 15, 2020.

ADDRESSES: To view the docket for this withdrawn rulemaking, go to *https://www.regulations.gov,* type USCG–2020–0074 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

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

SUPPLEMENTARY INFORMATION:

Background

On January 31, 2020, we published a notice of proposed rulemaking entitled ''Special Local Regulation; Choptank River, Between Trappe and Cambridge, MD'' in the **Federal Register** (85 FR 5608). The rulemaking concerned the Coast Guard's proposal to establish temporary special local regulations for certain waters of the Choptank River, between Trappe, MD, and Cambridge, MD, effective from 9 a.m. through 1 p.m. on May 30, 2020. This action was necessary to provide for the safety of life on these waters during an open water swim event. This rulemaking would have prohibited persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander.

Withdrawal

The proposed rule is being withdrawn due to a regulated area no longer being necessary following a cancellation of the swim by the event sponsor.

Authority

We issue this notice of withdrawal under the authority of 46 U.S.C. 70034.

Dated: May 5, 2020.

Joseph B. Loring,

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

[FR Doc. 2020–10203 Filed 5–14–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2016–0057; FRL–10007–86–Region 10]

Air Plan Approval; OR; 2010 Sulfur Dioxide NAAQS Interstate Transport Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) submission from Oregon as meeting certain Clean Air Act (CAA) interstate transport requirements for the 2010 1-hour Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). Specifically, the EPA proposes to find that emissions from Oregon sources will not contribute significantly to nonattainment or interfere with the maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

DATES: Comments must be received on or before June 15, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R10–OAR–2016–0057 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, or *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, it means the EPA.

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I. Background

A. Infrastructure SIPs

On June 2, 2010, the EPA established a new primary 1-hour SO_2 NAAQS of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations (75 FR 35520, June 22, 2010). The Clean Air Act (CAA) requires that, after promulgation of a new or revised NAAQS, states must submit SIPs to meet applicable infrastructure elements of sections 110(a)(1) and (2). One of these elements, codified at CAA section 110(a)(2)(D)(i), requires SIPs to prohibit emissions that will cause certain impacts on other states. These interstate transport requirements of the CAA are also known as ''good neighbor'' requirements.

CAA section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as prongs. The first two prongs, codified at CAA section 110(a)(2)(D)(i)(I), require SIPs to contain adequate provisions which prohibit emissions in one state from contributing significantly to nonattainment of the relevant NAAQS in any other state (prong 1) and from interfering with maintenance of the relevant NAAQS in any other state (prong 2). The second two prongs, codified at CAA section 110(a)(2)(D)(i)(II), require SIPs to contain adequate provisions which prohibit emissions in one state from interfering with measures required to prevent significant deterioration of air quality in any other state (prong 3) and from interfering with measures to protect visibility in any other state (prong 4).

On October 20, 2015, Oregon submitted a SIP to address prongs 1 and 2 of the good neighbor requirements for the 2010 1-hour SO_2 NAAQS along with the other infrastructure requirements.[1]

B. 2010 1-Hour SO_2 NAAQS Designations Background

In this action, the EPA has considered information from the 2010 1-hour SO_2 NAAQS designations process, discussed in more detail in section III of this document. For this reason, we have included a brief summary of the EPA's designations process for the 2010 1-hour SO_2 NAAQS.[2]

After the promulgation of a new or revised NAAQS, the EPA is required to designate areas as ''nonattainment,'' ''attainment,'' or ''unclassifiable'' pursuant to section 107(d)(1) of the CAA. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires the EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations by that deadline, the EPA has the authority to extend the deadline for completing designations by up to one year.

The EPA promulgated the 2010 1-hour SO_2 NAAQS on June 2, 2010. *See* 75 FR 35520 (June 22, 2010). The EPA completed the first round of designations (''round 1'')[3] for the 2010 1-hour SO_2 NAAQS on July 25, 2013, designating 29 areas in 16 states as nonattainment for the 2010 1-hour SO_2 NAAQS. *See* 78 FR 47191 (August 5, 2013). The EPA signed **Federal Register** documents of promulgation for round 2 designations[4] on June 30, 2016 (81 FR 45039, July 12, 2016) and on November 29, 2016 (81 FR 89870, December 13, 2016), and round 3 designations[5] on December 21, 2017 (83 FR 1098, January 9, 2018).[6]

On August 21, 2015 (80 FR 51052), the EPA separately promulgated air quality characterization requirements for the 2010 1-hour SO_2 NAAQS in the Data Requirements Rule (DRR). The DRR requires state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted 2,000 tons per year (tpy) or more of SO_2, or that have otherwise been listed under the DRR by the EPA or state air agencies. In lieu of modeling or monitoring, state air agencies, by specified dates, could elect to impose federally enforceable emissions limitations on those sources restricting their annual SO_2 emissions to less than 2,000 tpy, or provide documentation that the sources have been shut down. The EPA expected that the information generated by implementation of the DRR would help inform designations for the 2010 1-hour SO_2 NAAQS that must be completed by December 31, 2020 (''round 4'').

In round 3 of designations, the EPA designated Morrow County and all other areas in Oregon as attainment/unclassifiable for the 2010 1-hour SO_2 NAAQS.[7] There are no remaining areas within Oregon that have yet to be designated.

[1] The EPA approved the October 20, 2015 Oregon submission as it relates to other requirements in final rulemakings published May 16, 2016 (81 FR 30181), May 24, 2018 (83 FR 24034), and September 18, 2018 (83 FR 47073).

[2] While designations may provide useful information for purposes of analyzing transport, particularly for a more source-specific pollutant such as SO_2, the EPA notes that designations themselves are not dispositive of whether or not upwind emissions are impacting areas in downwind states. The EPA has consistently taken the position that CAA section 110(a)(2)(D)(i)(I) addresses ''nonattainment'' anywhere it may occur in other states, not only in designated nonattainment areas nor any similar formulation requiring that designations for downwind nonattainment areas must first have occurred. *See e.g.,* Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005); Cross-State Air Pollution Rule, 76 FR 48208, 48211 (August 8, 2011); Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (November 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 1-hour SO_2 NAAQS prior to issuance of designations for that standard).

[3] The term ''round'' in this instance refers to which ''round of designations.''

[4] The EPA and state documents and public comments related to the round 2 final designations are in the docket at *regulations.gov* with Docket ID No. EPA–HQ–OAR–2014–0464 and at the EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[5] The EPA and state documents and public comments related to round 3 final designations are in the docket at *regulations.gov* with Docket ID No. EPA–HQ–OAR–2017–0003 and at the EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[6] Consent Decree, *Sierra Club* v. *McCarthy,* Case No. 3:13–cv–3953–SI (N.D. Cal. March 2, 2015). This consent decree requires the EPA to sign for publication in the **Federal Register** documents of the EPA's promulgation of area designations for the 2010 1-hour SO_2 NAAQS by three specific deadlines: July 2, 2016 (''round 2''); December 31, 2017 (''round 3''); and December 31, 2020 (''round 4'').

[7] *See* Technical Support Document: Chapter 34 Final Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Oregon *at https://www.epa.gov/sites/production/files/2017-12/documents/34-or-so2-rd3-final.pdf. See* also Technical Support Document: Chapter 34 Intended Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Oregon at *https://www.epa.gov/sites/production/files/2017-08/documents/34_or_so2_rd3-final.pdf.*

II. Relevant Factors To Evaluate 2010 SO_2 Interstate Transport SIPs

Although SO_2 is emitted from a similar universe of point and nonpoint sources, interstate transport of SO_2 is unlike the transport of fine particulate matter ($PM_{2.5}$) or ozone, in that SO_2 is not a regional pollutant and does not commonly contribute to widespread nonattainment over a large (and often multi-state) area. The transport of SO_2 is more analogous to the transport of lead (Pb) because its physical properties result in localized pollutant impacts very near the emissions source. However, ambient concentrations of SO_2 do not decrease as quickly with distance from the source as Pb because of the physical properties and typical release heights of SO_2. Emissions of SO_2 travel farther and have wider ranging impacts than emissions of Pb but do not travel far enough to be treated in a manner similar to ozone or $PM_{2.5}$. The approaches adopted by the EPA for ozone and $PM_{2.5}$ transport are too regionally focused and the approach for Pb transport is too tightly circumscribed to the source to serve as a model for SO_2 transport. SO_2 transport is therefore a unique case and requires a different approach.

In this proposed rulemaking, as in prior SO_2 transport analyses, the 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. Given the physical properties of SO_2, the EPA selected the ''urban scale''—a spatial scale with dimensions from 4 to 50 kilometers (km) from point sources—given the usefulness of that range in assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at such point sources.[8] As such, the EPA utilized an assessment up to 50 km from point sources in order to assess trends in area-wide air quality that might impact downwind states.

As discussed in section III of this document, the EPA first reviewed Oregon's analysis to assess how the State evaluated the transport of SO_2 to other states, the types of information used in the analysis and the conclusions drawn by the State. The EPA then conducted a weight of evidence analysis, including review of Oregon's submission and other available information, including air quality, emission sources and emission trends within the State and in bordering states to which it could potentially contribute or interfere.[9]

III. Oregon SIP Submission and EPA Analysis

A. State Submission

On May 12, 2015, Oregon submitted a revision to the Oregon SIP addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS. Oregon conducted a weight of evidence analysis to examine whether SO_2 emissions from the State adversely affect attainment or maintenance of the 2010 1-hour SO_2 NAAQS in downwind states. Oregon's analysis included a review of: SO_2 emissions source categories; downwind monitoring sites that are potential receptors in neighboring states; industrial point sources located near the border with neighboring states; and SIP-approved controls that limit SO_2 emissions from existing and future Oregon sources. Oregon concluded that SO_2 emissions from Oregon sources will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

B. EPA Evaluation Methodology

The EPA believes that a reasonable starting point for determining which sources and emissions activities in Oregon are likely to impact downwind air quality in other states with respect to the 2010 1-hour SO_2 NAAQS is by using information in the EPA's National Emissions Inventory (NEI).[10] The NEI is a comprehensive and detailed estimate of air emissions for criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources, that is updated every three years using information provided by the states and other information available to the EPA. The EPA evaluated data from the 2014 NEI, the most recently available, complete, and quality assured dataset of the NEI.

In the submission, Oregon assessed SO_2 emissions source categories in the State using 2011 NEI data, which was the most recent, complete data at the time the submission was developed. Oregon found that power plants and other industrial facilities that combust fossil fuel are the primary emitters of SO_2 in the State. Smaller sources include processes to extract metal from ore and the combustion of sulfur-containing fuels in locomotives, ships, and non-road equipment.[11] Because most SO_2 is emitted from industrial facilities, Oregon focused its analysis on the potential for SO_2 emissions from industrial point sources in the State to contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

The EPA's review of more recent NEI data confirms the State's findings. We note that the EPA released a complete set of NEI data for 2014 addressing all source categories. However, the EPA has, to date, released a limited set of emissions data for 2017 addressing stationary sources only. Because the data for 2014 are complete, we reviewed and summarized 2014 NEI data in Table 1 of this document. The data indicate that the majority of SO_2 emissions in Oregon originate from fuel combustion at either electric utilities or other stationary sources such as industrial boilers, in addition to industrial and other processes. These source categories account for approximately 90% of SO_2 emissions in 2014, therefore, we find it reasonable to focus our evaluation on potential downwind impacts of SO_2 emissions from stationary fuel combustion or industrial point sources in Oregon, consistent with the State's submission.

TABLE 1—SUMMARY OF 2014 NEI SO_2 DATA FOR OREGON[12]

Source category	Emissions (tons)
Mobile—non-road	471
Mobile—on-road	307
Fuel combustion—electric generation	7,535
Fuel combustion—other	2,607

[8] For the definition of spatial scales for SO_2, please *see* 40 CFR part 58, appendix D, section 4.4 (''Sulfur Dioxide (SO_2) Design Criteria''). For further discussion on how the EPA is applying these definitions with respect to interstate transport of SO_2, see the EPA's proposal on Connecticut's SO_2 transport SIP. 82 FR 21351, 21352, 21354 (May 8, 2017).

[9] This proposed approval action is based on the information contained in the administrative record for this action and does not prejudge any other future EPA action that may make other determinations regarding any of the subject state's air quality status. Any such future actions, such as area designations under any NAAQS, will be based on their own administrative records and the EPA's analyses of information that becomes available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to the SO_2 Data Requirements Rule (80 FR 51052, August 21, 2015) and information submitted to the EPA by states, air agencies, and third-party stakeholders such as citizen groups and industry representatives.

[10] The EPA's NEI is available at *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory.*

[11] *See* page 26 of the Oregon State Implementation Plan Revision, Attachment C, Addressing the Interstate Transport of Nitrogen Dioxide, Sulfur Dioxide, Lead, Fine Particulate Matter, dated May 12, 2015, in the docket for this action (the submission).

[12] We derived the emissions information from the EPA's web page *https://www.epa.gov/air-emissions-inventories.*

TABLE 1—SUMMARY OF 2014 NEI SO_2 DATA FOR OREGON [12]—Continued

Source category	Emissions (tons)
Industrial and other processes	1,604
Total	12,524

Based on the information detailed in sections III.C.1 through 3 and III.D of this document (available data on emissions sources and emissions trends, ambient air quality data, and permit requirements, available dispersion modeling results, and enforceable regulations) we propose that it is reasonable to conclude that SO_2 sources in Oregon will not contribute significantly to nonattainment (prong 1 of section 110(a)(2)(D)(i)(I)) or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state (prong 2). We evaluate each prong separately, as discussed in the following paragraphs.

C. EPA Prong 1 Evaluation—Significant Contribution to Nonattainment

Prong 1 of the good neighbor provision requires SIPs to prohibit emissions that will contribute significantly to nonattainment of a NAAQS in another state. Oregon asserts in its SIP submission that emissions from Oregon will not contribute significantly to nonattainment in any other state with respect to the 2010 1-hour SO_2 standard. To evaluate Oregon's satisfaction of prong 1, the EPA assessed the State's SIP submission with respect to the following information: (1) SO_2 emissions information from Oregon and neighboring state sources; (2) SO_2 ambient air quality for Oregon and neighboring states; and (3) Analysis of Permit Requirements, Dispersion Modeling, and Source-Specific Controls. A detailed discussion of Oregon's SIP submission with respect to each of these points follows.[13] As a result of our analysis of this information, we believe that the following factors indicate emissions from Oregon are unlikely to impact a violation in any other state and thus are unlikely to contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state: (1) The combination of low ambient concentrations of SO_2 in Oregon and neighboring states and the downward trend in monitored concentrations; (2) our conclusions from our qualitative analysis of the identified sources of SO_2 emissions in Oregon and neighboring states; (3) the downward trend in SO_2 emissions from Oregon sources; (4) available modeling information for specific SO_2 point sources in Oregon; and (5) SIP-approved controls that limit SO_2 emissions from current and future sources. The EPA proposes, based on the information available at the time of this rulemaking, that these factors, taken together, support the EPA's proposed determination that Oregon will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in another state. In addition, 2017 SO_2 emissions for Oregon's sources emitting over 100 tons of SO_2 within 50 km of another state are at distances that make it unlikely that these SO_2 emissions could interact with SO_2 emissions from the neighboring states' sources in such a way as to contribute significantly to nonattainment in neighboring states. Finally, the downward trends in SO_2 emissions and relatively low DVs for air quality monitors in Oregon and neighboring states, combined with federal regulations and SIP-approved regulations affecting SO_2 emissions of Oregon's sources, further support the EPA's proposed conclusion.

1. SO_2 Emissions Analysis

a. State Submission

As discussed in section II of this document, Oregon assessed SO_2 emissions source categories using 2011 NEI data. Oregon found that power plants and other industrial facilities that combust fossil fuel are the primary emitters of SO_2 in the State. Because most SO_2 is emitted from industrial facilities, Oregon focused its analysis on the potential for SO_2 emissions from industrial point sources in the State to contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

Oregon's submission also included an analysis of specific sources located near the Oregon border. The State focused its evaluation on three large facilities located near the border with Washington, that are also listed in Table 3 of this document: The Boardman Plant, the Wauna Mill, and the Owens-Brockway Glass facility.

b. EPA Analysis

The EPA also analyzed SO_2 emissions trends in Oregon. Between 2002 and 2014, SO_2 emissions from Oregon sources were reduced significantly. NEI data summarized in Table 2 of this document illustrate this trend. SO_2 emissions from Oregon sources fell approximately 72% overall, and emissions from specific source categories also declined over this time period. These trends are due in part to the combustion of lower sulfur content fuels.

TABLE 2—SO_2 EMISSION TRENDS IN OREGON (TONS) [14]

Source category	2002	2005	2008	2011	2014	SO_2 reduction, 2002–2014 (%)
Mobile—non-road	12,470	5,746	2,058	340	471	96
Mobile—on-road	3,760	1,796	532	333	307	92
Fuel combustion—electric generation	12,344	452	11,410	13,169	7,535	40
Fuel combustion—other	10,142	12,911	1,739	3,164	2,607	74
Industrial and other processes	6,341	14,103	3,573	4,046	1,604	75
Total	45,057	35,008	19,312	21,052	12,524	72

[13] The EPA has reviewed Oregon's submission, and where new or more current information has become available, is including this information as part of the EPA's evaluation of this submission.

[14] We derived the emissions trends information from the EPA's web page *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.*

Emissions trends, while important, do not by themselves demonstrate that sources in Oregon will not contribute significantly to nonattainment in neighboring states.

As discussed in section II of this document, the EPA finds it appropriate to examine the impacts of emissions from stationary sources in Oregon in distances ranging from 0 km to 50 km from the facility, based on the ''urban scale'' definition contained in appendix D to 40 CFR part 58, section 4.4. Therefore, we reviewed NEI data for Oregon point sources with SO_2 emissions greater than 100 tpy [15] in 2017 that are located up to 50 km from State borders, as summarized in the following table, Table 3.

TABLE 3—SO_2 EMISSIONS TRENDS AT OREGON SOURCES WITHIN 50 KM OF BORDER [16]

Source name	Distance * (km)	2008 (tons)	2011 (tons)	2014 (tons)	2017 (tons)
Portland General Electric Power Plant (Boardman Plant) ..	17	11,303	13,103	7,439	3,298
Georgia-Pacific Consumer Products LP (Wauna Mill)	1	858	707	571	540
Portland International Airport	2	96	115	125	215
EP Minerals, LLC	33	1	141	66	182
Owens-Brockway Glass Container Inc. (Owens-Brockway Glass)	4	142	119	119	118

*Approximate distance to nearest Oregon border.

The EPA assessed this information to evaluate whether the SO_2 emissions from these sources could interact with SO_2 emissions from the nearest source in a neighboring state in such a way as to impact a violation of the 2010 1-hour SO_2 NAAQS in that state. The following Table 4 lists the five sources in Oregon that emitted greater than 100 tpy of SO_2 in 2017 and are located within 50 km of the State's border.

TABLE 4—OREGON SO_2 SOURCES EMITTING GREATER THAN 100 TPY NEAR NEIGHBORING STATES

Oregon source	2017 annual SO_2 emissions (tons)	Approximate distance to Oregon Border (km)	Closest neighboring state	Approximate distance to nearest neighboring state SO_2 source (km)	Nearest neighboring state SO_2 source & 2017 emissions (>100 tons SO_2)
Portland General Electric Power Plant (Boardman Plant).	3,298	17	Washington	83	Boise Paper (885 tons).
Georgia-Pacific Consumer Products LP (Wauna Mill).	540	1	Washington	33	Nippon Dynawave Packaging Co. (390 tons).
Portland International Airport.	215	2	Washington	61	Longview Fibre Paper and Packaging, Inc. (198 tons).
EP Minerals, LLC	182	33	Idaho	286	The Amalgamated Sugar Company LLC—Twin Falls (635 tons).
Owens-Brockway Glass Container Inc. (Owens-Brockway Glass).	118	4	Washington	66	Longview Fibre Paper and Packaging, Inc. (198 tons).

Only one source emitting greater than 100 tpy in Oregon located within 50 km of the State border is also within 50 km of a source also emitting greater than 100 tpy in a neighboring state. The Georgia Pacific Wauna Mill facility (discussed in the following paragraphs) is located 1 km from the State border and 33 km from the nearest out-of-state source emitting greater than 100 tpy, Nippon Dynawave Packaging in Washington. The EPA believes that the distances greater than 50 km between all remaining Oregon sources and the nearest out-of-state source make it unlikely that SO_2 emissions from these Oregon sources could interact with SO_2 emissions from these out-of-state sources in such a way as to contribute significantly to nonattainment in Washington and Idaho. Further discussion of all Oregon sources in Table 4 can be found in section III.C.2.b of this document.

2. Ambient Air Quality Data Analysis

a. State Submission

In its submission, Oregon identified SO_2 monitoring sites in the neighboring states of California, Idaho, Nevada, and Washington that are most likely to be impacted by SO_2 emissions from sources in Oregon. The submission lists each SO_2 monitoring site considered to be a potential downwind receptor and the most recent monitoring data at the receptor.[17] Oregon found that the 2011–2013 design value [18] at each identified receptor was well below the 2010 1-

[15] We have limited our analysis to Oregon sources emitting at least 100 tpy of SO_2 because in the absence of special factors, for example the presence of a nearby larger source or unusual physical factors, Oregon sources emitting less than 100 tpy can appropriately be presumed to not be causing or contributing to SO_2 concentrations above the NAAQS.

[16] We derived the emissions information from the EPA's web page *https://www.epa.gov/air-emissions-inventories.*

[17] *See* page 14 (Table 2) of the submission.

[18] The design value is a statistical representation of SO_2 in ambient air based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations, measures in parts per billion (ppb).

hour SO_2 NAAQS (75 ppb) and that SO_2 emissions from Oregon were therefore not significantly contributing to nonattainment in any other state.

b. EPA Analysis

The EPA also evaluated ambient air quality data in Oregon and neighboring states to determine whether there were any monitoring sites, particularly near the Oregon border, with elevated SO_2 concentrations that might warrant further investigation with respect to interstate transport of SO_2 from emission sources in Oregon. We reviewed the most recent SO_2 monitoring data available from the EPA's Air Quality System for the following set of receptors: (1) All monitors in Oregon; (2) the monitor with the highest design value in each neighboring state; (3) the monitor in each neighboring state located closest to the Oregon border; and (4) all monitors in each neighboring state within 50 km of the Oregon border.

The following table, Table 5, shows that the Multnomah County, Oregon monitoring site is the only SO_2 monitor in Oregon and is within 50 km of the Oregon border. The most recent design value at this monitor, for the years 2016–2018, is 3 ppb. This design value is well below the 2010 1-hour SO_2 NAAQS (75 ppb). In addition, all monitors identified in neighboring states are below the 2010 1-hour SO_2 NAAQS.

TABLE 5—SO_2 DESIGN VALUES FOR MONITORS IN OREGON AND NEIGHBORING STATES [19]

State/county	Site ID	Distance * (km)	2014–2016 (ppb)	2015–2017 (ppb)	2016–2018 (ppb)
California/Contra Costa	060131001	433	14	14	16
California/Humboldt	060231004	135	1	1	1
Idaho/Ada	160010010	55	4	3	3
Idaho/Pocatello	160050004	366	39	38	38
Nevada/Clark	320030540	668	7	6	6
Nevada/Washoe	320310016	275	5	5	5
Oregon/Multnomah	410510080	12	3	3	3
Washington/Skagit	530570011	327	5	4	3

*Approximate distance to nearest Oregon border.

These air quality data do not, by themselves, indicate any particular location that would warrant further investigation with respect to SO_2 emissions sources that might contribute significantly to nonattainment in the neighboring states. Because the monitoring network is not necessarily designed to find all locations of high SO_2 concentrations, this observation indicates an absence of evidence of impact at these locations but is not sufficient evidence by itself of an absence of impact at all locations in the neighboring states.

3. Analysis of Permit Requirements, Dispersion Modeling, and Source-Specific Controls

As previously discussed, Oregon identified three sources (Boardman Plant, the Wauna Mill, and the Owens-Brockway Glass facility), for which the State reviewed existing permitting information and available dispersion modeling, in addition to SIP-approved controls that apply to the sources to limit SO_2 emissions. In the following paragraphs, we have summarized the source-specific analysis in the State's submission followed by the EPA's supplemental analysis where necessary or where new information became available after the submission was developed.

a. State Submission

i. Boardman Plant

The Boardman Plant is a 575-megawatt coal-fired power plant operated by Portland General Electric, located approximately 17 km from the border with Washington. In its submission, Oregon stated that the Boardman Plant is subject to SIP-approved SO_2 controls established to meet regional haze planning requirements for Best Available Retrofit Technology (BART) (76 FR 38997, July 5, 2011). The SIP requires the Boardman Plant to cease burning coal by December 31, 2020 and requires the use of dry sorbent injection controls to further limit SO_2 emissions from the plant during the time period leading up to the shutdown date (2018 through 2020). Based on this information, Oregon concluded that SO_2 emissions from the Boardman Plant will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

ii. Wauna Mill

In its submission, Oregon evaluated permit information for the Wauna Mill including the air quality analysis conducted during the prevention of significant deterioration (PSD) permitting process for the facility. A PSD air quality analysis assesses the predicted impacts to ambient air associated with the construction and operation of a proposed major source or major modification. The analysis is designed to determine whether new emissions from a proposed major stationary source or major modification, in conjunction with other applicable emissions from existing sources (competing sources), will or will not cause or contribute to a violation of any applicable NAAQS. PSD dispersion modeling is conducted at a 50 km range and includes any portion of the range that may extend into neighboring states. In its submission, Oregon stated that a review of the modeling concluded predicted impacts from the Wauna Mill to ambient air were not expected to cause or contribute to a violation of any applicable NAAQS within Oregon or in neighboring states.

iii. Owens-Brockway Glass

Owens-Brockway Glass Container Inc. is located in Portland, Oregon, 4 km from the border with Washington. Oregon's submission stated that Owens-Brockway Glass was evaluated during PSD analyses for other major source permitting actions.[20] Oregon reviewed the permitting analyses and stated that the analyses demonstrated the proposed source's emissions considered in conjunction with the emissions from Owens-Brockway Glass and other

[19] We compiled the monitoring data from the EPA's web page *https://www.epa.gov/air-trends/air-quality-design-values#report.*

[20] *See* page 26 of the submission.

sources in the area do not cause or contribute to a violation of any applicable NAAQS within the 50-km area evaluated. Oregon concluded that this source will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS.

b. EPA Analysis

i. Boardman Plant

In accordance with the EPA's SO_2 Data Requirements Rule, Oregon characterized the Boardman Plant by conducting air dispersion modeling. Oregon modeled the area using a receptor grid that extended 50 km from the source (which extended into the neighboring State of Washington). Oregon's modeling accounted for allowable potential emissions from the Boardman Plant and 11 other Oregon SO_2 emissions sources in the area. The State submitted the resulting model data to the EPA and indicated that Oregon found no modeled exceedances of the 2010 1-hour SO_2 NAAQS within 50 km of the Boardman Plant. The maximum modeled concentration was found to be 73 ppb and was projected to occur southeast of the Boardman Plant, in the opposite direction of the border with Washington. The State recommended the EPA designate the area around the Boardman Plant as unclassifiable/attainment.[21] The EPA agreed and designated the entire State of Oregon attainment/unclassifiable for the 2010 1-hour SO_2 NAAQS (83 FR 1098, January 9, 2018).[22]

Based on the information provided by the State and the additional information available to the EPA, specifically the modeling results for the area around the Boardman Plant, we propose to concur with the State's conclusion that SO_2 emissions from the Boardman Plant will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

ii. Wauna Mill

The Georgia-Pacific Consumer Products LP (Wauna Mill) is in Clatskanie, Oregon and is located within 50 km of the Oregon border and within 50 km of two SO_2 sources emitting greater than 100 tpy in Longview, Washington. Elevated levels of SO_2, to which SO_2 emitted in Oregon may have a downwind impact, are most likely to be found near such sources. Therefore, we believe it is appropriate to further review permit information for the Wauna Mill and SIP-approved provisions that limit SO_2 emissions from the Wauna Mill, which we have summarized in the following paragraphs.

In 2010, the Wauna Mill was evaluated as part of the Oregon Regional Haze Plan and determined to be a BART-eligible source. The Wauna Mill underwent BART analysis by Oregon and elected to take federally enforceable SO_2 limits to comply with BART requirements promulgated in Oregon Administrative Rules (OAR) and approved by the EPA as part of the Oregon Regional Haze Plan.[23] The limits were added to the facility's title V operating permit, and to achieve the limits, the mill permanently reduced the use of fuel oil and limited production rates.[24] Emissions at the Wauna Mill, as shown in Table 3 of this document, are declining. Based on this information and the information provided by the State, the EPA believes it is reasonable to conclude that the Wauna Mill will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in Washington or any other state.

iii. Portland International Airport

The Portland International Airport is located approximately 2 km from the border with Washington. Oregon's submission did not specifically address the airport; therefore, we have conducted our own evaluation. In 2017, SO_2 emissions at the airport totaled approximately 215 tons, as shown in Table 4 of this document. While these emissions are greater than some of the industrial point sources evaluated, it is important to distinguish SO_2 emissions at an airport from those at a typical industrial point source, in part because airport-related emissions tend to be spread across large areas and operations, including emissions from airplanes departing from and arriving at the airport and support vehicles that service airplanes and transport passengers.

The distance between Portland International Airport and the nearest out-of-state source emitting greater than 100 tons, Longview Fibre Paper and Packaging, Inc. in Longview, Washington, is 61 km. In 2017, Longview Fibre Paper and Packaging, Inc., emitted 198 tons of SO_2. Based on the distance between these sources, it is unlikely that SO_2 emissions from Portland International Airport could interact with SO_2 emissions from Longview Fibre Paper and Packaging, Inc., in such a way as to impact a violation of the 2010 1-hour SO_2 NAAQS in that state. Therefore, we believe it is reasonable to conclude that SO_2 emissions from Portland International Airport will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in Washington or any other state.

iv. EP Minerals Inc.

EP Minerals Inc. operates a diatomaceous earth processing plant in Vale, Oregon, approximately 33 km from the Idaho border. The source emitted approximately 182 tons of SO_2 in 2017, as shown in Table 4 of this document. The State submission did not address this source therefore, we have supplemented the State's review with the following assessment. EP Minerals Inc. is a title V major stationary source with kilns and dryers subject to SO_2 emission limits.[25] The source is subject to monitoring, recordkeeping, and reporting requirements, as a condition of operating the source. In addition, SIP-approved sulfur-in-fuel limits apply, as well as Federal Standards of Performance for Calciners and Dryers in Mineral Industries.

The distance between EP Minerals Inc., and the nearest out-of-state source emitting greater than 100 tons, the Amalgamated Sugar Company in Twin Falls, Idaho, is 286 km. In 2017, the Amalgamated Sugar Company—Twin Falls emitted 635 tons of SO_2. Based on the distance between these sources, it is unlikely that SO_2 emissions from EP Minerals Inc., could interact with SO_2 emissions from the Amalgamated Sugar Company—Twin Falls in such a way as to impact a violation of the 2010 1-hour SO_2 NAAQS in that state. Therefore, we believe it is reasonable to conclude that SO_2 emissions from EP Minerals Inc., will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in Idaho or any other state.

v. Owens-Brockway Glass

Owens-Brockway Glass Container Inc. is located in Portland, Oregon, 4 km from the border with Washington. The distance between Owens-Brockway Glass Container Inc., and the nearest out-of-state source emitting greater than 100 tons, the Longview Fibre Paper and Packaging, Inc., in Longview, Washington, is 66 km. In 2017, the Longview Fibre Paper and Packaging,

[21] *See* designation technical support document at *https://www.epa.gov/sites/production/files/2017-08/documents/34_or_so2_rd3-final.pdf.*

[22] *See* 40 CFR 81.338.

[23] *See* Oregon Regional Haze Plan submitted on December 20, 2010, approved by the EPA on July 5, 2011 (76 FR 38897).

[24] *See* title V operating permit number 04–0004–TV–01, issued June 18, 2009 and modified on December 2, 2010, available online at: *https://www.deq.state.or.us/aq/aqpermitsonline.*

[25] Title V operating permit number 23–0032–TV–01, issued September 29, 2017, available online at: *https://www.deq.state.or.us/aq/aqpermitsonline.*

Inc., emitted 198 tons of SO_2. Based on the distance between these sources, it is unlikely that SO_2 emissions from Owens-Brockway Glass Container Inc., could interact with SO_2 emissions from the Longview Fibre Paper and Packaging, Inc in such a way as to impact a violation of the 2010 1-hour SO_2 NAAQS in that state. Therefore, we believe it is reasonable to conclude that SO_2 emissions from Owens-Brockway Glass Container Inc., will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in Idaho or any other state.

vi. TransAlta Central Generation Power Plant

The TransAlta Central Generation Power Plant (TransAlta) in Lewis County, Washington, is located approximately 66 km from the Oregon-Washington state border. TransAlta is located approximately 78 km from the nearest source in Oregon emitting greater than 100 tons, the Wauna Mill, which was further discussed earlier. In 2017, TransAlta emitted 1,689 tons of SO_2. TransAlta was required to be characterized pursuant the DRR by the State of Washington. The State of Washington elected to characterize the area around TransAlta through air dispersion modeling. In Round 3 of SO_2 designations, the EPA determined the modeling supplied by Washington was not sufficient to determine the area as in attainment of the NAAQS. Therefore, the EPA designated Lewis and Thurston Counties in Washington as unclassifiable.[26] This unclassifiable area is approximately 22 km from the Oregon-Washington border. Due to the distance between the Wauna Mill and TransAlta, it is unlikely that SO_2 emissions from Wauna Mill could interact with SO_2 emissions from TransAlta in such a way as to impact a violation of the 2010 1-hour SO_2 NAAQS in that state. Therefore, we believe it is reasonable to conclude that SO_2 emissions from Wauna Mill will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in Washington or any other state.

4. Conclusion

In conclusion, for prong 1, we believe that the following factors indicate emissions from Oregon are unlikely to impact a violation in any other state and thus are unlikely to contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state: (1) The combination of low ambient concentrations of SO_2 in Oregon and neighboring states and the downward trend in monitored concentrations; (2) our conclusions from our qualitative analysis of the identified sources of SO_2 emissions in Oregon and neighboring states; (3) the downward trend in SO_2 emissions from Oregon sources; (4) available modeling information for specific SO_2 point sources in Oregon; and (5) SIP-approved controls that limit SO_2 emissions from current and future sources. The EPA proposes, based on the information available at the time of this rulemaking, that these factors, taken together, support the EPA's proposed determination that Oregon will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in another state. In addition, 2017 SO_2 emissions for Oregon's sources emitting over 100 tons of SO_2 within 50 km of another state are at distances that make it unlikely that these SO_2 emissions could interact with SO_2 emissions from the neighboring states' sources in such a way as to contribute significantly to nonattainment in neighboring states. Finally, the downward trends in SO_2 emissions and relatively low DVs for air quality monitors in Oregon and neighboring states, combined with federal regulations and SIP-approved regulations affecting SO_2 emissions of Oregon's sources, further support the EPA's proposed conclusion. Therefore, we are proposing to approve the Oregon SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) prong 1 for purposes of the 2010 1-hour SO_2 NAAQS.

D. EPA Prong 2 Evaluation—Interference With Maintenance

1. Summary

Prong 2 of CAA section 110(a)(2)(D)(i)(I) requires an evaluation of the potential impact of a state's emissions on areas in other states that are not violating the NAAQS. This evaluation is not limited to only former nonattainment areas with EPA-approved maintenance plans, but rather it focuses on any areas that may have trouble attaining and maintaining the standard in the future. Our prong 2 evaluation for Oregon builds on our analysis in the prior prong 1 evaluation, regarding significant contribution to nonattainment (prong 1). Specifically, as described in our prong 1 evaluation and summarized in Table 3 of this document, we have a sufficient basis to conclude that there are no 2010 1-hour SO_2 NAAQS violations in other states near their shared borders with Oregon. Moreover, we have a sufficient basis to conclude that SO_2 emissions from sources in Oregon are highly unlikely to increase sufficiently to alter this situation, given the SIP-approved controls limiting emissions from large sources near the border.

2. Emissions Trends

Statewide SO_2 emissions from Oregon sources have decreased substantially over time, as shown in the preceding Table 2 of this document.[27] From 2002 to 2014, total statewide SO_2 emissions decreased by approximately 72 percent. This trend of decreasing SO_2 emissions does not by itself demonstrate that areas in Oregon and neighboring states will not have issues maintaining the 2010 1-hour SO_2 NAAQS. However, as a piece of this weight of evidence analysis for prong 2, it provides further indication (when considered alongside low monitor values in neighboring states) that such maintenance issues are unlikely.

3. SIP-Approved New Source Review Program

The EPA notes that any future major sources of SO_2 emissions will be addressed by Oregon's SIP-approved PSD program.[28] Future minor sources of SO_2 emissions will be addressed by Oregon's SIP-approved minor new source review permit program.[29] The EPA believes that the permitting regulations contained within these programs should help ensure that ambient concentrations of SO_2 in neighboring states are not exceeded as a result of new facility construction or modification occurring in Oregon.

4. Conclusion

In conclusion, for prong 2, we reviewed the technical information considered for interstate transport prong 1, additional information about emission trends, as well as the requirements of Oregon's SIP-approved new source review program. We believe that the following factors indicate emissions from Oregon will not interfere

[26] *See* Technical Support Document: Chapter 42 Final Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Washington at *https://www.epa.gov/sites/production/files/2017-12/documents/42-wa-so2-rd3-final.pdf. See* also Technical Support Document: Chapter 42 Intended Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Washington at *https://www.epa.gov/sites/production/files/2017-08/documents/43_wa_so2_rd3-final.pdf.*

[27] *See* additional emissions trends data at: *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.*

[28] The EPA recently approved revisions to the Oregon new source review permitting programs on October 11, 2017 (82 FR 47122).

[29] Ibid.

with maintenance of the 2010 1-hour SO_2 NAAQS in any other state: (1) The combination of low ambient concentrations of SO_2 in Oregon and neighboring states and the downward trend in monitored concentrations; (2) our conclusions from our qualitative analysis of the identified sources of SO_2 emissions; (3) the downward trend in SO_2 emissions from Oregon sources; (4) available modeling information for specific SO_2 point sources in Oregon; and (5) SIP-approved controls that limit SO_2 emissions from current and future sources. The EPA proposes, based on the information available at the time of this rulemaking, that these factors, taken together, support the EPA's proposed determination that Oregon will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. In addition, 2017 SO_2 emissions for Oregon's sources emitting over 100 tons of SO_2 within 50 km of another state are at distances that make it unlikely that these SO_2 emissions could interact with SO_2 emissions from the neighboring states' sources in such a way as to contribute significantly to nonattainment in neighboring states. Finally, the downward trends in SO_2 emissions and relatively low DVs for air quality monitors in Oregon and neighboring states, combined with federal regulations and SIP-approved regulations affecting SO_2 emissions of Oregon's sources, further support the EPA's proposed conclusion. Therefore, we are proposing to approve the Oregon SIP as meeting CAA section 110(a)(2)(D)(i)(I) prong 2 for purposes of the 2010 1-hour SO_2 NAAQS.

IV. Proposed Action

The EPA is proposing to approve the October 20, 2015, Oregon SIP submission as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS. The EPA is proposing this approval based on our review of the information and analysis provided by Oregon in the State's submission, as well as additional relevant information, which indicates that in-State air emissions will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. This action is being taken under section 110 of the CAA.

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: May 7, 2020.

Christopher Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–10228 Filed 5–14–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0449; FRL–10008–59–Region 9]

Approval and Limited Approval and Limited Disapproval of California Air Plan Revisions; San Diego County Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on four permitting rules submitted as a revision to the San Diego County Air Pollution Control District (SDAPCD or ''District'') portion of the California State Implementation Plan (SIP). We are proposing a limited approval and limited disapproval of one rule and proposing approval of the remaining three rules. These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the Clean Air Act (CAA). This action updates the SDAPCD's applicable SIP with revised rules that the District has amended to address deficiencies identified in a previous conditional approval action. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before June 15, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0449 at *http://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sheila Tsai, EPA Region IX, Air–3–1, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3328 or by email at *Tsai.Ya-Ting@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates when they were adopted by the SDAPCD and submitted by the California Air Resources Board (CARB), which is the governor's designee for California SIP submittals. These rules constitute part of the SDAPCD's current program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction. The rule revisions that are the subject of this action represent an update to the SDAPCD's preconstruction review and permitting program and are intended to satisfy the requirements under part D of title I of the Act (''nonattainment NSR'' or ''NNSR'') as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act (''minor NSR'').

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Adopted date	Submitted date
20.1	New Source Review—General Provisions	06/26/2019	07/19/2019
20.2*	New Source Review—Non-Major Stationary Sources	06/26/2019	07/19/2019
20.3*	New Source Review—Major Stationary Sources and PSD Stationary Sources	06/26/2019	07/19/2019
20.4*	New Source Review—Portable Emission Units	06/26/2019	07/19/2019

*The following paragraphs of the Rules 20.2–20.4 were not submitted to the EPA for inclusion in the San Diego SIP: Rule 20.2 paragraphs (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); Rule 20.3 paragraphs (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); and Rule 20.4 paragraphs (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5).

On August 6, 2019, the EPA determined that the submittal of the revised Rules 20.1, 20.2, 20.3, and 20.4 meets the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

The EPA conditionally approved Rules 20.1–20.4 into the SDAPCD portion of the California SIP in 2018, based on the District's commitment to adopt and submit revisions to address identified deficiencies within one year, consistent with the requirements at CAA section 110(k)(4) for conditional approval. 83 FR 50007 (October 4, 2018). That action also included a conditional approval of Rule 20.6, and a full approval of Rules 11, 20, and 24. The conditionally approved versions of Rules 20.1–20.4 are identified below in Table 2.

TABLE 2—SIP APPROVED RULES

Rule No.	Rule title	SIP approval date	**Federal Register** Citation
20.1	New Source Review—General Provisions	10/4/2018	83 FR 50007
20.2	New Source Review—Non-Major Stationary Sources	10/4/2018	83 FR 50007
20.3	New Source Review—Major Stationary Sources and PSD Stationary Sources	10/4/2018	83 FR 50007
20.4	New Source Review—Portable Emission Units	10/4/2018	83 FR 50007

If the EPA finalizes the action proposed herein, these rules will be replaced in the SIP by the submitted set of rules listed in Table 1. Additionally, as described below, the EPA's final approval of Rules 20.1–20.4 will resolve our conditional approval of Rule 20.6.

C. What is the purpose of the submitted rule revisions?

As noted above and described in further detail below, the submitted rules are intended to satisfy aspects of the minor NSR and NNSR requirements of section 110(a)(2)(C) and part D of title I of the Act, and related EPA regulations. Minor NSR requirements are generally applicable for SIPs in all areas, while NNSR requirements apply only for areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS). San Diego County is classified as a serious nonattainment area for the 2008 ozone standard and a moderate nonattainment area for the 2015 8-hour ozone standard. San Diego County is designated attainment or unclassifiable for all other NAAQS. *See* 40 CFR 81.305. Therefore, in addition to

being subject to the requirements for minor NSR at section 110(a)(2)(C) of the Act, California is required to adopt and implement a SIP-approved NNSR permitting program that applies to new or modified major stationary sources of ozone and ozone precursors within the San Diego County nonattainment area, under part D of title I of the Act.

These rules were submitted to address deficiencies identified in the EPA's 2018 action to approve and conditionally approve updates to the SDAPCD's SIP-approved NSR permitting program. *See* 83 FR 50007 (October 4, 2018). Additionally, the rules have been revised to include NO_X and VOC applicability thresholds and offset ratios applicable to severe and extreme ozone nonattainment areas, and to incorporate federal requirements for interprecursor offsetting that were added in the EPA's Implementation Rule for the 2015 Ozone NAAQS. *See* 83 FR 62998 (December 6, 2018).

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

The EPA evaluated the submitted rules to determine whether they address the deficiencies identified in our 2018 conditional approval, and for compliance with applicable requirements of section 110(a)(2)(C) and part D of title I of the CAA and associated regulations at 40 CFR 51.160–165, consistent with the District's current classification as a serious nonattainment area for the 2008 ozone standard and a moderate nonattainment area for the 2015 8-hour ozone standard. We have also reviewed the rules for consistency with other CAA general requirements for SIP submittals, including requirements at section 110(a)(2) regarding rule enforceability, and requirements at sections 110(l) and 193 for SIP revisions.

Section 110(a)(2)(C) of the Act requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. The EPA's regulations at 40 CFR 51.160–51.164 provide general programmatic requirements to implement this statutory mandate. These requirements, commonly referred to as the ''minor NSR'' or ''general NSR'' program, apply to both major and non-major stationary sources and modifications and in both attainment and nonattainment areas, in contrast to the specific statutory and regulatory requirements for the prevention of significant deterioration (PSD) [1] and NNSR permitting programs under parts C and D of title I of the Act that apply to major sources in attainment and nonattainment areas, respectively.

Part D of title I of the Act, and the implementing regulations at 40 CFR 51.165, contain the NNSR program requirements for major stationary sources and major modifications (as those terms are defined at 40 CFR 51.165) at facilities that are located in a nonattainment area and are major sources for the pollutants for which the area has been designated nonattainment.

Section 110(a)(2)(A) of the Act requires that regulations submitted to the EPA for SIP approval must be clear and legally enforceable. Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutant(s). With respect to procedures, CAA sections 110(a) and 110(l) require that a state conduct reasonable notice and hearing before adopting a SIP revision.

B. Do the rules meet the evaluation criteria?

With the exception noted below, the EPA finds that the submitted rules generally satisfy the applicable CAA and regulatory requirements. Accordingly, we are proposing a full approval of Rules 20.2–20.4 and a limited approval and limited disapproval of Rule 20.1 under CAA section 110(k)(3) and 301(a). Below, we discuss generally our evaluation of the submitted rules. The technical support document (TSD) included in the docket for this proposed rulemaking contains a more detailed analysis.

We find that the submitted rules generally satisfy the NNSR and minor NSR requirements. The rules clearly identify the kinds of projects subject to review under the District's program, include legally enforceable procedures to ensure that construction will not violate the state's control strategy or interfere with attainment or maintenance of the NAAQS, provide for public availability of relevant information, and meet other requirements of the minor NSR regulations at 40 CFR 51.160–164. In addition, the rules include the definitions, applicability procedures, and requirements for sources in nonattainment areas to obtain emission reduction offsets and comply with the lowest achievable emissions rate, as required by the NNSR regulations at 40 CFR 51.165. Rule 20.1 incorporates general regulatory requirements of the minor NSR program and definitions, applicability procedures, and requirements of the minor NSR and NNSR programs, while Rules 20.2, 20.3, and 20.4 apply applicable elements of the program to minor stationary sources, major stationary sources, and portable emission units, respectively. For more information about how the rules satisfy these requirements, see our 2018 conditional approval of the District's minor NSR and NNSR program at 83 FR 50007 (October 4, 2018).

The EPA has identified one deficiency in Rule 20.1(a) related to 40 CFR 51.160(a) and (b) and CAA section 173(a). The District revised Rule 20.1(a) to specify that the rule applies to a permit application based on the requirements in the rule as in effect on the date that the application is determined to be complete. By specifying the rule's applicability based on the date of application completeness, this language may limit the APCO's ability to ensure a source will comply with applicable NSR programs requirements at the time the permit is issued. Because of this deficiency, and our determination that other revisions to the rule conform to federal requirements, we are proposing a limited approval and limited disapproval of Rule 20.1. In order to correct this deficiency, we recommend that SDAPCD remove or revise the language added in the revised Rule 20.1(a). The TSD for this action contains additional detail regarding our determination and recommendation.

The submitted rules comply with the substantive and procedural requirements of CAA section 110(l). With respect to the procedural requirements, based on our review of the public process documentation included with the submitted rules, we find that the SDAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has satisfied these

[1] The SDAPCD has elected not to submit rules to satisfy requirements of the PSD program under part C of title I of the Act for major stationary sources in attainment areas at this time. Accordingly, the EPA is not evaluating whether this SIP submittal satisfies PSD program requirements at 40 CFR 51.166, and some portions of Rules 20.2–20.4 addressing major sources in attainment areas are excluded from the submittal. See Table 1. The EPA remains the PSD permitting authority in San Diego County.

procedural requirements under CAA section 110(l).

With respect to the substantive requirements of CAA section 110(l), we have determined that our approval of the submitted rules would strengthen the applicable SIP. The addition of public noticing requirement revisions, updates to the interpollutant offset procedures, and other changes to Rules 20.1–20.4 will not interfere with any applicable requirements of the CAA. Overall, the changes to Rules 20.1–20.4 better conform to the federal requirements. These changes will not interfere with the area's ability to attain or maintain the NAAQS and will better align SDAPCD's NSR program to the federal requirements. Accordingly, we are proposing to find that the revisions to Rules 20.1–20.4 are approvable under section 110(l).

Similarly, we find that the submitted rules are approvable under section 193 of the Act because they do not modify any control requirement in effect before November 15, 1990 without ensuring equivalent or greater emission reductions.

The submitted rules are otherwise consistent with criteria for the EPA's approval of regulations submitted for inclusion in the SIP, including the requirement at CAA section 110(c)(2)(A) that submitted regulations be clear and legally enforceable.

For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules generally satisfy the applicable CAA and regulatory requirements for minor NSR and NNSR permit programs under CAA section 110(a)(2)(C) and part D of title I of the Act and other applicable requirements, subject to the one exception noted above where the EPA has identified a deficiency. This submittal also corrects the deficiencies described in our 2018 conditional approval of Rules 20.1–20.4 and Rule 20.6. If we finalize this action as proposed, our action will resolve the conditional approval of these rules, and will be codified through revisions to 40 CFR 52.220 (Identification of plan—in part) and 40 CFR 52.248 (Identification of plan—conditional approval). As described below, a final limited disapproval would also trigger a timeline for the State to submit a revised SIP, or else face sanctions under the CAA.

C. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing full approval of Rules 20.2–20.4, and a limited approval and limited disapproval of Rule 20.1. We will accept comments from the public on this proposal until June 15, 2020. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

If finalized as proposed, our limited disapproval action would trigger an obligation on the EPA to promulgate a Federal Implementation Plan (FIP) unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action. Additionally, because the deficiency relates to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in San Diego County 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if the State submits and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiency that we identify in our final action. The EPA intends to work with the SDAPCD to correct the deficiency in a timely manner.

Note that the submitted rule has been adopted by the SDAPCD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval would also not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *https://www.epa.gov/sites/production/files/2015–07/documents/procsip.pdf.*

III. Incorporation by Reference

In this rule, the 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, the EPA is proposing to incorporate by reference the SDAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has

jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: May 1, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–09734 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2020–0003; FRL–10009–11–Region 4]

Air Plan Approval and Designation of Areas; KY; Redesignation of the Jefferson County 2010 1-Hour Sulfur Dioxide Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In a letter dated December 9, 2019, the Commonwealth of Kentucky, through the Kentucky Division of Air Quality (KDAQ) on behalf of the Louisville Metro Air Pollution Control District (LMAPCD), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Jefferson County sulfur dioxide (SO_2) nonattainment area (hereinafter referred to as the ''Jefferson County Area'' or ''Area'') to attainment for the 2010 1-hour SO_2 primary national ambient air quality standard (NAAQS) and to approve an accompanying state implementation plan (SIP) revision containing a maintenance plan for the Area. EPA is proposing to determine that the Jefferson County Area has attained the 2010 1-hour SO_2 NAAQS; to approve the SIP revision containing the Commonwealth's plan for maintaining attainment of the 2010 1-hour SO_2 standard and to incorporate the maintenance plan into the SIP; and to redesignate the Jefferson County Area to attainment for the 2010 1-hour SO_2 NAAQS.

DATES: Comments must be received on or before June 15, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0003 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, 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. Ms. Sanchez may be reached by phone at (404) 562–9644 or via electronic mail at *sanchez.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What are the actions EPA is proposing to take?

EPA is proposing to take the following three separate but related actions: (1) To determine that the Jefferson County Area has attained the 2010 1-hour SO_2 NAAQS; (2) to approve Kentucky's plan for maintaining the 2010 1-hour SO_2 NAAQS in the Area through 2032 and incorporate it into the SIP; and (3) to redesignate the Jefferson County Area to attainment for the 2010 1-hour SO_2 NAAQS. The Jefferson County Area is comprised of the portion of Jefferson County encompassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83 as follows: (1) Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Highway (US60 and US31W) at UTM Easting (m) 597515, UTM Northing 4212946; (2) Along Dixie Highway from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; (3) Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Highway at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; (4) Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086. The Area consists primarily of the Louisville Gas & Electric (LG&E) Mill Creek Generating Station (Mill Creek) and the area surrounding the monitor immediately north of that facility. Mill Creek is the only point source of SO_2 emissions within the Jefferson County Area.

EPA is proposing to determine that the Jefferson County Area has attained the 2010 1-hour SO_2 NAAQS. EPA is also proposing to approve Kentucky's SIP revision containing the maintenance plan for the Jefferson County Area in accordance with the requirements of section 175A of the Clean Air Act (CAA or Act). The maintenance plan submitted with Kentucky's request for redesignation is intended to help keep the Jefferson County Area in attainment of the 2010 1-hour SO_2 NAAQS through the year 2032.

EPA is also proposing to determine that the Jefferson County Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, EPA is proposing to approve a request to change the legal designation of the portion of Jefferson County that is designated nonattainment to attainment for the 2010 1-hour SO_2 NAAQS.

II. Background

On June 2, 2010, EPA revised the primary SO_2 NAAQS, establishing a new 1-hour SO_2 standard of 75 parts per billion (ppb). *See* 75 FR 35520 (June 22, 2010).[1] Under EPA's regulations at 40 CFR part 50, the 2010 1-hour SO_2 NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb (based on the rounding convention in 40 CFR part 50, appendix T). *See* 40 CFR 50.17. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. A year meets data completeness requirements when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including state-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.[2]

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS. EPA designated the Jefferson County Area as nonattainment for the 2010 1-hour SO_2 NAAQS, effective on October 4, 2013, based on 2009–2011 complete, quality assured, and certified ambient air quality data. *See* 78 FR 47191 (August 5, 2013). Under the CAA, nonattainment areas must attain the NAAQS as expeditiously as practicable but not later than five years after the October 4, 2013, effective date of the designation. *See* CAA section 192(a). Therefore, the Jefferson County Area's applicable attainment date was no later than October 4, 2018.

EPA's 2010 SO_2 nonattainment designation for the Area triggered an obligation for Kentucky to develop a nonattainment SIP revision addressing certain requirements under title I, part D, subpart 1 (hereinafter ''Subpart 1''), and to submit that SIP revision to EPA in accordance with the deadlines in title I, part D, subpart 5 (hereinafter ''Subpart 5''). Subpart 1 contains the general requirements for nonattainment areas for criteria pollutants, including requirements to develop a SIP that provides for the implementation of reasonably available control measures (RACM), requires reasonable further progress (RFP), includes base-year and attainment-year emissions inventories, a SIP-approved nonattainment new source review (NNSR) permitting program, enforceable emission limitations and other such control measures, and provides for the implementation of contingency measures. This SIP revision was due within 18 months following the October 4, 2013, effective date of designation (*i.e.,* April 4, 2015). *See* CAA section 191(a). Kentucky submitted a nonattainment SIP revision to EPA on June 23, 2017.[3]

On June 28, 2019 (84 FR 30920), EPA approved Kentucky's June 23, 2017, SO_2 nonattainment SIP revision. EPA determined that the nonattainment SIP revision met the applicable requirements of sections 110, 172, 191, and 192 of the CAA and nonattainment regulatory requirements at 40 CFR part 51 (including Kentucky's attainment modeling demonstration for the Jefferson County Area). As discussed in Section V below, the attainment modeling demonstration inputs included SO_2 emission limits and compliance parameters (monitoring, recordkeeping, and reporting) at Mill Creek established in the facility's title V permit 145–97– TV(R3) at Plant-wide Specific condition S1-Standards, S2-Monitoring and Record Keeping, and S3-Reporting. EPA incorporated these limits and parameters into the SIP as part of its final action on Kentucky's nonattainment SIP revision, thus making them permanent and enforceable controls.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations, and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992 (57 FR 13498), EPA provided guidance on redesignations in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the ''Calcagni Memorandum'');
2. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
3. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for

[1] On February 25, 2019, EPA retained the existing 2010 primary NAAQS for SO_2 of 75 parts per billion (ppb) based on the 3-year average of the 99th percentile of the annual distribution of 1-hour daily maximum concentrations. *See* 84 FR 9866.

[2] *See* 40 CFR part 50, appendix T, section 3(b).

[3] EPA published a notice on March 18, 2016 (81 FR 14736), announcing its finding that Kentucky (and other pertinent states) had failed to submit the required SO_2 nonattainment plan by the submittal deadline. The finding initiated a deadline under CAA section 179(a) for the potential imposition of NNSR offset and highway funding sanctions. However, pursuant to Kentucky's submittal of June 23, 2017 (received by EPA on July 6, 2017), and EPA's subsequent letter dated October 10, 2017, to Kentucky finding the submittal to be complete and noting the termination of these sanctions deadlines, the sanctions under section 179(a) were not and will not be imposed as a result of Kentucky having missed the April 4, 2015, submittal deadline.

Air and Radiation, October 14, 1994; and

4. ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' Memorandum from Stephen D. Page, April 23, 2014 (hereinafter referred to as the ''SO_2 Nonattainment Area Guidance'').

EPA's SO_2 Nonattainment Area Guidance discusses the CAA requirements that air agencies need to address when implementing the 2010 SO_2 NAAQS in areas designated as nonattainment for the standard. The guidance includes recommendations for air agencies to consider as they develop SIPs to satisfy the requirements of sections 110, 172, 175A, 191, and 192 of the CAA to show future attainment and maintenance of the 2010 SO_2 NAAQS. Additionally, the SO_2 nonattainment guidance provides recommendations for air agencies to consider as they develop redesignation requests and maintenance plans to satisfy the requirements of sections 107(d)(3)(E) and 175A.

IV. Why is EPA proposing these actions?

Through a letter dated December 9, 2019, Kentucky submitted a request for EPA to redesignate the Jefferson County Area to attainment for the 2010 1-hour SO_2 NAAQS and submitted an associated SIP revision containing a maintenance plan. EPA's evaluation indicates that the Jefferson County Area meets the requirements for redesignation as set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result of this evaluation, EPA is proposing to determine that the Area has attained the 2010 1-hour SO_2 NAAQS based upon air monitoring data for 2016–2018 and air quality dispersion modeling analyses. EPA is also proposing to approve Kentucky's maintenance plan for maintaining the 2010 1-hour SO_2 NAAQS in the Area and incorporate it into the SIP and to redesignate the Jefferson County Area to attainment for the 2010 1-hour SO_2 NAAQS.

V. What is EPA's analysis of the redesignation request and SIP revision?

The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Jefferson County Area in the following paragraphs.

Criterion (1)—The Administrator Uetermines Uhat the Urea Has Attained the NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). As discussed in section VIII.A of the SO_2 Nonattainment Area Guidance, there are generally two components needed to support an attainment determination for SO_2, which should be considered interdependently. The first component relies on air quality monitoring data. For SO_2, any available monitoring data would need to indicate that all monitors in the affected area are meeting the standard as stated in 40 CFR 50.17 using data analysis procedures specified in 40 CFR part 50, Appendix T. The second component relies on air quality modeling. If there are no air quality monitors located in the affected area, or there are air quality monitors located in the area, but analyses show that none of the monitors are located in the area of maximum ambient air SO_2 concentration,[4] then air quality dispersion modeling will generally be needed to estimate SO_2 concentrations in the area. Such dispersion modeling should be conducted to estimate SO_2 concentrations throughout the nonattainment area using actual emissions and meteorological information for the most recent three calendar years. However, EPA may also make determinations of attainment based on the modeling from the attainment demonstration for the applicable SIP for the affected area, eliminating the need for separate actuals-based modeling to support the determination that an area is currently attaining. If the air agency has previously submitted a modeled attainment demonstration using allowable emissions, no further modeling is needed as long as the source characteristics are still reasonably represented and so long as emissions are at or below allowable levels. In a case such as this, where both monitoring and modeling evidence are available, EPA will consider both types of evidence.

Kentucky's pre- and post-modification attainment demonstration modeling indicates that the Watson Lane Elementary School (Watson Lane) monitor is not sited in the area of maximum concentration for Mill Creek, and therefore, the clean monitoring data at the monitor does not on its own demonstrate that the Area is attaining the standard. EPA's proposed determination that the Jefferson County Area is attaining the SO_2 NAAQS is also based on the modeled attainment demonstration that includes permanent and enforceable SO_2 emissions limits at Mill Creek showing attainment of the 2010 1-hour SO_2 NAAQS. The modeled attainment demonstration accounts for more efficient wet flue gas desulfurization (FGD) control equipment at Mill Creek that became operational in stages from 2014 to 2016, as well as revised SO_2 emission limits.[5] EPA approved the attainment demonstration for the Jefferson County Area on June 28, 2019, and incorporated the new SO_2 emission limits including monitoring, recordkeeping, and reporting parameters into the SIP, making them permanent and enforceable. *See* 84 FR 30920. Monitoring data from the Watson Lane monitor and Kentucky's approved modeled attainment demonstration are discussed below.

Monitoring Data

For SO_2, a monitoring site may be considered to be attaining the 2010 1-hour SO_2 NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.17 and Appendix T of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. Specifically, to attain the NAAQS at each monitoring site, the 3-year average of the annual 99th percentile (fourth highest value) of daily maximum 1-hour average concentrations measured at each monitor within an area must be less than or equal to 75 ppb. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Kentucky currently operates one ambient SO_2 monitor in the Area, the Watson Lane SO_2 monitor (AQS ID: 21–111–0051). This monitor is located less than 2 kilometers (km) east of Mill Creek. The original nonattainment designation was based on the 2009–2011 design value of 112 ppb at this monitor. As shown in Table 1, the design values at this monitor have decreased since the 2014–2016 design value, and the quality-assured, complete, and certified 2016–2018 3-year design value is 19 ppb, well below the 2010 1-hour SO_2 standard of 75 ppb.

[4] *See* section VIII.A of the SO_2 Nonattainment Area Guidance.

[5] See the ''Criterion (3)'' section of this notice for additional information.

There have been no 1-hour values recorded above the standard since March 2015. The first three-year period for which the design value for the Area fell below the standard was 2015–2017.

TABLE 1—JEFFERSON COUNTY AREA SO_2 MONITORED DESIGN VALUES

Monitoring station (AQS Site ID)	2009–2011 Design value	2010–2012 Design value	2011–2013 Design value	2012–2014 Design value	2013–2015 Design value	2014–2016 Design value	2015–2017 Design value	2016–2018 Design value [6]
Watson Lane Elementary School (21–111–0051)	112 ppb	123ppb	ND *	ND *	ND *	76 ppb	31 ppb	19 ppb

* The Watson Lane monitor did not collect a valid design value during 2011–2013, 2012–2014, and 2013–2015 due to incomplete data in 2013.

Preliminary monitoring data from the Watson Lane monitor for 2019 indicates that the 2017–2019 preliminary design value is 15 ppb.[7] EPA is proposing to determine that the Jefferson County Area has attained the 2010 1-hour SO_2 NAAQS based on the modeling analysis discussed below, as well as the quality-assured, complete, and certified ambient air monitoring data for the 2016–2018 period that does not indicate a NAAQS violation. If, before EPA takes final action, monitoring data or other evidence causes EPA to conclude that the Area is not continuing to meet the standard, EPA will not go forward with the redesignation. As discussed in more detail below, Kentucky has committed to continue monitoring ambient SO_2 concentrations in this Area in accordance with 40 CFR part 58. Any future changes to the state or local air monitoring station (SLAMS) network in the Area will be submitted to EPA for approval in Kentucky's annual ambient air monitoring network plan, as required by 40 CFR 58.10.

Kentucky's EPA-Approved Modeling Analysis

As discussed in Section VIII.A. of the SO_2 Nonattainment Area Guidance, air quality dispersion modeling will generally be needed to demonstrate attainment in addition to attaining air quality monitoring data (in accordance with 40 CFR 50.17 and Appendix T of part 50) if the existing monitor is not located in the area of maximum ambient air SO_2 concentration. The SO_2 attainment demonstration submitted by Kentucky on June 23, 2017, provided an air quality dispersion modeling analysis demonstrating that the control strategies chosen by the Commonwealth and LMAPCD to reduce SO_2 emissions at Mill Creek provide for attainment of the standard. The source characteristics in KDAQ's attainment demonstration still reflect current conditions. On June 28, 2019 (84 FR 30920), EPA approved this attainment demonstration along with LMAPCD's control strategies at the facility. Details regarding the control strategies and emissions reductions are provided in the *Criterion (3)* Section of this notice. Details regarding the modeling analysis are discussed in the following paragraphs.

Kentucky's modeling analysis was developed in accordance with EPA's Guideline on Air Quality Models (Modeling Guideline) [8] and the SO_2 Nonattainment Area Guidance, and was prepared using EPA's preferred dispersion modeling system, the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) consisting of the AERMOD (version 15181) [9] model and multiple data input preprocessors as described below. Kentucky used regulatory default options and the rural land use designation in the AERMOD modeling. Appendix A in Kentucky's December 9, 2019, submittal provides a summary of the modeling procedures and options, including details explaining how they applied the Auer technique to determine that the rural dispersion coefficients were appropriate for the modeling.

The pre-processors AERMET (version 15181) and AERMINUTE (version 15272) were used to process five years (*i.e.,* 2011–2015) of 1-minute meteorological data from the Louisville Muhammad Ali International Airport station in Louisville, Kentucky, located about 20 km to the northeast of Mill Creek. Twice daily upper-air meteorological information came from the Wilmington Air Park, Wilmington, Ohio station located about 240 km to the northeast. The surface characteristics surrounding the meteorological surface station were processed using AERSURFACE version 13016 following EPA-recommended procedures and were determined to be representative of the facility by the Commonwealth.

The AERMOD pre-processor AERMAP (version 11103) was used to generate terrain inputs for the receptors, based on a digital elevation mapping database from the National Elevation Dataset developed by the U.S. Geological Survey. Model receptors were located throughout the Area using a grid with 100-meter spacing between receptors.

Mill Creek is the only SO_2 emitting major point source in the Area and the only emission source that was explicitly modeled in the attainment modeling analysis for the Jefferson County Area. All minor area sources and other major point sources (located outside the nonattainment area boundary) were accounted for with the background concentration discussed below. Mill Creek operates four coal-fired boiler units (U1 thru U4) that emit from three stacks. Unit 1 and Unit 2 have a joint stack (S33) while Unit 3 and Unit 4 have separate stacks (S4 and S34, respectively). The Commonwealth evaluated the emissions from Mill Creek and derived a set of three SO_2 critical emission values (CEVs), one for each stack, from AERMOD modeling simulations to show compliance with the 2010 SO_2 NAAQS. The AERMOD modeling analysis resulted in the following CEVs: Stack S33, which serves Units 1 and 2, was modeled at 225.4 grams/second (g/s) equivalent to 1,789 lb/hr; stack S4, which serves Unit 3, was modeled at 152.6 g/s equivalent to 1,211 lb/hr; and stack S34, which serves Unit 4, was modeled at 183.6 g/s equivalent to 1,457 lb/hr. In each case, the modeled emission rate corresponds to 0.29 pounds per million British thermal units (lb/MMBtu) times the maximum heat input capacity (MMBtu/

[6] The 2018 data is available at *https://www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

[7] Preliminary 2019 data is available at *https://www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

[8] *See* 40 CFR part 51 Appendix W (EPA's Guideline on Air Quality Models) (January 17, 2017) located at *https://www3.epa.gov/ttn/scram/appendix_w/2016/AppendixW_2017.pdf.*

[9] Version 15181 of the AERMOD Modeling System was the current EPA-recommended regulatory version at the time the modeling was performed in 2016–2017, and therefore, was appropriate for the modeling analysis.

hr) of the unit(s) associated with each stack. This form of an emission limit, in lb/MMBtu, is a frequent form of emission limit associated with electric generating units. The Commonwealth determined from these AERMOD modeling simulations that an hourly emission limit of 0.29 lb/MMBtu would suffice to ensure modeled attainment of the SO_2 NAAQS. However, the Commonwealth opted to apply a 30-day average limit, following EPA's SO_2 Nonattainment Area Guidance for setting longer term average limits. The Commonwealth determined that a 30-day average limit of 0.20 lb/MMBtu could be considered comparably stringent to a 1-hour limit of 0.29 lb/MMBtu. A comprehensive discussion of the procedures used by the Commonwealth to determine the longer-term average limit is contained in EPA's rulemaking notices associated with the approval of the nonattainment SIP revision for the Jefferson County Area. *See* 83 FR 56002 (November 9, 2018) and 84 FR 30920 (June 28, 2019).

Kentucky selected background SO_2 concentrations that vary by season and hour of day [10] using local SO_2 monitoring data from the Green Valley Road monitor (AQS ID: 18–043–1004) located in New Albany, Indiana, approximately 29 km north of the Mill Creek facility, for the period 2013–2015. The season-by-hour background values ranged from 2.13 ppb to 20.67 ppb. These background concentrations from the nearby ambient air monitor are used to account for SO_2 impacts from all sources that are not specifically included in the AERMOD modeling analysis. A comprehensive discussion of the background concentrations and how they are used to account for SO_2 emissions from all the sources not explicitly modeled is contained in EPA's notice of proposed rulemaking for the nonattainment SIP revision. *See* 83 FR 56002 (November 9, 2018).

The AERMOD modeling resulted in a maximum modeled design value of 190.1 micrograms per cubic meter or 72.6 ppb, including the background concentrations, which is below the 1-hour SO_2 NAAQS of 75 ppb. The modeling used hourly SO_2 emissions for each Mill Creek stack equivalent to the hourly SO_2 emission rate of 0.29 lb/MMBtu, which was used to derive the 30-day average emission limit for the four coal-fired boilers at Mill Creek. Mill Creek completed the phased installation of improved FGD SO_2 controls in 2016 and became subject to the new 30-day SO_2 emission limits on April 5, 2017, which reduced SO_2 emissions by approximately 89 percent from 2014 emission levels.[11] Furthermore, the Watson Lane monitoring data corroborate the significant SO_2 reductions from Mill Creek. EPA previously evaluated the modeling procedures, inputs, and results and finalized a determination that the Commonwealth's modeling analysis demonstrates that the 30-day emissions limits on Mill Creek assure that there will be no violations of the NAAQS within the Area.

All emissions limits and related compliance parameters have been incorporated into the Jefferson County portion of the Kentucky SIP, making these changes permanent and federally enforceable. More details on the pre-construction and post-construction operations at Mill Creek are included in Kentucky's June 23, 2017, nonattainment SIP submission and in EPA's rulemaking on that submittal.[12]

On June 28, 2019, EPA approved the modeled attainment demonstration described above and concluded that it is consistent with CAA requirements, EPA's Modeling Guideline, and EPA's guidance for SO_2 attainment demonstration modeling. The modeled controls have been fully implemented as of June 8, 2016, when the last of the new FGD SO_2 controls began operation. Mill Creek became subject to the revised SO_2 emission limits in the Title V permit on April 5, 2017. Emissions and air quality are at or below the levels modeled in Kentucky's attainment demonstration.[13] Therefore, EPA proposes to find that air quality modeling supports the conclusion that the Area has attained the 2010 1-hour SO_2 NAAQS.

Criterion (2)—The Administrator Has Fully Approved the Applicable Implementation Plan for the Area Under Section 110(k); and Criterion (5)—Kentucky Has Met all Applicable Requirements Under Section 110 and Part D of Title I of the CAA

To redesignate a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Kentucky has met all applicable SIP requirements for the Jefferson County Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Kentucky SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were due prior to submittal of the complete redesignation request.

A. The Jefferson County Area Has Met all Applicable Requirements Under Section 110 and Part D of the CAA

1. General SIP Requirements

General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NNSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

[10] Use of 99th percentile background concentrations that vary by season and hour of the day is an acceptable approach that is described in Appendix A, Section 8, of EPA's SO_2 Nonattainment Area Guidance.

[11] Mill Creek's annual SO_2 emissions have dropped from 28,149 tons in 2014 to 3,752 tons in 2018. Additionally, Mill Creek emitted a total of 2,923 tons in 2019. *See https://ampd.epa.gov/ampd/.*

[12] *See* 84 FR 30920 (June 28, 2019) (final rule), 83 FR 56002 (November 9, 2018) (proposed rule). Kentucky's 2017 SIP submittal is included in the Docket for this proposed rulemaking.

[13] A comparison of the Mill Creek unit-level potential to emit to the 2018 actual emissions indicate that SO_2 emissions at Mill Creek are below the levels modeled in the 2017 attainment demonstration modeling. *See* Kentucky's December 9, 2019, redesignation and maintenance submission and *https://ampd.epa.gov/ampd/*. Furthermore, the monitoring data trends corroborate the existence of the substantial air quality benefits from the SO_2 reductions at Mill Creek. The Watson Lane monitor has recorded decreasing SO_2 concentrations from an annual 99th percentile value of 148.6 ppb in 2014, 54.2 ppb in 2015, 26.1 ppb in 2016, 13.7 ppb in 2017, and 16.4 ppb in 2018. The quality-assured, complete, and certified 2016–2018 3-year design value for the Watson Lane monitor is 19 ppb, which is below the 1-hour SO_2 standard.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA interprets the other section 110(a)(2) elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status not to be ''applicable'' requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110(a)(2) and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Kentucky, final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001). Nonetheless, EPA has approved Kentucky's SIP revisions related to the section 110 requirements for the 2010 SO_2 NAAQS, with the exception of the interstate transport elements at section 110(a)(2)(D)(i)(I). *See* 81 FR 87817 (December 6, 2016), 84 FR 11652 (March 28, 2019), and 84 FR 13800 (April 8, 2019).

2. Title I, Part D, Applicable SIP Requirements

Subpart 1 of part D, comprised of CAA sections 171–179B, sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the SO_2 NAAQS were designated under Subpart 1 of the CAA in accordance with the deadlines in Subpart 5. For purposes of evaluating this redesignation request, the applicable Subpart 1 SIP requirements are contained in section 172(c)(1)–(9), section 176, and sections 191 and 192. A thorough discussion of the requirements contained in sections 172(c) can be found in the General Preamble for Implementation of Title I. *See* 57 FR 13498 (April 16, 1992).

a. Subpart 1 Section 172 Requirements

Section 172 requires states with nonattainment areas to submit plans providing for timely attainment and meeting a variety of other requirements. As discussed in section V.A, above, EPA's longstanding interpretation of the attainment-related nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not ''applicable'' for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for RFP and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements ''have no meaning'' for an area that has already attained the standard. *Id.* This interpretation was also set forth in the Calcagni Memorandum.

As discussed above, EPA previously approved Kentucky's nonattainment SIP for the Jefferson County Area. *See* 84 FR 30920 (June 28, 2019). The nonattainment SIP for the Area satisfied the section 172(c)(1) requirements for RACT/RACM; 172(c)(2) requirements related to RFP; 172(c)(3) requirements for a comprehensive and accurate emissions inventory; 172(c)(6) requirements for permanent and enforceable control measures necessary to provide for attainment of the NAAQS by the attainment date; and section 172(c)(9) requirements for contingency measures.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has a longstanding interpretation that because NNSR is replaced by PSD upon redesignation, nonattainment areas seeking redesignation to attainment need not have a fully approved part D NNSR program in order to be redesignated. See memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' However, LMAPCD currently has a fully-approved part D NNSR program in place in Regulation 2.04 (*Construction or Modification of Major Sources In or Impacting Upon Non-Attainment Areas (Emission Offset Requirements)*) of the Louisville Air Pollution Control District Regulations. LMAPCD's PSD program will become effective in the Area upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes that Kentucky's SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Finally, section 172(c)(8) allows a state to use equivalent modeling, emission inventory, and planning procedures if such use is requested by the state and approved by EPA. Kentucky has not requested the use of equivalent techniques under section 172(c)(8).

b. Subpart 1 Section 176—Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). Because EPA does not consider SO_2 a transportation related pollutant, only the requirements related to general conformity apply to the Jefferson County Area. The

Commonwealth of Kentucky adopted general conformity criteria and procedures as a revision to the Kentucky SIP. EPA approved Kentucky's general conformity SIP on July 27, 1998 (63 FR 40044). Thus, the requirements of CAA section 176 have been satisfied.

B. The Jefferson County Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Kentucky SIP for the Jefferson County Area under section 110(k) of the CAA for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3, *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3D 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25426 (May 12, 2003) and citations therein.

Criterion (3)—The Air Quality Improvement in the Jefferson County Area is due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

To redesignate a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA proposes to determine that Kentucky has demonstrated that the observed air quality improvement in the Jefferson County Area is due to permanent and enforceable reductions in SO_2 emissions resulting from implementation of the SIP, namely SO_2 control measures at Mill Creek since the nonattainment designation.

When EPA designated the Jefferson County Area as a nonattainment area for the 2010 1-hour SO_2 NAAQS, EPA determined that operations at Mill Creek were the primary cause of the 2010 1-hour SO_2 NAAQS violations in the Area. *See* 78 FR 47191.[14] The June 23, 2017, Jefferson County Area nonattainment SIP revision was based on this determination and successfully reduced ambient concentrations below the 1-hour SO_2 NAAQS by only requiring emissions reductions at Mill Creek.

Mill Creek consists of four coal-fired boilers (U1–U4). Kentucky's control strategy for the Jefferson County Area consists of replacing FGD control equipment with more efficient FGD controls at Mill Creek, addressing SO_2 emissions for all four units (U1, U2, U3 and U4). Unit 1 and Unit 2 share a common stack (S33) while Unit 3 and Unit 4 have separate stacks (S4 and S34, respectively). Unit 4's new FGD went into service on December 9, 2014; the new combined FGD for Units 1 and 2 went into service on May 27, 2015; and Unit 3's new FGD went into service on June 8, 2016.

Kentucky established an emission limit of 0.20 lb/MMBtu for each coal-fired unit at Mill Creek on a 30-day average basis in accordance with the SO_2 Nonattainment Area Guidance for longer term averaging time for the purpose of demonstrating attainment for the 1-hour SO_2 standard.[15] These emission limits apply independently to each of the four coal-fired units (U1 thru U4), which emit SO_2 from three separate stacks (S33, S4, and S34). These SO_2 limits were established in a revised title V operating permit 145–97–TV(R3) for Mill Creek and became effective on April 5, 2017. Mill Creek demonstrates compliance with the 30-day emission limits through a continuous emission monitoring system on each stack as well as the monitoring of the heat input firing rate of each emission unit. The 30-day SO_2 emission limit was established to demonstrate modeled attainment of the 2010 1-hour SO_2 standard for the Jefferson County nonattainment area. Kentucky requested that EPA incorporate into the Jefferson County portion of the Commonwealth's SIP the 30-day SO_2 emission limits and operating and compliance parameters (monitoring, recordkeeping, and reporting) established at Plant-wide Specific condition S1-Standards, S2-Monitoring and Record Keeping and S3-Reporting in title V permit 145–97–TV(R3). On June 28, 2019, EPA took final action to incorporate the SO_2 emission limits and operating and compliance parameters into the SIP with the approval of Kentucky's June 23, 2017, SO_2 nonattainment SIP revision. *See* 84 FR 30920. The air quality improvement in the Jefferson County Area is due to permanent and enforceable reductions in SO_2 emissions resulting from the emission limits incorporated into the SIP.

Criterion (4)—The Jefferson County Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. *See* CAA section 107(d)(3)(E)(iv). In conjunction with its request to redesignate the Jefferson County Area to attainment for the 2010 1-hour SO_2 NAAQS, Kentucky submitted a SIP revision to provide for the maintenance of the 2010 1-hour SO_2 NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA is proposing to determine that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2010 1-hour SO_2 violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory; maintenance demonstration; monitoring; verification of continued attainment; and a contingency plan. As is discussed more fully below, EPA is proposing to determine that Kentucky's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Kentucky SIP.

b. Attainment Emissions Inventory

An attainment inventory identifies a level of emissions in the Area that is sufficient to attain the NAAQS. As discussed above, the last monitored exceedance of the NAAQS occurred in

[14] *See* Final Technical Support Document, July 2013, Kentucky First Round of Nonattainment Area Designations for the 2010 SO_2 Primary NAAQS, Prepared by EPA Region 4. This document is available at Docket ID: EPA–HQ–OAR–2012–0233–0308.

[15] See section IV.B.4.ii of the proposed attainment demonstration (83 FR 56002, November 9, 2018).

2015. Phased installation of the new FGDs at Mill Creek began in 2013 and was completed in 2016, making 2017 the first full year with all of the new controls in operation. The design values at the Watson Lane monitor have decreased since the 2014–2016 design value with a quality-assured, complete, and certified 2016–2018 3-year design value of 19 ppb. In its maintenance plan, LMAPCD chose 2018 as the attainment inventory year which is one of the three years included in the current attaining 3-year design value. This design value reflects the permanent and enforceable Mill Creek SO_2 emission limits used in the attainment modeling.

Actual emissions from Mill Creek are used for point source emissions for the attainment inventory, as it is the only point source in the Area, and the only source specifically modeled in the attainment demonstration approved in 2019. SO_2 emissions data from Mill Creek is presented in Table 2. Kentucky interpolated emissions for all other sectors for 2018 from the 2011 and 2014 National Emissions Inventory (NEI) data for Jefferson County because the Commonwealth is only required to develop these inventories on a triennial period in accordance with the NEI and subpart A to 40 CFR part 51 and the final 2017 NEI is not yet available. The 2018 estimated emissions were then apportioned to the Area based on the Area's fraction of land area within the county. The complete attainment emissions inventory for the Area is presented in Table 3.

TABLE 2—2018 SO_2 EMISSIONS INVENTORY FOR LG&E MILL CREEK

Unit	Source	SO_2 emissions (tpy)
MC_U01	CEMS *	681.3
MC_U02	CEMS	571.1
MC_U03	CEMS	721.1
MC_U04	CEMS	1778.6
MC_Other	Calculated	0.06
Total		3,752.16

* Continuous Emissions Monitoring System.

TABLE 3—2018 ATTAINMENT EMISSIONS INVENTORY FOR THE JEFFERSON COUNTY AREA

Source type	Point	Area	Non-road	On-road	Total
2018 SO_2 Emissions (tpy)	3,752.16	0.46	0.01	0.28	3,752.91

For additional information regarding the development of the attainment year inventory, please see Kentucky's June 23, 2017, nonattainment SIP submission and EPA's rulemakings on that submittal.[16]

c. Maintenance Demonstration

Maintenance of the SO_2 standard is demonstrated either by showing that future emissions will not exceed the level of the attainment emissions inventory year or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.

To evaluate maintenance through 2032 and satisfy the 10-year interval required in CAA section 175A, Kentucky prepared attainment year emissions (2018) and projected emissions inventories for years 2023, 2028, and 2032. The emissions inventories are composed of the following general source categories: Point, area, non-road mobile, and on-road mobile. Projected point source emissions were based on Mill Creek's 2018 attainment emissions of 3752.16 tons. Projected point source emissions were held constant because Kentucky does not anticipate any development within the Area and also does not anticipate any major changes at Mill Creek. The projected emissions for area, non-road mobile, and on-road mobile emissions are from U.S. EPA's 2011 v6.3 modeling platform and further apportioned for the Area. The emissions inventories were developed consistent with EPA guidance and are summarized in Table 4. Kentucky compared projected emissions for the final year of the maintenance plan (2032) to the attainment emissions inventory year (2018) and compared interim years (2023 & 2028) to the attainment emissions inventory year to demonstrate continued maintenance of the 2010 1-hour SO_2 standard. For additional information regarding the development of the projected inventories, please see Kentucky's June 23, 2017, nonattainment SIP revision.

TABLE 4—ATTAINMENT & PROJECTED FUTURE EMISSIONS INVENTORIES FOR THE AREA

[tpy]

Sector	Attainment 2018 SO_2 emissions	Projected 2023 SO_2 emissions	Projected 2028 SO_2 emissions	Projected 2032 SO_2 emissions
Nonpoint	0.46	0.38	0.37	0.38
Nonroad	0.01	0.02	0.02	0.02
Onroad	0.28	0.09	0.08	0.09
Point	3752.16	3752.16	3752.16	3752.16

[16] *See* 84 FR 30920 (June 28, 2019) (final rule), 83 FR 56002 (November 9, 2018) (proposed rule). Kentucky's 2017 SIP submittal is included in the Docket for this proposed rulemaking.

TABLE 4—ATTAINMENT & PROJECTED FUTURE EMISSIONS INVENTORIES FOR THE AREA—Continued

[tpy]

Sector	Attainment 2018 SO_2 emissions	Projected 2023 SO_2 emissions	Projected 2028 SO_2 emissions	Projected 2032 SO_2 emissions
Total	3752.91	3752.65	3752.64	3752.65

In situations where local emissions are the primary contributor to nonattainment, such as the Jefferson County Area, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the related ambient air quality standards should not be exceeded in the future. Kentucky has projected emissions as described previously, and these projections indicate that emissions in the Jefferson County Area will remain at nearly the same levels as those in the attainment year inventory for the duration of the maintenance plan. Any increases in actual emissions from Mill Creek must remain below permitted levels, which were made permanent and enforceable through incorporation into the SIP and demonstrate attainment of the 1-hour SO_2 NAAQS. Furthermore, any potential future SO_2 emissions sources that may locate in or near the Area would be required to comply with the LMAPCD's approved PSD permitting programs to ensure that the Area will continue to meet the NAAQS.

As discussed in the SO_2 Nonattainment Area Guidance, an approved attainment plan that relies on air quality dispersion modeling using maximum allowable emissions, such as Kentucky's attainment plan for the Area, can generally be expected to demonstrate that the standard will be maintained for the requisite 10 years and beyond without regard to any changes in operation rate of the pertinent sources that do not involve increases in maximum allowable emissions.[17] EPA believes that the Area will continue to maintain the standard at least through the year 2032 because the air quality modeling in the approved attainment plan showed that the Area would attain the standard based on maximum allowable emissions limits at Mill Creek that are incorporated into the SIP, these sources have fully implemented the permanent and enforceable modeled limits and controls, and the emissions reductions from these measures are reflected in the attaining design values for the Area. Furthermore, the Watson Lane monitoring data trends substantiate the SO_2 reductions from Mill Creek facility.

d. Monitoring Network

The Watson Lane monitor (AQS ID: 21–111–0051) is the only SO_2 monitor located within the Jefferson County Area, and the 2010 1-hour SO_2 nonattainment designation was based on data collected from 2009–2011 at this monitor. In its maintenance plan, LMAPCD has committed to maintaining an appropriate, well-sited monitoring network in the Area, in accordance with 40 CFR part 58, through the maintenance plan period to verify the continued maintenance of the 2010 SO_2 NAAQS. Therefore, Kentucky has addressed the requirement for monitoring. Kentucky's monitoring network plan was submitted on June 28, 2019, and approved by EPA on October 3, 2019.

e. Verification of Continued Attainment

LMAPCD has the legal authority to enforce and implement all measures necessary to attain and maintain the NAAQS. *See, e.g.,* Kentucky Revised Statutes (KRS) Chapter 77 (which provides LMAPCD with the authority to implement and enforce orders, rules, and regulations necessary or proper to accomplish the purposes of the chapter, including taking legal action and imposing fines for violations).

The sole point source within the nonattainment area, Mill Creek, is required to submit annual emissions statements to LMAPCD pursuant to LMAPCD Regulation 1.06. LMAPCD will use these statements, along with monitoring data collected as described in the previous section, to verify continued attainment. Monitoring data is regularly compared to the SO_2 NAAQS and reported to the Louisville Air Pollution Control Board. LMAPCD will compare Mill Creek's annual emissions statements with the attainment inventory and the permanent and enforceable SO_2 emissions limits for Mill Creek discussed above. Furthermore, any potential future SO_2 emissions sources that may locate in or near the Area would be required to comply with the LMAPCD's approved PSD permitting programs to ensure that the Area will continue to meet the NAAQS. In addition to assuring continued attainment in this manner, Kentucky will verify continued attainment through operation of the monitoring network.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. In cases where attainment revolves around compliance of a single source or a small set of sources with emissions limits shown to provide for attainment, EPA interprets ''contingency measures'' to mean that the state agency has a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreement pending the adoption of revised SIPs.[18] A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan included in the maintenance plan contains triggers to determine when contingency measures are needed and what kind of measures should be used. In the event of a single monitored exceedance of the 1-hour 75ppb SO_2 NAAQS at the Watson Lane monitor, LMAPCD will expeditiously investigate and perform culpability analysis to determine the source that cause the exceedance and/or violation [19]

[17] *See* SO_2 Nonattainment Area Guidance at p.67.

[18] *See* SO_2 Nonattainment Area Guidance at p.69.

[19] Kentucky's contingency measure trigger accounts for a possible exceedance or violation of the 1-hour SO_2 standard. As specified in 40 CFR 50.17(b), the 1-hour primary SO_2 NAAQS is met at

Continued

and enforce any SIP or permit limit that is violated. If all sources are found to be in compliance with applicable SIP and permit emission limits, LMAPCD shall determine the cause of the exceedance and determine what additional control measures are necessary to impose on the area's stationary sources to continue to maintain attainment of the SO_2 NAAQS. LMAPCD shall inform any affected stationary sources of the monitored SO_2 exceedance and the potential need for additional control measures. Within six months of notification, the source must submit a detailed plan of action specifying additional control measures to be implemented no later than 18 months after the notification, or 24 months from the initial exceedance, whichever comes first. The additional control measures will be submitted to EPA for approval and incorporation into the SIP. Such measures may require that Mill Creek reduce load. Additional contingency measures include the alternative RACT/RACM of switching to low-sulfur fuel. LMAPCD will continue to implement all measures with respect to the control of SO_2 which were contained in the SIP for the Area before redesignation.

EPA has preliminarily concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory; maintenance demonstration; monitoring; verification of continued attainment; and a contingency plan. Therefore, EPA proposes to determine that the maintenance plan for the Area meets the requirements of section 175A of the CAA and proposes to incorporate the maintenance plan into the Kentucky SIP.

VI. What is the effect of EPA's proposed actions?

Approval of Kentucky's redesignation request would change the legal designation of the portion of Jefferson County that is within the Jefferson County Area, as found at 40 CFR part 81, section 81.310, from nonattainment to attainment for the 2010 1-hour SO_2 NAAQS. Approval of Kentucky's associated SIP revision would also incorporate a plan for maintaining the 2010 1-hour SO_2 NAAQS in the Jefferson County Area through 2032 into the SIP.

VII. Proposed Actions

EPA is proposing to take three separate but related actions regarding the redesignation request and associated SIP revision for the Jefferson County Area.

First, EPA is proposing to determine that the Area has attained the 2010 1-hour SO_2 NAAQS.

Second, EPA is proposing to approve the maintenance plan for the Area and to incorporate it into the SIP. As described above, the maintenance plan demonstrates that the Area will continue to maintain the 2010 1-hour SO_2 NAAQS through 2032.

Third, EPA is proposing to approve Kentucky's request for redesignation of the Area from nonattainment to attainment for the 2010 1-hour SO_2 NAAQS based on compliance with the redesignation criteria provided under CAA section 107(d)(3)(E). If finalized, approval of the redesignation request for the Jefferson County Area would change the official designation of the portion of Jefferson County encompassed by the polygon with the vertices using UTM coordinates in UTM zone 16 with datum NAD83 as follows: (1) Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Highway (US60 and US31W) at UTM Easting (m) 597515, UTM Northing 4212946; (2) Along Dixie Highway from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; (3) Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Highway at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; (4) Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086, as found at 40 CFR part 81, from nonattainment to attainment for the 2010 1-hour SO_2 NAAQS.

VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For these reasons, these proposed actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because these actions are not significant regulatory actions under Executive Order 12866;
- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

This redesignation action 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

an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1- hour average concentrations is less than or equal to 75 ppb. In a calendar year, four days with a maximum hourly value above 75 ppb is considered an exceedance.

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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: May 5, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–10063 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 85, No. 95
Friday, May 15, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0031]

Notice of Request for Reinstatement of an Information Collection; Imported Seeds and Screenings

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection associated with the regulations for the importation of seeds and screenings from Canada into the United States.

DATES: We will consider all comments that we receive on or before July 14, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0031.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0031, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0031* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations related to the importation of seeds and screenings, contact Ms. Lydia Colón, Senior Regulatory Policy Specialist, PHP, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 851–2302. For further information on the information collection process, contact Mr. Joseph Moxey, APHIS Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Imported Seeds and Screenings.

OMB Control Number: 0579–0124.

Type of Request: Reinstatement of an information collection.

Abstract: Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS) regulations implementing the provisions of Title III of the FSA are found in 7 CFR part 361.

The regulations in 7 CFR part 361, ''Importation of Seed and Screenings under the Federal Seed Act'' (§§ 361.1 to 361.10, referred to below as the regulations), prohibit or restrict the importation of agricultural seed, vegetable seed, and screenings into the United States. Section 361.7 provides the regulations for special provisions for Canadian-origin seed and screenings, and § 361.8 provides the regulations for the cleaning of imported seed and processing of certain Canadian-origin screenings.

APHIS' Plant Protection and Quarantine (PPQ) program operates a seed analysis program with Canada that allows U.S. companies that import seed for cleaning or processing to enter into compliance agreements with APHIS. This program eliminates the need for sampling shipments of Canadian-origin seed at the U.S.-Canadian border and allows certain seed importers to clean the seed without direct supervision of an APHIS inspector. The program provides a safe and expedited process for the importation of seed and screenings into the United States without posing a plant pest or noxious weed risk.

The seed analysis program involves the use of information collection activities, including a compliance agreement, seed analysis certificate, declaration for importation, container labeling, notification of seed location, a seed return request, seed identity maintenance, documentation for U.S. origin exported seed returned to the United States, written appeal for cancellation of a compliance agreement and request for a hearing, and associated recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.35 hours per response.

Respondents: Government food inspection agency officials; and commercial importers, seed cleaning/processing facility personnel, and seed laboratory personnel.

Estimated annual number of respondents: 1,163.

Estimated annual number of responses per respondent: 23.

Estimated annual number of responses: 27,038.

Estimated total annual burden on respondents: 9,629 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of May 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–10403 Filed 5–14–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0086]

General Conference Committee of the National Poultry Improvement Plan; Solicitation for Membership; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: We are correcting an error in a notice published in the **Federal Register** on April 27, 2020, which announced a forthcoming General Conference Committee membership solicitation. We provided an incorrect statement regarding nominations. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Dr. Elena Behnke, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094; phone (770) 922–3496; email: *elena.behnke@usda.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In a notice published in the **Federal Register** on April 27, 2020 (85 FR 23226–23227, Docket No. APHIS–2019–0086), on page 23226, second column, correct the **SUMMARY** to read:

SUMMARY: We are giving notice that the Secretary of Agriculture is soliciting nominations for the election of regional members and their alternates for the General Conference Committee of the National Poultry Improvement Plan.

Done in Washington, DC, this 11th day of May 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–10402 Filed 5–14–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—User Access Request Form FNS–674

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection. This is a revision of a currently approved collection. The purpose of this information collection request is to continue the use of the electronic form FNS–674, titled ''User Access Request Form.'' This form will continue to allow access to current FNS systems, modified access or to remove user access.

DATES: Written comments must be received on or before July 14, 2020.

ADDRESSES: Comments may be sent to: Joseph Binns, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Room 232, Alexandria, VA 22314. Comments may also be submitted via email to *Joseph.Binns@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Joseph Binns at 703–605–1181.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: User Access Request Form.

Form Number: FNS–674.

OMB Number: 0584–0532.

Expiration Date: 6/30/2021.

Type of Request: Revision of a currently approved collection.

Abstract: Form FNS–674 is designed to collect user information required to gain access to FNS Information Systems.

Affected Public: Contractors, State Agencies.

Estimated Number of Respondents: 2,700.

The respondents are State agencies, who are located in the 50 states and Trust Territories, staff contractors and Federal employees. Respondents who require access to the FNS systems are estimated at 3,600 annually (includes Federal, State and private) however, only 2,700 will account for the total public burden, excluding Federal employees. FNS estimates that it will receive an average of 300 requests per month (15 per day). Of the 300, 70 percent (or 210) of the responses are State Agency users, 5 percent (or 15) are staff contractors and 25 percent (or 75) are Federal employees which is not included in the total number of responses. Annually, that results in 2,700 respondents (210 State Agency users per month + 15 staff contractors per month × 12 months).

Estimated Number of Responses per Respondent: 1.9.

Estimated Total Annual Responses: 5,220.

Estimated Time per Response: 0.167 of an hour. Each respondent takes approximately 0.167 of an hour, or 10 minutes, to complete the required information on the online form.

Estimated Total Annual Burden on Respondents: 870 hours. See the table below for estimated total annual burden for each type of respondent.

REPORTING BURDEN

Affected public	Form No.	Number of respondents	Number of responses annually per respondent	Total annual responses	Estimate of burden hours per response	Total annual burden hours
Contractors	FNS–674	180	1	180	0.16667 (10 minutes)	30
State Agency Users	FNS–674	2,520	2	5,040	0.16667 (10 minutes)	840
Estimated Total Annual Burden		2,700		5,220	(0.16667) 10 minutes	870

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–10458 Filed 5–14–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tri-County Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tri-County Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/bdnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Monday, June 1, 2020, at 1:00 p.m. (MDT).

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held virtually. For virtual meeting informaiton, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Beaverhead-Deerlodge National Forest Supervisor's Office. Please call ahead to facilitate that inspection.

FOR FURTHER INFORMATION CONTACT: Jeanne Dawson, RAC Coordinator, by phone at 406–683–3987 or by email at *jeanne.dawson@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Introduce the new RAC members;
2. Elect a RAC Chairperson;
3. Discuss and determine if the RAC will recommend fee change proposals for developed recreation sites on National Forest lands;
4. Discuss and determine whether RAC funds will be used to fund committee members' travel costs to the public meetings; and
5. Discuss and recommend new Title II projects.

This meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Monday, May 18, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments, requests for time for oral comments or requests for instructions to participate virtually must be sent to Jeanne Dawson, RAC Coordinator, 420 Barrett Street, Dillon, Montana 59725; by email to *jeanne.dawson@usda.gov* or by phone at 406–683–3987.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 11, 2020.

Cikena Reid,

Committee Management Officer.

[FR Doc. 2020–10471 Filed 5–14–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Rural Business-Cooperative Service

[Docket number RBS–20–CO–OP–0018]

Solicitation of Applications for the Higher Blends Infrastructure Incentive Program (HBIIP) for Fiscal Year 2020

AGENCY: Commodity Credit Corporation and the Rural Business-Cooperative Service, USDA.

ACTION: Notice; announcement of opening date for Higher Blends Infrastructure Incentive Program application window.

SUMMARY: The Commodity Credit Corporation (CCC) and the Rural Business-Cooperative Service (RBCS), a Rural Development agency of the United States Department of Agriculture (USDA), announced its general policy and application procedures for funding under the Higher Blends Infrastructure Incentive Program (HBIIP) in a Notice of Funding Availability (NOFA) on May 5, 2020 in the **Federal Register.** The HBIIP will provide up to $100 million in competitive grants to eligible entities for activities designed to expand the sales and use of renewable fuels under the Higher Blends Infrastructure Incentive Program (HBIIP). This Notice announces the opening date for the HBIIP application window.

DATES: Applications for the Higher Biofuels Infrastructure Incentive Program will be accepted from May 15, 2020 through August 13, 2020. Applications received after 11:59 p.m. Eastern Daylight Time on August 13, 2020, will not be considered. The grant period is not to exceed 18-months, unless otherwise specified in the Grant Agreement or agreed to by CCC.

ADDRESSES:

Application Submission: The application system for electronic submissions will be available through *http://www.rd.usda.gov/HBIIP.*

Electronic submissions: Electronic submissions of applications will allow for the expeditious review of an Applicant's proposal. As a result, all Applicants must file their application electronically. Applicants' requests to establish an applicant user account will be available through *http://www.rd.usda.gov/HBIIP.*

FOR ADDITONAL INFORMATION CONTACT: For general inquiries regarding the HBIIP, contact Anthony Crooks: telephone (202) 205–9322, email: *EnergyPrograms@usda.gov.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Authority: This solicitation is issued pursuant to; 62 Stat 1070, and the Commodity Credit Corporation Charter Act of 1948 (Charter Act); U.S. Code 15 U.S.C. 714.

Overview

Federal Agency: The Commodity Credit Corporation (CCC) and the Rural Business-Cooperative Service (RBCS), (USDA).

Funding Opportunity Title: Higher Blends Infrastructure Incentive Program (HBIIP) for Fiscal Year 2020.

Announcement Type: Solicitation of Applications; announcement of opening date for Higher Blends Infrastructure Incentive Program application window. The grant period is not to exceed 18-months, unless otherwise specified in the Grant Agreement or agreed to by CCC.''

Catalog of Federal Domestic Assistance (CFDA) Title: The Higher Blends Infrastructure Incentive Program (HBIIP)–10.754.

I. Background

On May 5, 2020, the CCC and RBCS (the Agency) published a NOFA in the **Federal Register** announcing the availability of up to $100 million in competitive grants to eligible entities for activities designed to expand the sales and use of renewable fuels under the Higher Blends Infrastructure Incentive Program (HBIIP). The Agency stated in the NOFA that it would finalize the application window for enrollment in the HBIIP by notice in the **Federal Register** and *Grants.gov.* subject to future opening of the electronic application system. The purpose of this Notice is to announce that the Agency will begin to accept applications for the HBIIP beginning May 15, 2020.

II. General Funding Information

Grants for up to 50 percent of total eligible project costs, but not more than $5 million, are made available to vehicle fueling facilities, including, but not limited to, local fueling stations/locations, convenience stores (CS), hypermarket fueling stations (HFS), fleet facilities, and fuel terminal operations, midstream partners, and/or distribution facilities.

A. Type of Instrument

Grants. Awards to successful applicants will be in the form of cost-share grants for up to 50 percent of total eligible project costs, but not to exceed $5 million, whichever is less.

B. Available Funds

Under HBIIP, up to $100 million is made available to eligible participants. Of the total amount of available funds, approximately $86 million will be made available to transportation fueling facilities (including fueling stations, convenience stores, hypermarket fueling stations, fleet facilities, and similar entities with capital investments) for eligible implementation activities related to higher blends of fuel ethanol greater than 10 percent ethanol, such as E15 or higher; and approximately $14 million will be made available to transportation fueling facilities and fuel distribution facilities (including terminal operations, depots, and midstream partners), for eligible implementation activities related to higher blends of biodiesel greater than 5 percent biodiesel, such as B20 or higher.

C. Approximate Number of Awards

The number of awards will depend on the number of eligible participants and the total amount of requested funds. In the unlikely event that every successful applicant is awarded the maximum amount available of $5 million, 20 awards will be made. The Agency intends/expects to make approximately 150 awards and provide assistance to 1,500 locations from this solicitation.

III. Program Requirements

To be eligible for an award, applications must meet all the requirements contained in the NOFA published in the **Federal Register** on May 5, 2020 at 85 FR 26656. Information can also be found at *http://www.rd.usda.gov/HBIIP.*

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–10487 Filed 5–14–20; 8:45 am]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota 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 North Dakota Advisory Committee to the Commission will be held by teleconference at 12:00 p.m. (CDT) on Monday, June 1, 2020. The purpose of the meeting is for planning of its next civil rights project.

DATE AND TIME: Monday, June 1, 2020, at 12:00 p.m. CDT.

PUBLIC CALL-IN INFORMATION: Conference call-in number: 1–800–458–4121 and conference call 4347843.

TDD: Dial Federal Relay Service 1–800–877–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ebohor@usccr.gov* or by phone at (202) 376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–458–4121 and conference call 4347843. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–

800–877–8339 and providing the operator with the toll-free conference call-in number: 1–800–458–4121 and conference call 4347843.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact Evelyn Bohor at 202–381–8915.

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=a10t0000001gzl9AAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. 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 agency at the above phone number or email address.

Agenda

Monday, June 1, 2020, 12:00 p.m. (CDT)

- Roll call
- Planning Next Civil Rights Project
- Other Business
- Open Comment
- Adjourn

Dated: May 11, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–10406 Filed 5–14–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold a series of meetings via teleconference on Thursday, May 28, Thursday, June 4, and Thursday, June 11, 2020 at 3:00 p.m. Pacific Time. The purpose of the meeting is for the Committee to discuss their advisory memorandum on voting rights and felony convictions.

DATES: The meetings will be held on:

- Thursday, May 28, 2020, at 3:00 p.m. Pacific Time
- Thursday, June 4, 2020, at 3:00 p.m. Pacific Time
- Thursday, June 11, 2020, at 3:00 p.m. Pacific Time

Public Call Information: Dial: 800–367–2403, Conference ID: 2040104.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

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 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, 300 N Los Angeles St., Suite 2010, Los Angeles, CA 90012. They may also be emailed to Brooke Peery at *bpeery@usccr.gov.*

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 at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. 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

I. Welcome & Roll Call
II. Approval of Minutes
III. Discussion of Draft Memorandum
IV. Public Comment
V. Adjournment

Dated: May 11, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–10405 Filed 5–14–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2098]

Approval of Subzone Status; Cheniere Energy, Inc., Portland, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, has made application to the Board for the establishment of a subzone at the facility of Cheniere Energy, Inc., located in Portland, Texas (FTZ Docket B–72–2019, docketed November 25, 2019);

Whereas, notice inviting public comment has been given in the **Federal Register** (84 FR 66149–66150, December 3, 2019) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facility of Cheniere Energy, Inc., located in Portland, Texas (Subzone 122X), as

described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: May 11, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020–10449 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–27–2020]

Foreign-Trade Zone (FTZ) 143—West Sacramento, California; Notification of Proposed Production Activity, LiCAP Technologies, Inc. (Electrodes), Sacramento, California

The Port of Sacramento, grantee of FTZ 143, submitted a notification of proposed production activity to the FTZ Board on behalf of LiCAP Technologies, Inc. (LiCAP Technologies), located in Sacramento, California. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 21, 2020.

The applicant has submitted a separate application for FTZ designation at the company's facility under FTZ 143. The facility is used for the production of electrodes. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components 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 LiCAP Technologies from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, LiCAP Technologies would be able to choose the duty rate during customs entry procedures that applies to electrodes (duty-free). LiCAP Technologies 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 components and materials sourced from abroad include: Carbon powder; aluminum foil—coated aluminum foil; and, electrolytes (duty rate ranges from 4.8 to 5.3%). The request indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) and Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

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 24, 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: May 12, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–10450 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–81–2020]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Application for Expansion of Subzone 7F, Puma Energy Caribe, LLC, Bayamon and Guaynabo, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting an expansion of Subzone 7F on behalf of Puma Energy Caribe, LLC. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 11, 2020.

Subzone 7F was approved on May 15, 2001 (Board Order 1165, 66 FR 28890–28891, May 25, 2001) and expanded on February 27, 2020 (S–235–2019, 85 FR 12892, March 5, 2020). The subzone consists of the following sites: *Site 1* (173.81 acres)—State Road 28, Km 2, Bayamon; and, *Site 2* (45.18 acres)—Road 28, Km .08, Guaynabo.

The applicant is requesting authority to expand the subzone to include an additional site: *Proposed Site 3* (2.28 acres)—located at Luis Muñoz Marin International Airport, General Cargo Area/Airport Fuel Facility, Carolina. The existing subzone and the proposed site would be subject to the existing activation limit of FTZ 7. No additional authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

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 24, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 9, 2020.

A copy of the application 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 Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: May 12, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–10451 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–29–2020]

Foreign-Trade Zone (FTZ) 148—Knoxville, Tennessee; Notification of Proposed Production Activity, CoLinx, LLC (Tapered Roller Bearing Unit and Gearhead Kitting), Crossville, Tennessee

CoLinx, LLC (CoLinx) submitted a notification of proposed production activity to the FTZ Board for its facility in Crossville, Tennessee. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 7, 2020.

CoLinx already has authority to produce certain kits of bearing products within FTZ 148. The current request would add finished products and foreign-status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CoLinx from customs duty payments on the foreign-status materials/components used in export production (estimated 4 percent of production). On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, CoLinx would be able to choose the duty rates during customs entry procedures that apply to kits of tapered roller bearing cup/cone assemblies and gearheads (duty rates, 2.5% or 5.8%). CoLinx 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 materials/components sourced from abroad include tapered roller bearing cones, inner and outer races for tapered roller bearings, and fixed ratio speed changers (duty rates, 2.5% or 5.8%). The request indicates that certain tapered roller bearings are subject to an antidumping/countervailing duty (AD/CVD) order if imported from China. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

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 24, 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 Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 11, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–10448 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee will meet June 2, 2020, at 10:00 a.m., Eastern Daylight Time, via remote teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Opening remarks by the Bureau of Industry and Security
3. Presentation of papers or comments by the Public
4. Export Enforcement Update
5. Regulations Update
6. Working Group Reports
7. Automated Export System Update

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than May 26, 2020.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 19, 2020, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–10485 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Technology Letter of Explanation

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 2/6/2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security.

Title: Technology Letter of Explanation.

OMB Control Number: 0694–0047.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 6,283.

Average Hours per Response: 30 minutes to 2 hours.

Burden Hours: 9,416.

Needs and Uses: The collection is necessary as export licensing officers must make decisions on licensing the export of United States commodities and technical data to foreign countries. When an export involves certain technical data or knowhow described in the Export Administration Regulation, additional information is required to fully understand the transaction and make a licensing decision. The additional information is necessary to evaluate technology exports as covered under this collection. Under certain

circumstances, the export of technology requires additional safeguards to insure that advanced U.S. knowhow is not permitted to end up in the wrong hands. The letter of assurance puts the consignee on notice that the technology is subject to U.S. export controls and causes the consignee to certify that it will not release the data or the direct product of the data to certain specified countries; thus providing assurance that U.S. national security data will be safeguarded.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Export Control Reform Act 4812(b) and 4814(b)(1)(B).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0047.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–10466 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–826]

Certain Hot-Rolled Steel Flat Products From Turkey: Notice of Court Decision Not in Harmony With the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination, Amended Antidumping Duty Order; Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of the 2017–18 and 2018–19 Antidumping Duty Administrative Reviews, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 13, 2020, the U.S. Court of International Trade (CIT) sustained the Department of Commerce's (Commerce) third remand redetermination pertaining to the less-than-fair-value (LTFV) investigation of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's *Amended Final Determination* in the LTFV investigation of hot-rolled steel from Turkey. Pursuant to the CIT's final judgment, Commerce is amending the estimated weighted-average dumping margins for Ereğli Demir ve Çelik Fabrikalari T.A.Ş. and Iskenderun Demir Ve Celik (collectively, Erdemir) and Çolakoğlu Metalurji A.S. and Çolakoğlu Dis Ticaret A.S. (collectively, Çolakoğlu), and excluding Çolakoğlu from the *Order.* Further, Commerce is discontinuing, in part, the 2017–18 and 2018–19 administrative reviews with respect to Çolakoğlu.

DATES: Applicable April 23, 2020.

FOR FURTHER INFORMATION CONTACT: Toni Page, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1398.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2016, Commerce published its *Final Determination* in the LTFV investigation of hot-rolled steel from Turkey.[1] Subsequently, on October 3, 2016, Commerce published its *Amended Final Determination* and *Order.*[2] As reflected in Commerce's *Amended Final Determination,* Commerce calculated estimated weighted-average dumping margins of 6.77 percent for Çolakoğlu, 4.15 percent for Erdemir, and 6.41 percent for all other producers and exporters of subject merchandise.[3]

Çolakoğlu and Erdemir appealed Commerce's *Final Determination,* as amended by the *Amended Final Determination,* to the CIT. On March 22, 2018, the CIT remanded the *Amended Final Determination* for Commerce to explain or reconsider: (1) Its treatment of Erdemir's home market date of sale; (2) Çolakoğlu's request for a duty drawback adjustment; and (3) Commerce's rejection of Çolakoğlu's corrections to international ocean freight expenses presented at verification.[4] On July 20, 2018, Commerce issued its first results of redetermination, in which it determined to: (1) Use the ''click date'' of the pro-forma invoice as the date of sale for Erdemir's home market sales; (2) grant Çolakoğlu's request for a duty drawback adjustment; and (3) continue to reject Çolakoğlu's corrections to its reported international ocean freight expenses, which were presented at verification.[5] As a result of the changes in the *First Redetermination,* Commerce calculated estimated weighted-average dumping margins of 5.70 percent for Çolakoğlu, 2.73 percent for Erdemir, and 5.29 percent for all other producers and exporters of subject merchandise.[6]

On December 27, 2018, in its *Second Remand Order,* the CIT sustained Commerce's revised home market date of sale for Erdemir and its determination not to accept corrections to Çolakoğlu's international ocean freight expenses that had been presented at verification, and remanded Commerce's methodology for calculating Çolakoğlu's duty drawback adjustment.[7] Specifically, the CIT found that Commerce's calculation methodology of allocating exempted duties over the total cost of sales for hot-rolled steel to calculate Çolakoğlu's duty drawback adjustment was inconsistent with the statute.[8]

On June 3, 2019, Commerce issued its second results of redetermination, in which we increased Çolakoğlu's U.S. price by the full amount of duties that were drawn back or forgiven and then added the same per-unit duty amount to normal value as a circumstance of sale adjustment.[9] As a result of the changes to our duty drawback methodology in the *Second Redetermination,* Commerce calculated estimated weighted-average dumping margins of 6.27 percent for Çolakoğlu, and 5.79 percent for all other

[1] *See Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 81 FR 53428 (August 12, 2016) (*Final Determination*), and accompanying Issues and Decision Memorandum.

[2] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016) (*Amended Final Determination* and *Order*).

[3] *Id.,* 81 FR at 67965.

[4] *See Eregli Demir ve Celik Fabrikalari T.A.S.* v. *United States,* 308 F. Supp. 3d 1297 (CIT 2018).

[5] *See Eregli Demir ve Celik Fabrikalari T.A.S., et al.* v. *United States,* Consol. Ct. No. 16–00218, Slip Op. 18–27 Final Results of Redetermination Pursuant to Remand, dated July 20, 2018 (*First Redetermination*).

[6] *See First Redetermination* at 16.

[7] *See Eregli Demir ve Celik Fabrikalari T.A.S.* v. *United States,* 357 F. Supp. 3d 1325 (CIT 2018) (*Second Remand Order*).

[8] *See Second Remand Order* at 16; *see also Eregli Demir ve Celik Fabrikalari T.A.S.* v. *United States,* Consol. Ct. No. 16–00218, Slip Op. 18–180 Final Results of Redetermination Pursuant to Second Court Remand, dated June 3, 2019 (*Second Redetermination*) at 5, 13–16.

[9] *Id.* at 16.

producers and exporters of subject merchandise.[10]

On October 29, 2019, in its *Third Remand Order,* the CIT ordered Commerce to recalculate normal value without making a circumstance of sale adjustment related to the duty drawback adjustment made to U.S. price.[11] On January 27, 2020, in the third results of redetermination, Commerce did not make a circumstance of sale adjustment to normal value to reflect the difference between the amount of import duties reflected in Çolakoğlu's reported costs of production and the amount of import duties that the Court directed Commerce to recognize as the basis for a duty drawback adjustment to U.S. price.[12] In addition, Commerce corrected the unit of currency that Çolakoğlu used to report its U.S. duty drawback amount.[13] As a result of the changes to our duty drawback methodology in the *Third Redetermination,* Commerce calculated estimated weighted-average dumping margins of 0.00 percent for Çolakoğlu, and 2.73 percent for all other producers and exporters of subject merchandise.[14]

Timken Notice

In its decision in *Timken,*[15] as clarified by *Diamond Sawblades,*[16] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's April 13, 2020 judgment constitutes a final decision of the Court that is not in harmony with Commerce's *Amended Final Determination.*[17] Thus, this notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

Amended Final Determination

Because there is now a final court decision, Commerce is amending its *Amended Final Determination.* The revised estimated weighted-average dumping margins for the period of investigation July 1, 2014 through June 30, 2015 are as follows:

Exporter or producer	Weighted-average dumping margin (percent)
Çolakoğlu Metalurji A.S. and Çolakoğlu Dis Ticaret A.S.	0.00
Eregli Demir ve Celik Fabrikalari T.A.S. and Iskenderun Demir Ve Celik	2.73 [18]
All Others	2.73 [19]

Amended Antidumping Duty Order

Pursuant to section 735(a)(4) of the Act, Commerce ''shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.'' [20] As a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 0.00 percent for Çolakoğlu, Commerce is hereby excluding merchandise produced and exported by Çolakoğlu from the *Order.*[21] This exclusion does not apply to merchandise that is not both produced and exported by Çolakoğlu.[22]

Continued Suspension of Entries for Çolakoğlu

Pursuant to *Timken,* the suspension of liquidation for entries of subject merchandise produced and exported by Çolakoğlu will continue during the pendency of the appeals process. Thus, we will continue to instruct CBP to suspend liquidation of all unliquidated entries from Çolakoğlu that are entered, or withdrawn from warehouse, for consumption after April 23, 2020 (*i.e.,* ten days after the CIT's final decision) at a cash deposit rate of 0.00 percent.[23]

Discontinued Administrative Reviews

As a result of Çolakoğlu's exclusion from the *Order,* Commerce is discontinuing the ongoing 2017–18 and 2018–19 administrative reviews, in part, with respect to Çolakoğlu.[24] Further, Commerce will not initiate a subsequent administrative review of entries of subject merchandise both produced and exported by Çolakoğlu pursuant to the *Order.*[25]

Cash Deposit Requirements for Erdemir and All Other Producers and Exporters

Because Erdemir does not have a superseding cash deposit rate, *i.e.,* there have been no final results published in a subsequent administrative review for Erdemir, Commerce will instruct CBP to collect a cash deposit for estimated antidumping duties at *ad valorem* rates equal to the estimated weighted-average dumping margins listed above for Erdemir and all other producers and exporters of the subject merchandise, effective April 23, 2020. Entries of subject merchandise for all-other producers and exporters include entries of subject merchandise not both produced and exported by Çolakoğlu (*i.e.,* produced by Çolakoğlu and exported by another party, or exported by Çolakoğlu and produced by another party).

Liquidation of Suspended Entries for Çolakoğlu

If the CIT's final judgment is not appealed, or if appealed and upheld, Commerce will instruct CBP to terminate the suspension of liquidation

[10] *Id.*

[11] *See Eregli Demir ve Celik Fabrikalari T.A.S.* v. *United States,* 415 F. Supp. 3d 1216 (CIT 2019) (*Third Remand Order*).

[12] *See Eregli Demir ve Celik Fabrikalari T.A.S.* v. *United States Consol. Ct. No. 16–00218,* Slip Op. 19–135 (CIT October 29, 2019); *see also* Final Results of Redetermination Pursuant to Third Court Remand, dated January 27, 2020 (*Third Redetermination*) at 6.

[13] *See Third Redetermination* at 6.

[14] *Id.* at 5.

[15] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[16] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[17] *See Ereğli Demir ve Çelik Fabrikalari T.A.Ş.* v. *United States,* Ct. No. 16–00218, Slip Op. 20–47 (CIT April 13, 2020).

[18] *See Second Redetermination* at 16.

[19] As explained in the *Third Redetermination,* because Çolakoğlu's estimated weighted-average dumping margin is now 0.00 percent, its rate is no longer factored in the calculation of the all-others rate. Accordingly, the rate calculated for Erdemir is now the only rate that is not zero, *de minimis* or based entirely on facts available, and as such Erdemir's rate is now the estimated weighted-average dumping margin for all other producers and exporters of subject merchandise. *See* Memorandum, ''Redetermination Pursuant to Remand of Hot-Rolled Steel Products from the Republic of Turkey: Final Remand Calculation Memorandum for the 'All-Others' Rate,'' dated January 27, 2020.

[20] Section 733(b)(3) of the Act defines *de minimis* dumping margin as ''less than 2 percent *ad valorem* or the equivalent specific rate for the subject merchandise.''

[21] *See Third Redetermination* at 7.

[22] *Id.*

[23] *See, e.g., Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review,* 79 FR 78037, 78038 (December 29, 2014) (*Drill Pipe*); *see also High Pressure Steel Cylinders from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review,* 82 FR 46758, 46760 (October 6, 2017).

[24] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 63615 (December 11, 2018); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 67712 (December 11, 2019).

[25] *See Drill Pipe,* 79 FR at 78038; *see also Certain Steel Nails from the United Arab Emirates: Notice of Court Decision Not in Harmony with the Final Determination and Amended Final Determination of the Less Than Fair Value Investigation,* 80 FR 77316 (December 14, 2015).

and to liquidate entries produced and exported by Çolakoğlu without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e), 735(d), 736(a), 751(a) and 777(i) of the Act.

Dated: May 11, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–10491 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–042, C–570–043]

Stainless Steel Sheet and Strip From the People's Republic of China: Initiation of Anti-Circumvention and Scope Inquiries on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on available information, the Department of Commerce (Commerce) is self-initiating a country-wide anti-circumvention inquiry to determine whether imports of stainless steel sheet and strip (stainless sheet and strip), completed in Vietnam using certain stainless steel flat-rolled inputs manufactured in the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on stainless sheet and strip from China (collectively, the *Orders*). Commerce is also self-initiating a scope inquiry to determine whether stainless sheet and strip that is produced in China and undergoes further processing in Vietnam before being exported to the United States is subject to the *Orders.*

DATES: Applicable May 15, 2020.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse at (202) 482–6345, AD/CVD Operations, or Barb Rawdon at (202) 482–0474, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 2016, AK Steel Corporation, Allegheny Ludlum, LLC D/B/A ATI Flat Rolled Products, North American Stainless, and Outokumpu Stainless USA, LLC filed petitions seeking the imposition of antidumping and countervailing duties on imports of stainless sheet and strip from China.[1] Following Commerce's affirmative determinations of dumping and countervailable subsidies,[2] and the U.S. International Trade Commission's (USITC) finding of material injury,[3] Commerce issued AD and CVD orders on imports of stainless sheet and strip from China.[4]

Scope of the Order

The products covered by the *Orders* are stainless sheet and strip, whether in coils or straight lengths. For a full description of the scope of the *Orders, see* the ''Scope of the Orders,'' in the Appendix to this notice.

Merchandise Subject to the Anti-Circumvention Inquiry

The anti-circumvention inquiry covers stainless sheet and strip completed in Vietnam using certain non-subject stainless steel flat-rolled inputs of Chinese-origin that is subsequently exported from Vietnam to the United States.

Initiation of Anti-Circumvention Inquiry

Section 781(b)(1) of the Tariff Act of 1930, as amended (the Act), provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anti-circumvention inquiries, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping or countervailing duty order or finding, (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order, (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant, (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States, and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) The level of investment in the foreign country, (B) the level of research and development in the foreign country, (C) the nature of the production process in the foreign country, (D) the extent of production facilities in the foreign country, and (E) whether or not the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[5] Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular anti-circumvention inquiry.[6]

Furthermore, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an antidumping and/or countervailing duty order. Specifically, Commerce shall take into account such

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[1] *See Stainless Steel Sheet and Strip from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 81 FR 12711 (March 10, 2016); *see also Stainless Steel Sheet and Strip from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 81 FR 13322 (March 14, 2016).

[2] *See Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 82 FR 9716 (February 8, 2017); *see also Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 82 FR 9714 (February 8, 2017).

[3] *See Stainless Steel Sheet and Strip from China; Determinations,* 82 FR 15716 (March 30, 2017); *see also Stainless Steel Sheet and Strip from China,* Inv. Nos. 791–TA–557 and 731–TA–1312, USITC Pub. 4676 (March 2017) (Final).

[4] *See Stainless Steel Sheet and Strip from the People's Republic of China: Antidumping Duty Order,* 82 FR 16160 (April 3, 2017) (*AD Order*); *see also Stainless Steel Sheet and Strip from the People's Republic of China: Countervailing Duty Order,* 82 FR 16166 (April 3, 2017) (*CVD Order*) (collectively, *Orders*).

[5] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 103–316 (1994) at 893.

[6] *See Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order,* 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum at 4.

factors as: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country have increased after the initiation of the investigation that resulted in the issuance of such order or finding.

We have analyzed the criteria above, and from available information we determine pursuant to section 781(b) of the Act and 19 CFR 351.225(b) and (h), that initiation of an anti-circumvention inquiry is warranted to determine whether certain imports of stainless sheet and strip, completed in Vietnam using certain stainless steel flat-rolled inputs manufactured in China, are circumventing the *Orders.* For a full discussion of the basis for our decision to initiate this anti-circumvention inquiry, *see* the Initiation Memo.[7] As explained in the Initiation Memo, the available information supports initiating this anti-circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior anti-circumvention inquiries, where the facts supported initiation on a country-wide basis.[8]

Consistent with the approach in the prior anti-circumvention inquiries that were initiated on a country-wide basis, Commerce intends to issue questionnaires to solicit information from producers and exporters in Vietnam concerning their shipments of stainless sheet and strip to the United States and the origin of any imported stainless steel flat-rolled inputs being processed into stainless sheet and strip. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Merchandise Subject to the Scope Inquiry

The scope inquiry covers stainless sheet and strip of Chinese-origin that has undergone further processing in Vietnam (including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders*) that is subsequently exported to the United States.

There is evidence of (a) possible circumvention of the *Orders* pursuant to section 781(b) of the Act through the completion of stainless sheet and strip in Vietnam using inputs from China, and (b) third-country processing in Vietnam of stainless sheet and strip from China that is subsequently exported to the United States. Furthermore, the scope language states that stainless sheet and strip is subject to the *Orders* even if it has undergone processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the stainless sheet and strip. Accordingly, the initiation of a scope inquiry is warranted to determine whether stainless sheet and strip produced in China that undergoes processing in Vietnam is subject to the *Orders.* For a discussion of the basis for our decision to initiate this scope inquiry, *see* the Initiation Memo.

Notification to Interested Parties

In accordance with section 781(b) of the Act and 19 CFR 351.225(b) and (h), Commerce determines that available information supports initiating anti-circumvention and scope inquiries to determine whether certain imports of stainless sheet and strip are circumventing or subject to the *Orders.* Accordingly, Commerce hereby notifies all parties on Commerce's scope service list of the initiation of anti-circumvention and scope inquiries. In addition, in accordance with 19 CFR 351.225(f)(1)(i) and (ii), in this notice of initiation issued under 19 CFR 351.225(b), we have included a description of the products that are the subject of these inquiries, and an explanation of the reasons for Commerce's decision to initiate these inquiries as provided above and in the accompanying Initiation Memo. Commerce will establish a schedule for questionnaires and comments on the issues in these inquiries.

In accordance with 19 CFR 351.225(l)(2), if Commerce issues preliminary affirmative determinations, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of the estimated antidumping and countervailing duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of these inquiries. Moreover, in the event we issue preliminary affirmative determinations of circumvention, pursuant to section 781(b) of the act (Merchandise Completed or Assembled in Other Foreign Countries), we intend to notify the ITC, in accordance with section 781(b)(1) of the Act and 19 CFR 351.225(f)(7)(i)(B), if applicable.

Commerce will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. In accordance with section 781(f) of the Act and 19 CFR 351.225(f)(5), Commerce intends to issue its final scope and circumvention determinations within 120 days and 300 days, respectively, of the date of publication of this initiation.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: May 11, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by the *Orders* is stainless sheet and strip, whether in coils or straight lengths. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product with a width that is greater than 9.5 mm and with a thickness of 0.3048 mm and greater but less than 4.75 mm, and that is annealed or otherwise heat treated, and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, annealed, tempered, polished, aluminized, coated, painted, varnished, trimmed, cut, punched, or slit, *etc.*) provided that it maintains the specific dimensions of sheet and strip set forth above following such processing. The products

[7] *See* Memorandum, ''Stainless Steel Sheet and Strip from the People's Republic of China: Initiation of Anti-Circumvention and Scope Inquiries on the Antidumping and Countervailing Duty Orders'' (Initiation Memo). This memo is a public document dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[8] *See, e.g., Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 84 FR 43585 (August 21, 2019); *see also Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order,* 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

described include products regardless of shape, and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above: (1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and (2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of the *Orders* unless specifically excluded.

Subject merchandise includes stainless sheet and strip that has been further processed in a third country, including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the stainless sheet and strip.

Excluded from the scope of the *Orders* are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and not pickled or otherwise descaled; (2) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more); and (3) flat wire (*i.e.,* cold-rolled sections, with a mill edge, rectangular in shape, of a width of not more than 9.5 mm).

The products under the *Orders* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.13.0081, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.23.0030, 7219.23.0060, 7219.24.0030, 7219.24.0060, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.32.0045, 7219.32.0060, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.33.0045, 7219.33.0070, 7219.33.0080, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.34.0050, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.35.0050, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2020–10490 Filed 5–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Rescission of Review in Part; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminary determines that Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. are not eligible for a separate rate, and therefore are part of the China-wide entity. Commerce is also rescinding this administrative review, in part, with respect to eight companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable May 15, 2020.

FOR FURTHER INFORMATION CONTACT: Jasun Moy, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8194.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty (AD) order on steel wire garment hangers from the People's Republic of China (China) for the period of review (POR) October 1, 2018 through September 30, 2019.[1] Pursuant to a request from M&B Metal Products Co., Inc. (the petitioner),[2] Commerce initiated an administrative review with respect to 11 companies, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[3]

Subsequent to the initiation of the administrative review, the petitioner timely withdrew its request for eight of the companies for which a review had been requested.[4] No other party requested an administrative review of these companies. Therefore, this administrative review continues for the two companies remaining under review, Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. However, because we have previously found that Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. are a single entity (collectively, Shanghai Wells), Shanghai Wells remains the sole respondent in this review.[5]

On January 2, 2020, Commerce issued the standard non-market economy (NME) questionnaire to Shanghai Wells.[6] We confirmed that the questionnaire was delivered to Shanghai Wells and that a company representative received the questionnaire on January 6, 2020.[7] Shanghai Wells did not respond to this questionnaire and has filed no submissions on the record of this

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 52068 (October 1, 2019).

[2] *See* Petitioner's Letter, ''Steel Wire Garment Hangers from China: Petitioner's Request for Administrative Review,'' dated October 25, 2019 (Petitioner's Review Request).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 67712 (December 11, 2019) (*Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 3014 (January 17, 2020) (which corrected the POR for this review). In the *Initiation Notice,* we inadvertently included a company named ''Hong Kong Ltd.'' Based on the Petitioner's Review Request, the correct name of the company is Hong Kong Ltd. (USA). However, this company is an importer, rather than an exporter of subject merchandise, and it is not under review. Therefore, we are correcting the *Initiation Notice* to clarify that this company is not under review. As such, only 10 companies are under review.

[4] *See* Petitioner's Letter, ''Administrative Review of Steel Wire Garment Hangers from China-Petitioner's Withdrawal of Review Requests for Specific Companies,'' dated January 8, 2020 (Petitioner's Withdrawal Letter).

[5] Commerce found that Shanghai Wells Hanger Co., Ltd., Hong Kong Wells Ltd., and Hong Kong Ltd. (USA) are affiliated and that Shanghai Wells Hanger Co. Ltd. and Hong Kong Wells Ltd. are a single entity. Because there were no changes to the facts that supported that decision since that determination was made, we continue to find that these companies are affiliated and that Shanghai Wells Hanger Co. Ltd. and Hong Kong Wells comprise a single entity for this administrative review. *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review,* 75 FR 68758, 68759 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994, 27995 (May 13, 2011); *see also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2016–2017,* 83 FR 53449 (October 23, 2018).

[6] *See* Commerce's Letter, ''Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Non-Market Economy Questionnaire,'' dated January 2, 2020.

[7] *See* Memorandum, ''Initial Antidumping Duty Questionnaire Delivery Confirmation,'' dated January 6, 2020.

administrative review, including information concerning its eligibility for a separate rate.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until August 21, 2020.[8]

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation. The request for an administrative review of the following companies was withdrawn within 90 days of the date of publication of the *Initiation Notice:* Hangzhou Qingqing Mechanical Co., Ltd., Hangzhou Yingqing Material Co., Ltd., Shaoxing Dingli Metal Clotheshorse, Shaoxing Lishi Metal Products Co., Ltd., Shaoxing Maosheng Metal Products Co., Ltd., Shaoxing Shunji Metal Clotheshorse Co., Ltd., Shaoxing Yongnuo Metal Products Co., Ltd., and Zhejiang Lucky Cloud Hanger Co., Ltd.[9] Because we received no other requests for review of these companies, Commerce is rescinding this administrative review of the AD order on steel wire garment hangers, in part, with respect to these eight companies. The instant review will continue with respect to Shanghai Wells.

Scope of the Order

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under Harmonized Tariff Schedule U.S. (HTSUS) subheadings 7326.20.0020, 7323.99.9060, and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[10] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the China-wide entity.[11] Because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review and the weighted-average dumping margin for the China-wide entity is not subject to change (*i.e.,* 187.25 percent).[12]

Preliminary Results of Review

Because Shanghai Wells is not eligible for a separate rate, Commerce preliminarily finds that Shanghai Wells is part of the China-wide entity. As discussed above, the weighted-average dumping margin for the China-wide rate continues to be 187.25 percent.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results of an administrative review within five business days after public announcement of the preliminary results of review in accordance with 19 CFR 351.224(b). Because Commerce preliminary denied the separate rate eligibility for the sole mandatory respondent in this review and treated it as part of the China-wide entity, there are no calculations to disclose.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties are invited to comment on these preliminary results, and may submit case briefs and/or written comments, filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) within 30 days after the date of publication of these preliminary results of review. ACCESS is available to registered users at *http://access.trade.gov.* Rebuttal briefs, limited to issues raised in the case briefs, must be filed within seven days after the time limit for filing case briefs.[13] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.[14] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[15]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to Commerce within 30 days of the date of publication of this notice.[16] Hearing requests should contain: (1) The party's name, address, telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[17]

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of all issues raised in the case briefs, within 120 days of the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment of Antidumping Duties

Upon issuance of the final results of this review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.[18] If the preliminary results are unchanged for the final results, we will instruct CBP to apply an *ad valorem* assessment rate of 187.25 percent to all entries of subject merchandise during the POR which were exported by Shanghai Wells.

Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final

[8] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[9] *See* Petitioner's Withdrawal Letter.

[10] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[11] *Id.*

[12] *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 58111 (October 6, 2008).

[13] *See* 19 CFR 351.309(d)(1)–(2).

[14] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310(d).

[18] *See* 19 CFR 351.212(b)(1).

results of this review in the **Federal Register**.[19]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters of subject merchandise not listed above that continue to be eligible for a separate rate based on a completed prior segment of this proceeding, the cash deposit rate will continue to be that existing cash deposit rate published for the most recently completed period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, including Shanghai Wells, the cash deposit rate will be 187.25 percent, the weighted-average dumping margin for the China-wide entity from the less-than-fair-value investigation; and (3) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of any antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results and partial rescission of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act, and 19 CFR 351.213(h)(1).

[19] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Dated: May 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–10453 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Nautical Discrepancy Reporting System

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on January 15, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration.

Title: Nautical Discrepancy Reporting System.

OMB Control Number: 0648–0007.

Form Number(s): None.

Type of Request: Regular submission (revision and extension of an existing collection).

Number of Respondents: 905.

Average Hours per Response: ASSIST entry: 10 min; Citizen Science Chart Update: 30 minutes.

Total Annual Burden Hours: 680.

Needs and Uses: NOAA's Office of Coast Survey is the nation's nautical chart maker, maintaining and updating over a thousand charts covering the 3.5 million square nautical miles of coastal waters in the U.S. Exclusive Economic Zone and the Great Lakes. The marine transportation system relies on charting accuracy and precision to keep navigation safe and coastal communities protected from environmental disasters at sea.

Coast Survey also writes and publishes the *United States Coast Pilot®*, a series of nine nautical books that supplement nautical charts with essential marine information that cannot be shown graphically on the charts and are not readily available elsewhere. Subjects include, but are not limited to, channel descriptions, anchorages, bridge and cable clearances, tides and tidal currents, prominent features, pilotage, towage, weather, ice conditions, wharf descriptions, dangers, routes, traffic separation schemes, small craft facilities and Federal Regulations applicable to navigation.

The marine environment and shorelines are constantly changing. NOAA makes every effort to update information portrayed in charts and described in the Coast Pilot. Sources of information include, but are not limited to: Pilot associations, shipping companies, towboat operators, state marine authorities, city marine authorities, local port authorities, marine operators, hydrographic research vessels, naval vessels, Coast Guard cutters, merchant vessels, fishing vessels, pleasure boats, U.S. Power Squadron Units, U.S. Coast Guard Auxiliary Units, and the U.S. Army Corps of Engineers.

The purpose of NOAA's Nautical Discrepancy Reporting System is to offer a formal, standardized instrument for recommending changes, corrections, and updates to nautical charts and the Coast Pilot, and to monitor and document the accepted changes. Coast Survey solicits information through the stakeholder engagement and feedback tool ASSIST (*https://www.nauticalcharts.noaa.gov/customer-service/assist/*).

Coast Survey is proposing to add a Citizen Science component to the collection, which would allow boating groups or individuals to submit reports to update the charts. Adding the Citizen Science component to the collection method will benefit Coast Survey by allowing the public to ''adopt'' a product or part of a product and provide annual data updates that directly affect that product or products. Data obtained through these systems is used to update U.S. nautical charts and the *United States Coast Pilot.*

Affected Public: Business or other for profit; individuals or households; not for- profit institutions; federal government; state, local or tribal government.

Frequency: Annual and periodic.

Respondent's Obligation: Voluntary.

Legal Authority: None.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0648–0007.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–10464 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA182]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Whiting Committee and Advisory Panel 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: This webinar will be held on Thursday, June 4, 2020 at 9.30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/2250524786943419917.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Whiting Committee and Advisory Panel will present impact analyses on the proposed alternatives for the southern red hake rebuilding framework action. After receiving the Plan Development Teams analyses and recommendations, the Advisory Panel and Committee will choose preferred alternatives to recommend to the Council at the June 23–25 meeting. They will also give a brief review of NROC/MARCO/RODA fishery dependent data project by Dr. Fiona Hogan and request for feedback. Other business will be discussed if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. 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: May 12, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–10446 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA178]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Outreach and Education Advisory Panel (OEAP) will hold a two-day public virtual meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The OEAP public virtual meeting will be held on June 3, 2020, from 12 p.m. to 2 p.m., and June 4, 2020, from 12 p.m. to 2 p.m. All meetings will be at Eastern Day Time.

ADDRESSES: You may join the OEAP public virtual meeting (via GoToMeeting) from a computer, tablet or smartphone by entering the following address:

Wednesday, June 3, 2020, 12 p.m.–2 p.m. (EDT)

https://global.gotomeeting.com/join/309752413.

You can also dial in using your phone.

United States: +1 (224) 501–3412
Access Code: 309–752–413

Get the app now and be ready when your first meeting starts: *https://global.gotomeeting.com/install/309752413.*

Thursday, June 4, 2020, 12 p.m.–2 p.m. (EDT)

Please join the meeting from your computer, tablet or smartphone. *https://global.gotomeeting.com/join/359344597.*

You can also dial in using your phone.

United States: +1 (646) 749–3112
Access Code: 359–344–597

Please join the meeting from your computer, tablet or smartphone: *https://global.gotomeeting.com/install/359344597.*

FOR FURTHER INFORMATION CONTACT: Miguel Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

Wednesday, June 3, 2020, 12 p.m.–1 p.m.

—Call to Order
—Adoption of Agenda
—OEAP Chairperson's Report
  —CFMC Arrangements for Virtual Meetings
  —Fishers' Initiatives to Cope with COVID–19 Scenario
  —USVI Activities
  —Fishery Ecosystem Based Management Plan (FEBMP)
  —EBFMTAP
  —Outreach & Education Initiatives for Fishers and Consumers

Wednesday, June 3, 2020, 1:10 p.m.–2 p.m.

—Responsible Seafood Consumption Campaign

Thursday, June 4, 2020, 12 p.m.–1 p.m.

—Update on Five-Year Strategic Plan—Michelle Duval
—Island-Based Fisheries Management Plans (IBFMPs)
—2021 Calendar

Thursday, June 4, 2020, 1:10 p.m.–2 p.m.

—CFMC Facebook and Instagram Communications with Stakeholders
—PEPCO
—Other Business

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on June 3, 2020, at 12 p.m. EDT, and will end on June 4, 2020, at 2 p.m. EDT. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair. In addition, the meeting may be completed prior to the date established in this notice.

Special Accommodations

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 12, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–10445 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Coastal and Marine Ecological Classification Standard Solicitation for Revisions

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 27, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration.

Title: Coastal and Marine Ecological Classification Standard Solicitation for Revisions.

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Request: Regular submission (new information collection).

Number of Respondents: 100.

Average Hours per Response: 1.

Total Annual Burden Hours: 100.

Needs and Uses: NOAA's Office of Coastal Management (OCM) is proposing a new information collection that will allow interested parties to submit requests for revisions to update the Coastal and Marine Ecological Classification Standard (CMECS). CMECS was approved by the Federal Geographic Data Committee (FGDC) in August 2012 and provides a national standard for consistent descriptions of coastal and marine ecological features. The primary uses of CMECS are in mapping and classifying the geological, physical, biological, and chemical components of the environment. Among other applications, the CMECS framework can be used to integrate data from disparate sources, facilitate comparisons among sites, and organize data for regional assessment. Since its publication in 2012, the CMECS has been used to characterize habitats ranging from coastal wetlands and estuaries to the deep ocean and at local to global scales. Benefits of CMECS include: Data collected by different sensors and methods can be integrated into a single database; all the physical, biological, and chemical-forcing functions that collectively determine a habitat type can be captured; and the system has the flexibility to accommodate new units as additional information becomes available.

The CMECS was developed as a dynamic standard to allow periodic revisions to continue to meet the needs of the user community and as such, the CMECS can be updated to accommodate the requirements of evolving scientific practices, technology, and coastal and marine resource management. The review process allows the CMECS to retain its consistency, credibility, and rigor through periodic reviews and an orderly, authoritative, and transparent updating process as required by the Federal Geographic Data Committee. Anyone can propose changes, which can include minor edits, such as grammatical or typographical corrections, clarifications of definitions and meaning, or more substantial changes to the hierarchy within components. The CMECS Implementation Group, through the Office for Coastal Management, has determined it is necessary to initiate the dynamic standard process to revise the CMECS. We are soliciting recommendations for revisions to the CMECS through a form to be posted on the CMECS website. All recommendations collected will be reviewed and revisions will be made to the CMECS to reflect those recommendations found to be valuable for implementation of the CMECS and supportive of the user community needs.

Affected Public: Coastal scientists and managers throughout the United States responsible for characterization of coastal and marine habitats or ecosystems more broadly. This may include academia; non-governmental organizations; State, Local or Tribal government; Federal government; and for profit environmental support businesses.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority:

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–10469 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA161]

Fisheries of the Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The SEDAR 65 assessment of the Atlantic stock of Blacktip Shark will consist of a series of workshops and webinars: Data Workshop; Assessment Webinars; and a Review workshop.

DATES: The SEDAR 65 Assessment Webinar IV for Highly Migratory Species Atlantic Blacktip Shark has been scheduled for June 4, 2020, from 1 p.m. until 4 p.m., EDT.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/1446251822262877964.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Assessment Webinar IV are as follows:

- Finalize reference case model run(s) which are robust to the major uncertainties identified in commercial bycatch discard estimation (and post-release mortality) as well as the major uncertainties identified in the indices of abundance. Discuss sensitivity analyses, model diagnostic methodology and preliminary results for the reference case model run(s).

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 South Atlantic Fishery Management Council 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: May 12, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–10443 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Southeast Region Individual Fishing Quota Programs

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 24, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration.

Title: Southeast Region Individual Fishing Quota Programs.

OMB Control Number: 0648–0551.

Form Number(s): None.

Type of Request: Regular submission (Revision of a currently approved collection).

Number of Respondents: 1,164.

Average Hours Per Response:

- Transfer Shares, 3 minutes
- Share Receipt, 2 minutes
- Account Update, 2 minutes
- Trip Ticket Update, 2 minutes
- Transfer Allocation, 3 minutes
- Landing Transaction Correction Request, 5 minutes
- Dealer Cost Recovery Fee Submission through *pay.gov,* 3 minutes
- Commercial Reef Fish Landing Location Request, 5 minutes
- Dealer Landing Transaction Report, 6 minutes (electronic form)
- Dealer Landing Transaction Report, 5 minutes (paper form, catastrophic conditions only)
- IFQ Notification of Landing, 5 minutes
- Gulf Reef Fish Notification of Landing, 3 minutes
- IFQ Close Account, 3 minutes
- IFQ Online Account Renewal Application, 10 minutes
- Wreckfish Quota Share Transfer, 20 minutes

Total Annual Burden Hours: 2,397.

Needs and Uses: The NMFS Southeast Regional Office manages three

commercial IFQ and individual transferable quota (ITQ) programs in the Southeast Region under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* The IFQ programs for red snapper, and groupers and tilefishes occur in Federal waters of the Gulf of Mexico (Gulf), and the ITQ program for wreckfish occurs in Federal waters of the South Atlantic.

The NMFS Southeast Regional Office proposes to revise parts of the information collection approved under OMB Control Number 0648–0551. This collection of information tracks the transfer and use of IFQ and ITQ shares, and IFQ allocation and landings necessary to operate, administer, and review management of the IFQ and ITQ programs. Regulations for the IFQ and ITQ programs are located at 50 CFR part 622.

For the Gulf IFQ Programs, the revisions would modify pages within the Catch Share Online System. The Transfer Shares page allows IFQ shareholders to transfer shares online to other IFQ shareholders. Similarly, the Transfer Allocation page allows IFQ shareholders to transfer allocation online to other IFQ shareholders. Beginning in 2020, IFQ shareholders can use IFQ shares as collateral in the Federal Fisheries Finance Program to obtain a loan that can be used for fishing related expenses. However, to accommodate the finance program, the Transfer Shares and Transfer Allocation pages must be modified to allow IFQ shareholders to indicate if their shares are being held as part of a lien. The Landing Transaction page allows IFQ dealers to submit landing transactions online to record landings of IFQ species. NMFS would revise the Landing Transaction page to allow for better data collection and monitoring of landings in conjunction with the NMFS Southeast Fisheries Science Center.

If implemented by NMFS, these administrative revisions would not change the estimated time or cost per response. NMFS estimates that it would still require approximately 3 minutes to complete the Transfer Shares or Transfer Allocation pages per occurrence, and 6 minutes to complete the Landing Transaction page per occurrence.

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: Annual and periodic.

Respondent's Obligation: Mandatory.

Legal Authority: 16 U.S.C. 1801 *et seq.*

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0648–0551.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–10468 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA172]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The SEDAR 70 assessment of Gulf of Mexico Greater Amberjack will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 70 Data Webinar for Gulf of Mexico Greater Amberjack will be held on June 4, 2020, from 1 p.m. to 3 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (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: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Webinar is as follows:

Participants will discuss what data may be available for use in the assessment of Gulf of Mexico Greater Amberjack.

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 physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 12, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–10444 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 911 Grant Program Annual Performance Report

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 6, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Telecommunications and Information Administration.

Title: 911 Grant Program Annual Performance Report.

OMB Control Number: 0660–0041.

Form Number(s): None.

Type of Request: Revision of a current information collection.

Number of Respondents: 36.

Average Hours per Response: 60 hours.

Burden Hours: 2,160 hours.

Needs and Uses: In 2012, the Next Generation 911 (NG911) Advancement Act of 2012 (Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, Title VI, Subtitle E (codified at 47 U.S.C. 942)) enacted changes to this program. It reauthorized the National 911 Implementation Coordination Office (ICO), a joint effort between the National Highway Traffic Safety Administration (NHTSA) and the National Telecommunications and Information Administration (NTIA). It delineated the responsibilities of the ICO to include a joint program to establish and facilitate coordination and communication between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of 911 services.

The NG911 Advancement Act provided funding for grants to be used for the implementation and operation of 911 services, E911 services, migration to an IP-enabled emergency network, and adoption and operation of NG911 services and applications; the implementation of IP-enabled emergency services and applications enabled by NG911 services, including the establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and training public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 911 services. In August of 2019, NTIA and NHTSA made $109,250,000 in grant awards to 36 agencies.

The information collected for the remaining period of performance for this grant program will include various reporting requirements. All grantees will submit performance and financial reports in accordance with 2 CFR part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance). It is important for the Agencies to have this information so that they can effectively administer the grant program and account for the expenditure of funds.

The publication of this notice allows NTIA to begin the process to request OMB approval to collect information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Affected Public: State, Local, or Tribal Government. Under this proposed effort, all grantees are required to submit required electronically via email. Reporting entities are the 36 grantees, making the total maximum number of respondents 36.

Frequency: Once a year. The reporting entities will be required to submit annual performance reports and certifications.

Respondents' Obligation: Mandatory.

Legal Authority: Next Generation 911 (NG911) Advancement Act of 2012, Public Law 112–96, Title VI, Subtitle E, codified at 47 U.S.C. 942.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0660–0041.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–10463 Filed 5–14–20; 8:45 am]

BILLING CODE 3510–JE–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* June 14, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 4/10/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):

6515–00–NIB–0508—Gloves, Surgical, Powder-free, Latex, Triumph Natural, White, Size 5.5″
6515–00–NIB–0509—Gloves, Surgical, Powder-free, Latex, Triumph Natural, White, Size 6″
6515–00–NIB–0510—Gloves, Surgical, Powder-free, Latex, Triumph Natural, White, Size 6.5″
6515–00–NIB–0511—Gloves, Surgical, Powder-free, Latex, Triumph Natural, White, Size 7″
6515–00–NIB–0512—Gloves, Surgical, Powder-free, Latex, Triumph Natural, White, Size 7.5″
6515–00–NIB–0513—Gloves, Surgical, Powder-free, Latex, Triumph Natural, White, Size 8″
6515–00–NIB–0514—Gloves, Surgical, Powder-free, Latex, Triumph Natural, White, Size 8.5″
6515–00–NIB–0515—Gloves, Surgical, Powder-free, Latex, Triumph Natural, White, Size 9″
6515–00–NIB–0516—Gloves, Surgical, Powder-free, Latex, Triumph Green with Aloe, Green, Size 5.5″
6515–00–NIB–0517—Gloves, Surgical, Powder-free, Latex, Triumph Green with Aloe, Green, Size 6″
6515–00–NIB–0518—Gloves, Surgical, Powder-free, Latex, Triumph Green with Aloe, Green, Size 6.5″
6515–00–NIB–0519—Gloves, Surgical, Powder-free, Latex, Triumph Green with Aloe, Green, Size 7″
6515–00–NIB–0520—Gloves, Surgical, Powder-free, Latex, Triumph Green with Aloe, Green, Size 7.5″
6515–00–NIB–0521—Gloves, Surgical, Powder-free, Latex, Triumph Green with Aloe, Green, Size 8″
6515–00–NIB–0522—Gloves, Surgical, Powder-free, Latex, Triumph Green with Aloe, Green, Size 8.5″
6515–00–NIB–0523—Gloves, Surgical, Powder-free, Latex, Triumph Green with Aloe, Green, Size 9″
6515–00–NIB–0524—Gloves, Surgical, Powder-free, Latex, Triumph Ortho with Aloe, Brown, Size 6″
6515–00–NIB–0525—Gloves, Surgical, Powder-free, Latex, Triumph Ortho with Aloe, Brown, Size 6.5″
6515–00–NIB–0526—Gloves, Surgical, Powder-free, Latex, Triumph Ortho with Aloe, Brown, Size 7″
6515–00–NIB–0527—Gloves, Surgical, Powder-free, Latex, Triumph Ortho with Aloe, Brown, Size 7.5″
6515–00–NIB–0528—Gloves, Surgical, Powder-free, Latex, Triumph Ortho with Aloe, Brown, Size 8″
6515–00–NIB–0529—Gloves, Surgical, Powder-free, Latex, Triumph Ortho with Aloe, Brown, Size 8.5″
6515–00–NIB–0530—Gloves, Surgical, Powder-free, Latex, Triumph Ortho with Aloe, Brown, Size 9″
6515–00–NIB–0749—Gloves, Surgical, Powder-free, Latex, Triumph LT, White, Size 5.5″
6515–00–NIB–0750—Gloves, Surgical, Powder-free, Latex, Triumph LT, White, Size 6″
6515–00–NIB–0751—Gloves, Surgical, Powder-free, Latex, Triumph LT, White, Size 6.5″
6515–00–NIB–0752—Gloves, Surgical, Powder-free, Latex, Triumph LT, White, Size 7″
6515–00–NIB–0753—Gloves, Surgical, Powder-free, Latex, Triumph LT, White, Size 7.5″
6515–00–NIB–0754—Gloves, Surgical, Powder-free, Latex, Triumph LT, White, Size 8″
6515–00–NIB–0755—Gloves, Surgical, Powder-free, Latex, Triumph LT, White, Size 8.5″
6515–00–NIB–0756—Gloves, Surgical, Powder-free, Latex, Triumph LT, White, Size 9″
6515–00–NIB–0757—Gloves, Surgical, Powder-free, Latex, Eudermic, Brown, Size 5.5″
6515–00–NIB–0758—Gloves, Surgical, Powder-free, Latex, Eudermic, Brown, Size 6″
6515–00–NIB–0759—Gloves, Surgical, Powder-free, Latex, Eudermic, Brown, Size 6.5″
6515–00–NIB–0760—Gloves, Surgical, Powder-free, Latex, Eudermic, Brown, Size 7″
6515–00–NIB–0761—Gloves, Surgical, Powder-free, Latex, Eudermic, Brown, Size 7.5″
6515–00–NIB–0762—Gloves, Surgical, Powder-free, Latex, Eudermic, Brown, Size 8″
6515–00–NIB–0763—Gloves, Surgical, Powder-free, Latex, Eudermic, Brown, Size 8.5″
6515–00–NIB–0764—Gloves, Surgical, Powder-free, Latex, Eudermic, Brown, Size 9″
6515–00–NIB–8108—Gloves, Surgical, Powder-free, Latex, Triumph Classic, White, Size 5.5″
6515–00–NIB–8109—Gloves, Surgical, Powder-free, Latex, Triumph Classic, White, Size 6″
6515–00–NIB–8110—Gloves, Surgical, Powder-free, Latex, Triumph Classic, White, Size 6.5″
6515–00–NIB–8111—Gloves, Surgical, Powder-free, Latex, Triumph Classic, White, Size 8.5″
6515–00–NIB–8112—Gloves, Surgical, Powder-free, Latex, Triumph Classic, White, Size 9″
6515–00–NIB–8121—Gloves, Surgical, Powder-free, Latex-Free, Sensicare LT Custom Fit with Aloe, White, Size 7″
6515–00–NIB–8122—Gloves, Surgical, Powder-free, Latex-Free, Sensicare LT Custom Fit with Aloe, White, Size 7.5″
6515–00–NIB–8123—Gloves, Surgical, Powder-free, Latex-Free, Sensicare LT Custom Fit with Aloe, White, Size 8″
6515–00–NIB–8124—Gloves, Surgical, Powder-free, Latex-Free, Sensicare LT Custom Fit with Aloe, White, Size 8.5″
6515–00–NIB–8149—Gloves, Surgical, Powder-free, Latex, Triumph Classic, White, Size 7″
6515–00–NIB–8150—Gloves, Surgical, Powder-free, Latex, Triumph Classic, White, Size 7.5″
6515–00–NIB–8151—Gloves, Surgical, Powder-free, Latex, Triumph Classic, White, Size 8″
6515–00–NIB–8152—Gloves, Surgical, Powder-free, Latex, Radion-X, Khaki, Size 6.5″
6515–00–NIB–8153—Gloves, Surgical, Powder-free, Latex, Radion-X, Khaki, Size 7″
6515–00–NIB–8154—Gloves, Surgical, Powder-free, Latex, Radion-X, Khaki, Size 7.5″
6515–00–NIB–8155—Gloves, Surgical, Powder-free, Latex, Radion-X, Khaki, Size 8″
6515–00–NIB–8156—Gloves, Surgical, Powder-free, Latex, Radion-X, Khaki, Size 8.5″
6515–00–NIB–8157—Gloves, Surgical, Powder-free, Latex, Radion-X, Khaki, Size 9″

Mandatory Source of Supply: BOSMA Enterprises, Indianapolis, IN

Contracting Activity: Strategic Acquisition Center, Fredericksburg, VA

NSN(s)—Product Name(s):

7510–01–600–7621—Wall Calendar, Dated 2019, Wire Bound w/Hanger, 12″ x 17″

Mandatory Source of Supply: Chicago Lighthouse Industries, Chicago, IL

Contracting Activity: GSA/FAS Admin Svcs Acquisition BR(2, New York, NY

NSN(s)—Product Name(s):

8340–00–485–3012—Tarpaulin, Flyer's Emergency

Mandatory Source of Supply: L.E. Phillips Career Development Center, Inc., Eau

Claire, WI
Contracting Activity: DLA Troop Support, Philadelphia, PA
NSN(s)—Product Name(s):
6230–00–NSH–0011—Flashlight, Magnet Type, Krypton Bulb
6230–01–465–7180—Flashlight, Krypton Bulb
Mandatory Source of Supply: Development Workshop, Inc., Idaho Falls, ID
Contracting Activity: Strategic Acquisition Center, Fredericksburg, VA

Services

Service Type: Custodial Services
Mandatory for: U.S. Geological Survey—Warehouse: Huffman Business Park, Building P, Anchorage, AK
Mandatory for: U.S. Geological Survey—Warehouse: 800 Ship Creek Avenue (USGS Storage Area), Anchorage, AK
Mandatory Source of Supply: Assets, Inc., Anchorage, AK
Contracting Activity: Office of Policy, Management, and Budget, NBC Acquisition Services Division

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–10439 Filed 5–14–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: June 14, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type: Base Supply Center
Mandatory for: New Mexico National Guard, Santa Fe, NM
Mandatory Source of Supply: Envision, Inc., Wichita, KS
Contracting Activity: Dept of the Army, W7NQ USPFO Activity NM ARNG

Service Type: Grounds Maintenance Service
Mandatory for: Defense Information Systems Agency, DISA Global, Building 5160, Scott AFB, IL
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: Defense Information Systems Agency (DISA), IT Contracting Division—PL83

Service Type: Grounds Maintenance Service
Mandatory for: Defense Information Systems Agency, DITCO, Building 3600, Scott AFB, IL
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: Defense Information Systems Agency (DISA), IT Contracting Division—PL83

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–10442 Filed 5–14–20; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Rescindment of a system of records notice.

SUMMARY: The Corporation for National and Community Service (CNCS) is rescinding the system of records named *Join Senior Service Now Web-based Recruiting System (JASON)—Corporation-20.* It was used to manage information about prospective Senior Corps volunteers who sought placement with organizations seeking their services.

DATES: You may submit comments until June 17, 2020. This system of records notice (SORN) will be rescinded June 17, 2020 unless CNCS receives any timely comments which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by system name and number, to CNCS via any of the following methods:

1. Electronically through *regulations.gov.*

Once you access *regulations.gov,* locate the web page for this SORN by searching for *Join Senior Service Now Web-based Recruiting System (JASON)—Corporation-20.* If you upload any files, please make sure they include your first name, last name, and the name of the SORN being rescinded.

2. By email at *privacy@cns.gov.*

3. By mail: Corporation for National and Community Service, Attn: Chief Privacy Officer, OIT, 250 E Street SW, Washington, DC 20525.

4. By hand delivery or courier to CNCS at the address for mail between 9:00 a.m. and 4:00 p.m. Eastern Standard Time, Monday through Friday, except for Federal holidays.

Please note that all submissions received may be posted without change to *regulations.gov,* including any personal information.

FOR FURTHER INFORMATION CONTACT: Aaron Goldstein, (202) 606–3237, or by email at *AGoldstein@cns.gov.* Please include the system of record's name and number.

SUPPLEMENTARY INFORMATION: CNCS established and maintained a system of records, *Join Senior Service Now Web-based Recruiting System (JASON)—Corporation-20,* to manage records created by an online service called Join Senior Service Now. Among other features, potential Senior Corps volunteers could use the service to find Senior Corps organizations which fit their location and interests and send messages to those organizations. CNCS has since decommissioned the service and deleted all records collected through the service. As such, CNCS is rescinding the system of records notice *Join Senior Service Now Web-based Recruiting System (JASON)—Corporation-20.*

SYSTEM NAME AND NUMBER:

Join Senior Service Now Web-based Recruiting System (JASON)—Corporation-20.

HISTORY:

67 FR 4395, 4396, January 30, 2002; 67 FR 48616, 48616, July 25, 2002.

Dated: May 12, 2020.

Ndiogou Cisse,

Senior Agency Official for Privacy and Chief Information Officer.

[FR Doc. 2020–10478 Filed 5–14–20; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Rescindment of two system of records notices.

SUMMARY: The Corporation for National and Community Service (CNCS) is rescinding two systems of records named *Travel Files—Corporation-7* and *Travel Authorization Files—Corporation-16.* These two systems of records were used to manage information about employees and invitational travelers who traveled on official CNCS business.

DATES: You may submit comments until June 15, 2020. These system of records notices (SORNs) will be rescinded June 15, 2020 unless CNCS receives any timely comments which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by system name and number, to CNCS via any of the following methods:

1. Electronically through *regulations.gov.*

Once you access *regulations.gov,* locate the web page for these SORNs by searching for *Travel Files—Corporation-7* or *Travel Authorization Files—Corporation-16.* If you upload any files, please make sure they include your first name, last name, and the names of the SORNs being rescinded.

2. By email at *privacy@cns.gov.*

3. By mail: Corporation for National and Community Service, Attn: Chief Privacy Officer, OIT, 250 E Street SW, Washington, DC 20525.

4. By hand delivery or courier to CNCS at the address for mail between 9:00 a.m. and 4:00 p.m. Eastern Standard Time, Monday through Friday, except for Federal holidays.

Please note that all submissions received may be posted without change to *regulations.gov,* including any personal information.

FOR FURTHER INFORMATION CONTACT: Aaron Goldstein, (202) 606–3237, or by email at *AGoldstein@cns.gov.* Please include the system of records' name and number.

SUPPLEMENTARY INFORMATION: CNCS established and maintained two systems of records, *Travel Files—Corporation-7 and Travel Authorization Files—Corporation-16,* to manage information about employees and invitational travelers who traveled on official CNCS business. CNCS now participates in the General Services Administration (GSA) E-Gov Travel Service described at *http://www.gsa.gov/egovtravel.* The records that were handled according to *Travel Files—Corporation-7 and Travel Authorization Files—Corporation-16* are now handled according to GSA's government-wide SORN, *GSA/GOVT–4, Contracted Travel Services Program (74 FR 26700, July 6, 2009).* As such, CNCS is rescinding the *Travel Files—Corporation-7 and Travel Authorization Files—Corporation-16* system of records.

SYSTEM NAME AND NUMBER:

Travel Files—Corporation-7.

HISTORY:

67 FR 4395, 4402, January 30, 2002.

SYSTEM NAME AND NUMBER:

Travel Authorization Files—Corporation-16.

HISTORY:

67 FR 4395, 4409, January 30, 2002.

Dated: May 12, 2020.

Ndiogou Cisse,

Senior Agency Official for Privacy and Chief Information Officer.

[FR Doc. 2020–10477 Filed 5–14–20; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Rescindment of a system of records notice.

SUMMARY: The Corporation for National and Community Service (CNCS) is rescinding a system of records named *Employee/Member Occupational Injury/Illness Reports and Claim Files—Corporation-6.* The system of records was used to manage information about CNCS staff and full-time volunteers who filed workers' compensation claims under the Federal Employees' Compensation Act (FECA).

DATES: You may submit comments until June 15, 2020. This system of records notice (SORN) will be rescinded June 15, 2020 unless CNCS receives any timely comments which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by system name and number, to CNCS via any of the following methods:

1. Electronically through *regulations.gov.*

Once you access *regulations.gov,* locate the web page for this SORN by searching for *Employee/Member Occupational Injury/Illness Reports and Claim Files—Corporation-6.* If you upload any files, please make sure they include your first name, last name, and the name of the SORN being rescinded.

2. By email at *privacy@cns.gov.*

3. By mail: Corporation for National and Community Service, Attn: Chief Privacy Officer, OIT, 250 E Street SW, Washington, DC 20525.

4. By hand delivery or courier to CNCS at the address for mail between 9:00 a.m. and 4:00 p.m. Eastern Standard Time, Monday through Friday, except for Federal holidays.

Please note that all submissions received may be posted without change to *regulations.gov,* including any personal information.

FOR FURTHER INFORMATION CONTACT: Aaron Goldstein, (202) 606–3237, or by email at *AGoldstein@cns.gov.* Please include the system of records' name and number.

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor (DOL) Office of Workers' Compensation Programs administers the Federal workers' compensation program established by FECA. However, each agency must complete certain tasks when a claim is filed against that agency. CNCS previously established and maintained *Employee/Member Occupational Injury/Illness Reports and Claim Files—Corporation-6* to manage the records that CNCS collected to complete those tasks. After DOL published a government-wide SORN titled *DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File* (81 FR 25765, 25776, April 29, 2016), CNCS began using that SORN to handle the records. This makes *Employee/Member Occupational Injury/Illness Reports and Claim Files—Corporation-6* redundant, so CNCS is rescinding it.

SYSTEM NAME AND NUMBER:

Employee/Member Occupational Injury/Illness Reports and Claim Files—Corporation-6.

HISTORY:

67 FR 4395, 4402, January 30, 2002.

Dated: May 12, 2020.

Ndiogou Cisse,

Senior Agency Official for Privacy and Chief Information Officer.

[FR Doc. 2020–10480 Filed 5–14–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0128]

Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project in the Joint Warfare Analysis Center (JWAC) of the United States Strategic Command (USSTRATCOM)

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: Personnel demonstration project notice.

SUMMARY: This **Federal Register** Notice (FRN) serves as notice of the adoption of an existing STRL Personnel Demonstration Project by the Joint Warfare Analysis Center (JWAC), United States Strategic Command (USSTRATCOM). JWAC adopts, with some modifications, the STRL Personnel Demonstration Project implemented at the Air Force Research Laboratory (AFRL).

DATES: Implementation of this demonstration project will begin no earlier than May 15, 2020.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337; as amended, authorizes the Secretary of Defense (SECDEF), through the USD(R&E), to conduct personnel demonstration projects at DoD laboratories designated as STRLs.

1. Background

Many studies conducted since 1966 on the quality of the laboratories and personnel have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects have been approved. The demonstration projects are ''generally similar in nature'' to the Department of Navy's China Lake Personnel Demonstration Project. The terminology, ''generally similar in nature,'' does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

2. Overview

DoD published notice on November 21, 2019 in 84 FR 64283 that JWAC will adopt, with some modifications, the STRL personnel demonstration project published in 75 FR 53076, August 30, 2010, and implemented in the AFRL. Section 1105(b) of the NDAA for FY 2010, as amended by section 1104 of the NDAA for FY 2018, Public Law 115–91 authorizes JWAC in the USSTRACOM to implement an STRL personnel demonstration project.

Adoption of the AFRL's personnel demonstration project, with modifications, will enable JWAC to achieve the best workforce for its mission, adjust the workforce for change, improve workforce quality, and allow JWAC to acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientific and engineering professionals. Implementation of the JWAC personnel demonstration project (JWAC–DP) is essential for competitive hiring and retention of a highly qualified workforce.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this FRN will be available for use by the STRLs enumerated in section 1105 of the NDAA for FY 2010, Public Law 111–84 as amended, if they wish to adopt them in accordance with DoD Instruction 1400.37 (and its successor instructions) and after the fulfillment of any collective bargaining obligations.

4. Summary of Comments

Sixteen comments were received electronically via the Federal eRulemaking Portal regarding the Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project in the Joint Warfare Analysis Center (JWAC) of the United States Strategic Command (USSTRATCOM), **Federal Register**, 84 FR 64283, dated November 21, 2019. Of the 16 comments received, 4 were not relevant to this document and are not addressed. The remaining comments by topical area and a response to each are provided below

(1) Problems With the Present Systems

Comment: A commenter expressed concern about how this project will enable JWAC to compete with the private sector and other government agencies for the best talent and be able to make job offers in a timely manner with the appropriate monetary compensation and incentives, while not penalizing current employees.

Response: JWAC–DP flexibilities, such as broadbanding, flexible pay setting and direct hire authorities, will aid in attracting the highly sought after talent. The broadbanding structure and flexible pay setting authorities will enable management to offer more competitive starting salaries and broader pay ranges. The direct hire authorities will allow JWAC to target specific occupations and recruiting events and provide a more streamlined hiring experience for candidates. Nevertheless, pay setting actions will continue to be constrained by the JWAC civilian pay budget, which is not to be confused with the pay pool budget applicable to Contribution-based Compensation System (CCS) actions. Current employee salaries are an established part of the civilian pay budget and civilian pay funds will not be reallocated to disadvantage current employees. Rather, contribution-based pay parity is achieved through the CCS assessment process.

(2) Personnel Policy Board

Comment: A commenter asked a series of questions relating to section II. F. (Personnel Policy Board): ''How does the PPB ensure accountability? Is this information shared with all employees to help ensure accountability? If not, why? If this is done behind closed doors then what true accountability is there? Pay secrecy helps make it easier for management to be less accountable for their decision. Management may want to keep in mind that many civil servant salaries are actually published online for the entire world to see—with names. If that is appropriate then is it 100% appropriate for fellow employees within JWAC to have at a minimum a full picture of what awards were given out. I am not suggesting to include names, but the monetary information should be visible to all.''

Response: The Personnel Policy Board (PPB) ensures reasonable transparency and appropriate accountability by publishing information such as the annual compensation strategy, to include pay pool funding decisions, pay pool process guidance, an aggregate rollup of CCS results, and any changes to the JWAC–DP policies. The responsibilities of the PPB will be detailed in the JWAC internal operating procedures (IOPs), which will be available to all employees. Additionally the PPB will review the results of the

evaluation described in Section VII and will publish its conclusions.

(3) Pay Setting

Comment: A commenter asked whether there would be service obligation periods for employees receiving a bonus (*e.g.,* recruitment, retention, or relocation) to prevent employee attempts to ''game'' the system by taking a bonus and then leaving immediately.

Response: Use of these pay setting flexibilities will be governed by internal JWAC IOPs which will require a continued service agreement for such bonuses.

Comment: A commenter asked a series of questions about the ''demo bonus'' available to employees converting into or hired into JWAC–DP: ''Where does this money come from? If it is from the general pot of money how does offering bonuses to new employees not penalize existing employees as money would be taken out of the pot of money being divided for yearly payouts? Under pay setting ''demo bonus'': Why is the limitation on the bonuses allowed with the total compensation not to exceed Level 1 of the Executive schedule? That appears to mean that the bonus could potentially be between 76,941 and 198,958! These potential bonuses seem excessive as well as seem like an excessive amount of leeway being given to management. While someone being given almost a 200K sign on bonus seems implausible, why is it even a granted option? Wouldn't this be better written as a ''demo bonus'' up to X-thousand dollars can be given, where total compensation for the year does not exceed Level 1 of the Executive Schedule? On the flip side to retain a highly preforming employee with an 'alternative employment opportunity' that employee can only be offered a bonus up to 50% of one year of base pay. This means a maximum of 68,329.50. (This authority in itself seem excessive!) So in order to retain a proven worker JWAC is authorized to give a bonus smaller than the bonus authority authorized to get a new-unproven employee? Where does all this money come from, and how does awarding these bonuses not affect the pay of other employees?''

Response: While the flexible pay setting authority is meant to help the JWAC compete with private industry for high quality candidates, pay setting actions will continue to be constrained by the JWAC civilian pay budget which does not reallocate funds to disadvantage existing employees. Moreover, JWAC–DP will continue to apply the aggregate pay limitations in section 5307 of Title 5, United States Code (U.S.C.) and part 503, subpart B of title 5 of the Code of Federal Regulations (CFR). Under these provisions, an employee's total monetary compensation (to include base pay and bonuses) may not exceed the basic rate of pay in level I of the Executive Schedule ($219,200 for calendar year 2020). To recruit top talent, management is otherwise afforded significant flexibility to develop a compensation package, to include annual pay and bonus, based on the employee's academic qualifications, competencies, experience and anticipated contributions.

Comment: A commenter asked what limits are placed on how much students returning to duty at JWAC can be paid incentives/bonuses?

Response: The PPB will determine the use and the financial limits of this incentive. The initial incentive payment may be based on anticipated expenses, or a portion thereof. Documentation, to include receipts of actual expenses, must be provided by the student to validate initial incentive payment and support potential future payments. Actual expenses may include airline tickets, rental car, van rental, driving cost from each location, and lodging. Management has the discretion to determine the appropriate incentive amount, which may or may not cover all expenses. Payments may be made incrementally (*e.g.,* monthly, quarterly). This authority is not intended to pay moving expenses in conjunction with permanent appointment action.

(4) CCS

Comment: A commenter expressed concerns with the use of the word ''perceived'' in relation to employee accomplishments.

Response: The word has been removed.

Comment: A commenter asked a series of questions about application of the General Pay Increase (GPI) to pay calculations: ''Are the rails moved FIRST and then it is determined if someone falls within the rails or above or below? Or is the location determination made first and then the rail moved? What happens if (when) a late or even retroactive basic pay rate increase occurs? All this could affect if someone gets the basic rate increase or not. (Ex: someone was just above the rail so they would not automatically get any late general basic pay rate).''

Response: Rail position is based on the current year's pay. Retroactive changes to the General Pay Increase (GPI) do not affect pay calculations, but only affect the amount of the GPI payout. Once the retroactive increase is approved and ready to be processed, revised pay transactions are sent through the personnel and pay systems to update pay. The current STRL demonstration projects followed this process with the retroactive change in GPI for 2019.

Comment: A commenter asked what concrete steps have been taken to ensure that compensation bias does not affect the outcomes of this program.

Response: The question does not identify the the bias of concern. The Office of Personnel Management (OPM) reviewed how various demographics have fared under the STRL personnel demonstration projects and found the STRL results to be similar to GS employees. The Meetings of Managers process used in this compensation system helps to alleviate bias by using a group of managers who have been provided objective criteria to make compensation decisions. Additionally, the PPB will review and analyze annual CCS and evaluation results, and make overall policy changes as needed.

Comment: A commenter made the following observations about opportunities for employees to increase contribution levels in order to receive pay increases: ''As this system is so dependent on 'contribution' what concrete steps are being taken to ensure that ALL employees are given equal opportunity to contribute in a significant way? In other words what does management do to ensure that every year, every employee has the opportunity to advance and be rewarded equally? This cannot be left up to the employee. Perhaps the employee is doing a valid job that takes 100% of their time, but it is not an appreciated job. Employees are not aware of all the opportunities that are available, so they can't ask for an opportunity. And, of course they don't control what they are given, even if they asked for new opportunities. As an example: Say my given job was to empty the trash. It takes all day and I don't have time to do anything else. No one else is willing to do this job. People don't seem to appreciate the contribution I make when the trash is emptied, but there will certainly be criticism if the job is NOT done. Thus we don't give credit for a good job being done which is a required (and very important) job. In other words the true contribution is not acknowledged except in the negative. If this job is going to continue to be discounted then what opportunity will I be given to learn and practice a new skill which makes a greater 'contribution'? Or as a flip side, what steps will be taken to ensure that when

management rates me, my 'contribution' is truly appropriately acknowledged? The multiple level evaluations do not seem to alleviate this issue. How is the actual opportunities the employee was given taken into account? If they are, how will management ensure that the general population actually believes this is true? How will management prove it to the general worker? Bottom line: If an employee is not given an opportunity to 'contribute' in a significant way how is the salary/award outcome fair and equal in this system?''

Response: The employee and the supervisor must work together to ensure that assigned duties and tasks contribute to the mission. Both the employee and the supervisor should be able to articulate the relevance and the impact of the work. An employee's expected contribution is determined by the current level of base pay and the duties of the job as defined in the Statement of Duties and Experience. As long as the employee contributes at the level of the current level of pay, the employee will receive the GPI each year. To receive more than the GPI, the employee must contribute at a higher level. For example, this may involve expanding the duties of the job or performing the duties in a manner that is more efficient. However, when additional contribution opportunities for a certain level of pay or occupation become limited, an employee may need to pursue a higher level position in order to obtain greater compensation opportunities.

(5) JWAC–DP Training

Comment: A commenter questioned whether the JWAC–DP Training provided during transition will lead to program commitment on the part of the participants.

Response: Training is a key component of JWAC preparation for a smooth transition. Training is expected to increase the rate of change management success, encourage belonging, provide clarity and understanding, and promote employee engagement. This section has been revised to better convey JWAC's intent to provide workforce training in order to ease employee concerns about moving to a new system.

(6) Evaluation Plan

Comment: A commenter asked whether an evaluation has been conducted for the existing STRL programs to ensure that there is no detriment to employees' pay and bonuses based on sex, race, or any other protected class and, if so, where the evaluation results are published.

Response: Evaluations conducted by various public and private organizations over the last 40 years are maintained by those organizations. The Office of Personnel Management (OPM) published evaluation reports in the early years of the STRL demonstration projects but no longer does, Each STRL is responsible for conducting and maintaining their own evaluations. JWAC will be required to do the same, as outlined in the FRN.

(7) Terminology Clarification

Comment: A commenter questioned the use of the gender pronouns ''his'' and ''her'' because some may believe that they exclude non-binary employees.

Response: Although use of such pronouns is not objectionable, they are not necessary for the purposes of this FRN and have been removed.

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I. Executive Summary

JWAC is a global warfighting organization and a subordinate organization of the USSTRATCOM. JWAC provides targeting analysis to combatant commands, Joint Staff, and other customers including effects-based, precision targeting options for selected networks and nodes in order to carry out the national security and military strategies of the U.S. during peace, crisis, and war. In order to enable military forces to rapidly achieve U.S. national security objectives, JWAC relies on the analysis of a variety of engineering, scientific, intelligence, and social science disciplines. The analytical and research teams apply social and physical science techniques and engineering expertise to provide quick-turn-around solutions to support the warfighter. Further, JWAC conducts research and development of new methodologies and technologies to advance technical analysis of critical networks and provide more targeting options against emerging threats.

JWAC must be able to acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientists and engineers, and must have in place a system that fosters their development, enhances their contribution and experience, and provides a strong retention incentive.

II. Introduction

A. Purpose

The purpose of JWAC—DP is to demonstrate that the effectiveness of DoD laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. JWAC—DP will provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products.

B. Problems With the Present System

1. JWAC has a proven history of providing the warfighter with targeting recommendations that break free from attrition warfare and focus on striking the enemy at the point that produces the greatest advantage for friendly forces. It has the ability to provide recommendations that can prevent war and, if necessary, help our nation win in time of conflict. To achieve its mission, JWAC must acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientific and engineering professionals.

2. The Civil Service General Schedule (GS) personnel system has several major inefficiencies that hinder management's ability to recruit and retain the best-qualified personnel. Line managers have only limited authority to manage personnel resources, and existing personnel regulations are often in conflict with management's ability to support JWAC's mission. Current personnel action processes and

procedures cause delays in recruiting, reassigning, promoting, and removing employees.

3. The GS classification system rigidly defines types of work by occupational series and grade, with very precise qualifications for each job which are then classified by complex classification standards, causing lengthy hiring delays, and limiting the manager's ability to offer competitive compensation. This system does not easily or quickly respond to changes in the work based on mission requirements. One of the JWAC—DP's goals is to support simplified classification processes that can be accomplished quickly and efficiently at the lowest level of management.

4. JWAC must be able to compete with the private sector and other government agencies for the best talent and be able to make job offers in a timely manner with the appropriate monetary compensation and incentives to attract high quality employees. JWAC must successfully compete for high quality scientists and engineers locally with Naval Surface Warfare Center (NSWC) Dahlgren Division, an established STRL, and the public and private sector across the National Capital Region. Today, other STRLs can make an employment offer, at a much higher salary, to a promising candidate before JWAC can prepare the paperwork necessary to begin the recruitment process.

C. Expected Benefits

1. This project is expected to demonstrate that a human resources system tailored to the mission and needs of JWAC will result in:

a. Increased quality in the total workforce and the products they produce;

b. increased timeliness of key personnel processes;

c. increased retention of high contributing employees;

d. increased employee satisfaction with the laboratory; and

e. improved procedures for effectively and efficiently dealing with poor contributors.

2. The JWAC–DP builds on the successful features of existing demonstration projects, including the AFRL's. For the JWAC–DP to achieve the same results it must enable and enhance:

a. The ability to attract highly qualified scientific, technical, business, and support employees in today's competitive environment;

b. the ability to select personnel and make job offers in a timely and efficient manner, with the competitive compensation that attracts high-quality, in-demand employees;

c. employee satisfaction with pay setting and adjustment, recognition, and career advancement opportunities;

d. human resources (HR) flexibilities needed to staff, shape, and adjust to evolving requirements associated with sustaining a quality workforce for the future; and

e. retention of high-level contributors.

3. To effectively meet the above expectations, the JWAC–DP has identified and established in this notice those features and flexibilities that provide the mechanisms to achieve its objectives. Those features and flexibilities alone, however, will not ensure success. The nature of the JWAC–DP and its ambitious workforce goals will require HR support at an enhanced level. A traditional process-oriented and reactive construct will serve neither the mission nor the management needs of the organization. The JWAC–DP's emphases include its streamlined hiring, a sophisticated contribution-based compensation system, talent acquisition/retention, and professional human capital planning and execution. Accordingly, successful execution of that vision includes an HR service delivery model that is highly proactive, expertly skilled in analytical tools, and fully capable of engaging as a strategic partner and trusted agent of a modern multi-faceted organization.

D. Participating Employees

1. The JWAC–DP will cover civilian appropriated fund employees in the competitive and excepted service, unless otherwise excluded. Personnel added to the laboratory after implementation either through appointment, conversion, promotion, reassignment, change to a lower grade, or where their functions and positions have been transferred into the laboratory will be converted to the demonstration project.

2. Senior Executive Service (SES) members, Defense Civilian Intelligence Personnel System (DCIPS, pay plan GG) positions, and Department of Air Force (DAF) centrally funded interns and recent graduates appointed under the Pathways Program are not covered in the demonstration project.

3. DAF centrally funded interns and recent graduates will convert to the JWAC—DP once they have successfully completed a formal development program and converted to a competitive position in JWAC. Performance appraisals will be conducted using the Defense Performance Management and Appraisal Program (DPMAP) until such employees are converted to the JWAC—DP.

E. Project Design

The JWAC–DP was designed and led by a cross-functional team comprised of the Director or Deputy Director and other senior leaders representing each JWAC directorate. The design team was augmented and supported by volunteers from across JWAC to support the iterative development, assessment and evaluation of all of the elements of the JWAC–DP design. The team composition represented all career fields and utilized their vast experience in the current systems and authorities as well as previous DoD personnel management systems. The design team reviewed and considered all existing STRL designs through detailed reviews of the published FRNs, exchanges with other STRL program managers, and organizational site visits to leverage the experience and lessons-learned of existing, mature STRL designs. The JWAC design team relied heavily on subject-matter-expertise that has been supporting the AFRL demonstration project's design and revisions, as well as demonstration projects that have been utilized at other STRLs, some for over 20 years. The JWAC–DP design is grounded in the AFRL demonstration project's design, and takes advantage of authorities and design elements from other DoD laboratories and personnel systems applicable to JWAC. The JWAC–DP design team utilized an iterative approach of reviews and a series of mock activities to develop, test, and exercise the JWAC–DP design proposal, including a JWAC-wide workforce critique of the draft FRN. The design is focused on recruiting and hiring authorities and flexibility as well as a contribution-based compensation system. This FRN adopts hiring authorities currently utilized by other DoD STRL Personnel Demonstration Projects.

F. Personnel Policy Board

JWAC has created a Personnel Policy Board (PPB) to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishing internal controls and accountability. The PPB Chairperson and members of the board are senior JWAC managers appointed by the JWAC Commander and documented in internal operating procedures (IOPs). The PPB Chairperson serves as the pay pool manager and must report directly to the JWAC Commander. Ad hoc members can be assigned at the discretion of the JWAC Commander to

provide subject matter expertise or to advise the PPB. The establishment of this Board shall not affect the authority of any management official in the exercise of their management rights set forth in 5 U.S.C. 7106(b)(1). The PPB is tasked with the following:

1. Formulating and managing the civilian pay pool budget;
2. Determining the composition of the pay pool in accordance with the guidelines of this proposal and internal procedures;
3. Reviewing operation of JWAC's pay pool process;
4. Providing guidance to the pay pool process;
5. Reviewing seamless broadband level movements;
6. Reviewing Accelerated Compensation for Developmental Position (ACDP) increases;
7. Monitoring award pool distribution by organization or any other special categorization;
8. Assessing the need for and making changes to the JWAC–DP policies when needed to further define specific flexibilities to ensure standard application across the organizational units;
9. Ensuring all budget decisions are in alignment with funding sponsor's fiscal guidelines and boundaries; and
10. Ensuring that all employees are treated in a fair and equitable manner in accordance with all policies, regulations, and guidelines covering this demonstration project.

III. Personnel System Changes

A. Hiring and Appointment Authorities

1. Description of Hiring Process

JWAC is implementing a streamlined examining process as demonstrated in other STRLs. This applies to all covered positions in JWAC, with the exception of Senior Executive Service (SES) and DAF centrally funded interns and students. This process includes coordination of recruitment and public notices, the administration of the examining process, the certification of candidates, and selection and appointment consistent with merit system principles, to include existing authorities under title 5 U.S.C. and title 5 of the CFR. The ''rule of three'' is eliminated, similar to the authorities granted to AFRL in 75 FR 53076, August 30, 2010. When there are no more than 15 qualified applicants and no preference eligible applicants, all qualified applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking are required only when the number of qualified candidates exceeds 15 or there is a mix of preference eligible and non-preference eligible applicants. Statutes and regulations covering veterans' preference are observed in the selection process and when rating and ranking are required.

The JWAC Commander is delegated authority, with respect to a JWAC employee, to administer the oath of office required by 5 U.S.C. 3331, incident to entrance into the executive branch or any other oath required by law in connection with employment in the executive branch.

2. Direct Hiring Authorities

The JWAC–DP will use the direct-hire authorities authorized by section 1108 of the NDAA for FY 2009 as amended by section 1103 of the NDAA FY 2012 and in 10 U.S.C. 2358a to non-competitively appoint the following:

a. Candidates with advanced degrees to scientific and engineering positions;
b. Candidates with bachelor's degrees to scientific and engineering positions;
c. Veteran candidates to scientific, technical, engineering, and mathematics positions (STEM), including technicians; and
d. Student candidates enrolled in a program of instruction leading to a bachelors or advanced degree in a STEM discipline.

3. Distinguished Scholastic Achievement Authority (DSAA): The JWAC–DP will use the Distinguished Scholastic Achievement Authority (DSAA) to non-competitively appoint candidates possessing a bachelor's degree or higher to Science and Engineering positions, Business Management and Professional positions or Technician positions, up to the equivalent of GS–12 (DR–II or DO–II). Candidates may be appointed using this authority provided all of the following conditions are met: the candidate meets the minimum standards for the position as published in OPM's operating manual, ''Qualification Standards for General Schedule Positions,'' plus any selective factors stated in the vacancy announcement; the occupation has a positive education requirement; and the candidate has a cumulative grade point average of 3.5 or better (on a 4.0 scale) in those courses in those field's of study that are specified in the Qualifications Standards for the occupational series.

Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligible candidates who meet the above criteria will be considered ahead of non-preference eligible candidates. In making selections, to pass over any preference eligible candidate(s) to select a non-preference eligible candidate requires approval under applicable DA pass-over or objection procedures. Distinguished Scholastic Achievement Appointments will enable JWAC to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements.

4. Flexible Length and Renewable Term Technical Appointments (Flexible Term Appointment): Non-permanent positions (exceeding one year) needed to meet fluctuating or uncertain workload requirements may be competitively filled using the Flexible Length and Renewable Term Technical Appointment Authority, authorized in section 1109 of NDAA FY16, Section 1109, as amended by section 1112 of NDAA FY19 and described 82 FR 43339, 43340, or the Contingent Employee Appointment Authority authorized in 62 FR 34876, 34899.

Employees hired for more than one year, under the Contingent Employee Appointment Authority (CEAA), are given modified term appointments in the competitive service for up to five years. The JWAC Commander is authorized to extend a contingent appointment for up to one additional year.

Using the Flexible Length and Renewable Term Technical Appointment Authority (FLRTTA), a modified term scientific or technical position may be filled for any period of more than one year but not more than six years, and may be extended in up to six year increments at any time.

Employees hired under these appointment authorities may be eligible for conversion to career appointments. To be converted from CEAA or FLRTTA, the employee must (a) have been selected for the term position under an announcement or public notice specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date without further competition; (b) served two years of substantially continuous service in a term position; and (c) have a current rating of acceptable or better.

Employees serving under term appointments at the time of conversion to the STRL Demonstration Project will be converted to new term contingent employee appointments. Time served in term positions prior to conversion to the contingent employee appointment is creditable to the requirement for two years of continuous service stated above, provided the service was continuous.

5. Reemployed Annuitants and Voluntary Early Retirement Authority

and Voluntary Separation Incentive Payment: The JWAC Commander may appoint reemployed annuitants and/or offer Voluntary Early Retirement Authority (VERA)/Voluntary Separation Incentive Payment (VSIP) packages as described in 82 FR 43339, September 15, 2017, to shape the mix of technical skills and expertise in the workforce.

6. Probationary Period. The probationary period will be three years for all newly hired employees, including individuals entering the JWAC–DP after a break in service of 30 calendar days or more. Employees who enter the JWAC–DP with a break in service of less than 30 calendar days are not required to complete an extended probationary period if their previous service was in the same line of work as determined by the employee's actual duties and responsibilities upon reappointment. Current permanent Federal employees hired into the JWAC–DP are not required to serve a new probationary period. Any employee appointed prior to the date of this FRN will not be affected.

Employees on non-status appointments (appointments that are time-limited or nonpermanent and from which employees do not acquire competitive status) will be subject to the probationary period required by their appointing authority. Upon conversion from a non-status appointment to a competitive service appointment, employees will be required to serve a three-year probationary period. However, employees serving on a Flexible Length and Renewable Term Technical Appointment will serve a three-year trial period (in accordance with (IAW) 5 CFR 316.304 except that rather than a one-year trial period, it is a three-year trial period). Upon conversion to competitive service, any periods of employment served during a non-status appointment or a flexible term appointment will be counted toward the completion of the extended probationary period.

All other features of the current probationary period are retained, including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Probationary employees will be terminated if an employee fails to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When the JWAC Commander or designee decides to terminate an employee serving a probationary period because their work performance or conduct during this period fails to demonstrate fitness or qualifications for continued employment, the employee will be provided written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated will, as a minimum, consist of the manager's conclusions as to the inadequacies of their performance or conduct.

Supervisory probationary periods will be made consistent with 5 CFR 315.901. Employees that have successfully completed the initial probationary period will be required to complete an additional one year probationary period for the initial appointment to a supervisory position. If, during the supervisory probationary period, the decision is made to return the employee to a nonsupervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower payband and pay than the position from which promoted.

7. Qualification Determinations: A candidate's basic eligibility will be determined using OPM's ''Qualification Standards Handbook for General Schedule Positions.'' Selective placement factors may be established in accordance with OPM's Qualification Handbook when determined to be critical to successful position contribution. These factors are communicated to all candidates for particular position vacancies and must be met for basic eligibility.

a. Science and Engineering (S&E) (Pay Plan DR) Career Path: This career path includes technical professional positions, such as engineers, physicists, chemists, metallurgists, mathematicians, operations research analysts, and computer scientists. Additional occupational series may be added in the future. Employees in these positions require specific course work or educational degrees. Five broadband levels have been established for the S&E career path:

- Band level I minimum eligibility requirements are consistent with the GS–07 qualifications.
- Band level II minimum eligibility requirements are consistent with the GS–12 qualifications.
- Band level III minimum eligibility requirements are consistent with the GS–14 qualifications.
- Band level IV minimum eligibility requirements are consistent with the GS–15 qualifications.
- Band level V minimum eligibility requirements are above the GS–15 qualifications. This band is limited to senior scientific technical manager (SSTM) positions, the primary functions of which are to engage in research and development in the physical, biological, medical or engineering sciences or another field closely related to the mission of the JWAC; and to carry out technical supervisory responsibilities. The number of such positions shall not exceed two percent of the number of scientists and engineers employed at JWAC.

b. Business Management and Professional (Pay Plan DO) Career Path: This career path supports the S&E mission, and includes specialized positions such as finance, acquisition, human resources, IT services, and administrative specialists. Employees may or may not be required to have specific course work or degrees to qualify for these positions. Four broadband levels have been established for the Business Management and Professional career path:

- Band level I minimum eligibility requirements are consistent with the GS–07 qualifications.
- Band level II minimum eligibility requirements are consistent with the GS–12 qualifications.
- Band level III minimum eligibility requirements are consistent with the GS–14 qualifications.
- Band level IV minimum eligibility requirements are consistent with the GS–15 qualifications.

c. Technician (Pay Plan DX) Career Path: This career path is associated with and supportive of a professional field and may involve substantial elements of the work of the professional field, but requires less than full knowledge of the field involved. It includes positions such as Engineering Technician and Electronics Technician. Employees in these positions may or may not require specific course work or educational degrees. Four broadband levels have been established for the Technician career path:

- Band level I minimum eligibility requirements are consistent with the GS–01 qualifications.
- Band level II minimum eligibility requirements are consistent with the GS–05 qualifications.
- Band level III minimum eligibility requirements are consistent with the GS–08 qualifications.
- Band level IV minimum eligibility requirements are consistent with the GS–11 qualifications.

d. Mission Support (Pay Plan DU) Career Path: This career path includes positions for which specific course work or educational degrees are not required. This career path includes clerical work, that usually involves the processing and maintaining of records, as well as assistant work, that requires knowledge of methods and procedures within a

specific administrative area. Examples of positions within this career path include secretaries, office automation clerks, and budget/program/computer assistants.

- Band level I minimum eligibility requirements are consistent with the GS–01 qualifications.
- Band level II minimum eligibility requirements are consistent with the GS–05 qualifications.
- Band level III minimum eligibility requirements are consistent with the GS–07 qualifications.
- Band level IV minimum eligibility requirements are consistent with the GS–09 qualifications.

8. Temporary Promotions and Details: JWAC may detail its employees to higher broadband level positions and temporarily promote employees for up to one year within a 24-month period, with or without competition, and may extend such detail or promotion by one additional year, similar to the authority adopted by the AFRL in 75 FR 53076, August 30, 2010.

B. Pay Setting

1. Management has authority to establish appropriate basic pay for employees converting into or hired by the JWAC—DP. The basic pay of newly hired personnel will be at a level consistent with the expected contribution of the position. The expected contribution is based on the employee's academic qualifications, competencies, and experience, as well as the position's scope and level of difficulty. Except for Senior Scientific Technical Manager (SSTM) positions, basic pay is limited to an amount equal to GS–15, step 10 pay. A demo bonus (a lump sum payment made to an employee) may be provided to employees converting into or hired by the JWAC–DP. An employee's total monetary compensation paid in a calendar year may not exceed the basic rate of pay paid in level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Further details will be published in the IOP.

2. The JWAC Commander is authorized to approve retention, recruitment, and relocation incentives. Unless specifically amended by this notice, the eligibility and documentation requirements in 5 CFR part 575 remain in effect.

3. The JWAC Commander may offer a retention counteroffer to retain high performing employees with critical scientific or technical skills who present evidence of an alternative employment opportunity with higher compensation. Such employees may be provided increased base pay (up to the ceiling of the pay band) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. Retention counteroffers, either in the form of a base pay increase or a bonus, count toward the aggregate limitation on pay consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Further details will be published in the IOP.

4. Student recruitment is currently limited to the local commuting area because college students often cannot afford to temporarily relocate to the Dahlgren area while enrolled at schools outside of the local commuting area. To expand recruitment to top universities, the authority in 5 CFR part 575 is expanded to allow management to pay a relocation incentive/bonus each time a student returns to duty to JWAC. The PPB will determine the use and the financial limits of this incentive. The initial incentive payment may be based on anticipated expenses, or a portion thereof. Documentation, to include receipts of actual expenses, must be provided by the student to validate initial incentive payment and for determining potential future payments. Actual expenses may include the cost of airline or other commercial transportation, rental vehicles, fuel, and lodging. Management has the discretion to determine the appropriate incentive amount, which may or may not cover all expenses. Payments may be made incrementally (*e.g.,* monthly, quarterly). This authority is not intended to pay moving expenses in conjunction with a permanent appointment.

5. Accelerated Compensation for Developmental Positions (ACDP): The JWAC Commander may authorize an increase to basic pay for employees participating in training programs, internships, or other development capacities. ACDP will be used to recognize development of job related competencies as evidenced by successful contribution to the JWAC.

The use of ACDP is limited to employees in pay bands I and II in the Business Management and Professional and S&E career paths. Additional guidance will be published in an IOP.

6. Maintained Pay: The JWAC–DP will eliminate retained grade and retained pay and will adopt ''maintained pay'' provisions similar to those utilized in AFRL (75 FR 53076). An employee may be entitled to maintain the employee's current rate of basic pay if, as a result of personnel actions that would entitle the employee to grade or pay retention under Title 5, the employee is placed in a payband where the employee's current rate of basic pay exceeds the maximum rate of basic pay for the pay band. At the time of conversion, an employee on grade retention will be converted to the career path and broadband level based on the assigned permanent position of record, not the retained grade. An employee's adjusted pay will not be reduced upon conversion. Implementing instructions will be documented in IOPs.

C. Broadbanding

JWAC–DP will use a broadbanding approach to compensation and classification. A broadbanding structure will simplify the classification system, reduce the number of distinctions between levels of work, and facilitate delegation of classification authority and responsibility to line managers.

The broadbanding structure replaces the GS structure. Table 1 shows the four broadband levels in each career path, labeled I, II, III, IV, and the additional broadband level, labeled V, for SSTM positions in the S&E career path. The broadband levels are designed to enhance pay progression and to allow for more competitive recruitment of quality candidates at differing rates within the appropriate broadband level(s). Competitive promotions will be less frequent and movement through the broadband levels will be a more seamless process. Like the broadbanding system used at AFRL, advancement within each band is based upon contribution.

The four distinct career paths within JWAC–DP are: S&E, Business Management and Professional, Technician, and Mission Support.

1. S&E (Pay Plan DR)

- Band I includes the current GS–7 through GS–11;
- Band II includes the current GS–12 through GS–13;
- Band III includes the current GS–14;
- Band IV includes the current GS–15;
- Band V SSTM positions above GS–15.

2. Business Management and Professional (Pay Plan DO)

- Band I includes the current GS–7 through GS–11;
- Band II includes the current GS–12 through GS–13;
- Band III includes the current GS–14;
- Band IV includes the current GS–15.

3. Technician (Pay Plan DX)

- Band I includes the current GS–1 through GS–4;
- Band II includes the current GS–5 through GS–7;

• Band III includes the current GS–8 through GS–10;

• Band IV includes the current GS–11 through GS–12.

4. Mission Support (Pay Plan DU)

• Band I includes the current GS–1 through GS–4;

• Band II includes the current GS–5 through GS–6;

• Band III includes the current GS–7 through GS–8;

• Band IV includes the current GS–9 through GS–10.

Comparison to the GS grades was useful in setting the upper and lower dollar limits of the broadband system; however, once employees are converted or hired into the JWAC–DP, GS grades and steps no longer apply.

TABLE 1. BROADBANDING SYSTEM

Career Paths	Corresponding GS Grades															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
	Band Structure															
Scientists & Engineers							DR-I					DR-II		DR-III	DR-IV	DR-V
Business Mgt/Professional							DO-I					DO-II		DO-III	DO-IV	
Technician	DX-I				DX-II			DX-III			DX-IV					
Mission Support	DU-I				DU-II		DU-III		DU-IV							

The JWAC–DP will use the authority in title 10 U.S.C. 2358a to expand the S&E career path to include a broadband level V. This broadband level is designed for SSTM positions, the primary functions of which are: (1) To engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the JWAC mission; and (2) to carry out technical supervisory responsibilities. The SSTM positions will be similar to those described in 79 FR 43722. Panels will be created to assist in filling SSTM positions. Panel makeup will be included in the IOPs. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level. Vacant SSTM positions will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory abilities.

Upon the implementation of the JWAC–DP, and periodically thereafter, the JWAC Commander will review organizational and mission requirements, and where appropriate, may modify the duties of existing SSTM positions and/or the total number of SSTM positions. Consistent with 10 U.S.C. 2358a, the total number of SSTM positions may not exceed two percent of the number of scientists and engineers employed at the JWAC as of the close of the last fiscal year before the fiscal year in which any additional appointments are made. The minimum basic pay for SSTM positions is 120 percent of the minimum rate of basic pay for GS–15. Maximum SSTM basic pay with locality pay is limited to Executive Level III (EX–III), and maximum salary without locality pay may not exceed EX–IV. The contribution management system used to evaluate an SSTM employee will be documented in the JWAC IOPs.

D. Classification

1. Statement of Duties and Experience (SDE)

Under the JWAC–DP's simplified classification system, the SDE replaces the DAF Form 1003 Air Force Core Personnel Document (CPD). The SDE includes a description of position-specific information; identifies the career path, occupational series and broadband level; includes the factors and descriptors for the assigned career path and broadband level; and provides data element information pertinent to the position.

2. Occupational Series

The present system of OPM classification standards is used for the identification of proper series and occupational titles of positions within the JWAC–DP. The OPM occupational series scheme, which frequently provides well-recognized disciplines with which employees are to be identified, is maintained and facilitates movement of personnel into and out of the JWAC–DP. Other series may be added as the need for new competencies emerges within the JWAC environment.

3. Classification Factors and Descriptors

Current OPM Position Classification Standards will not be used to grade positions in the JWAC–DP. JWAC's factors and descriptors will describe the level of work expected for each broadband level in each career path. The AFRL classification factors and descriptors published in 75 FR 5076, August 30, 2010, and OPM classification guidance will be used as a framework to develop JWAC specific factors and descriptors (see Appendix B). The JWAC–DP factors and descriptors will also be used for the annual Compensation-based Contribution System (CCS) employee assessments (Section III., E. 3). Factors and descriptors will be documented in JWAC IOPs.

4. Classification Authority

The JWAC Commander will have classification authority and may, in-turn, re-delegate this authority to appropriate levels. HR Specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. The final classification decision will be documented on the SDE.

5. Classification Process

The SDE is developed using the following process:

a. The supervisor identifies the organizational location, SDE number, and the employee's name. The supervisor selects the appropriate occupational series, pay plan, broadband level, and title; the level factor descriptors corresponding to the broadband level that is most commensurate with the level of contribution necessary to accomplish the duties and responsibilities of the position; and the Defense Civilian Personnel Data System (DCPDS) supervisory level. The classification system is not hierarchical, meaning that a supervisor's broadband level is based on the contributions the employee has made to the organization, and not based on the broadband level of subordinate

employees, as is typical under other personnel systems. Therefore, supervisors may be at the same, lower, or higher broadband level than the employees they supervise.

b. The supervisor selects a brief description of the primary purpose of the position making sure the description is consistent with the series and title chosen for the position. The supervisor chooses statements pertaining to physical requirements; competencies required to perform the work; and special licenses or certifications needed. Based on the supervisory level of the position, the system produces mandatory statements pertaining to affirmative employment, safety, and security programs.

c. The supervisor selects other position data, such as position sensitivity and drug testing requirements. The supervisor also selects the Fair Labor Standards Act (FLSA) status. The FLSA status selection must be in accordance with OPM guidance and HR Specialists may advise management as necessary. The data elements are maintained as a separate page of the SDE (*i.e.,* an addendum) and may be changed as needed, without creating and classifying a new SDE.

d. The supervisor makes a recommended classification, then signs and dates the document. The supervisor sends the SDE to the classification authority for classification. The classification is finalized when the classification official signs and dates the SDE. The SDE development process incorporates definitions for the CCS supervisory levels, and occupational series as appropriate.

E. Contribution-Based Compensation System (CCS)

1. Overview

The CCS is a contribution-based assessment system that goes beyond a performance-based rating system. The CCS measures the employee's contribution to the organization's mission, the contribution level, and how well the employee performed a job. Contribution is defined as the measure of the demonstrated value of what an employee did in terms of accomplishing or advancing the organizational objectives and mission impact. The purpose of the CCS is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the JWAC workforce. It is essential for the development of a highly productive workforce and to provide management, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products. The CCS allows for more employee involvement in the assessment process, increases communication between supervisors and employees, promotes a clear accountability of contribution, facilitates employee career progression, provides an understandable basis for basic pay changes, and delinks awards from the annual assessment process. The CCS process described herein applies to broadband levels I through IV. The assessment process for broadband level V positions will be documented in the JWAC IOPs.

2. Factors and Descriptors

Each factor (*e.g.,* Communication, Technology/Business Management, Problem Solving, and Teamwork/Leadership) has descriptors that describe increasing levels of contribution corresponding to each broadband level. The same factors and descriptors will be used for classification and for the annual CCS employee assessments. The factors and descriptors for the appropriate career path will be used by the rating official to determine the employee's overall contribution score (OCS). Employees can score within, above, or below the range for their broadband level. For example, a broadband level II employee could score in the broadband level I, II, III, or IV range. Therefore, supervisors utilize all factors and descriptors to determine each employee's contribution assessment.

3. CCS Assessment Scoring

The annual CCS assessment scoring process begins with employee input, which provides employees with an opportunity to communicate their accomplishments and level of contribution to their supervisors. An employee's basic pay determines an expected score when plotted on the appropriate career path Standard Pay Line (SPL) (discussed in section III.E.4).

Each career path has its own SPL based on the salary range established for that career path. Scores have a direct relationship with basic pay; therefore, the significance of an employee's actual score is not known until it is compared to their expected score. For instance, an employee in the Mission Support career path with a basic pay rate of $33,091 in 2018 would have an expected score of 2.25, while an employee in the Business Management and Professional career path with a basic pay rate of $74,705 would have the same expected score. The comparison between expected score and OCS provides an indication of equitable compensation, under-compensation, or overcompensation. (Typically, employees who are overcompensated are not meeting contribution expectations and may be placed on a Contribution Improvement Plan, described in further detail in section III.F.) Broadband levels in each career path have the same expected score range, as depicted in Table 2 below, which also includes the 2018 basic pay ranges for each broadband level. As the general basic pay rates increase annually, the minimum and maximum basic pay rates of each broadband level for each career path are adjusted accordingly. Individual employees receive basic pay increases and/or bonuses based on the annual assessments under the CCS. There are no changes to title 5 U.S.C., regarding locality pay under the JWAC–DP.

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TABLE 2. 2018 BASIC PAY AND CCS SCORE RANGES

Science and Engineering (DR) Broadband Score and 2018 Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
I	0.75	2.25	$38,909	$74,705
II	1.75	3.25	$62,773	$98,569
III	2.75	4.25	$86,637	$122,433
IV	3.75	5.25	$110,501	$136,659

*Basic salary is limited to GS-15, step 10

Business Management and Professional (DO) Broadband Score and 2018 Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
I	0.75	2.25	$38,909	$74,705
II	1.75	3.25	$62,773	$98,569
III	2.75	4.25	$86,637	$122,433
IV	3.75	5.25	$110,501	$136,659

*Basic salary is limited to GS-15, step 10

Technical (DX) Broadband Score and 2018 Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
I	0.75	2.25	$14,641	$39,558
II	1.75	3.25	$31,252	$56,169
III	2.75	4.25	$47,863	$72,780
IV	3.75	5.25	$64,474	$89,391

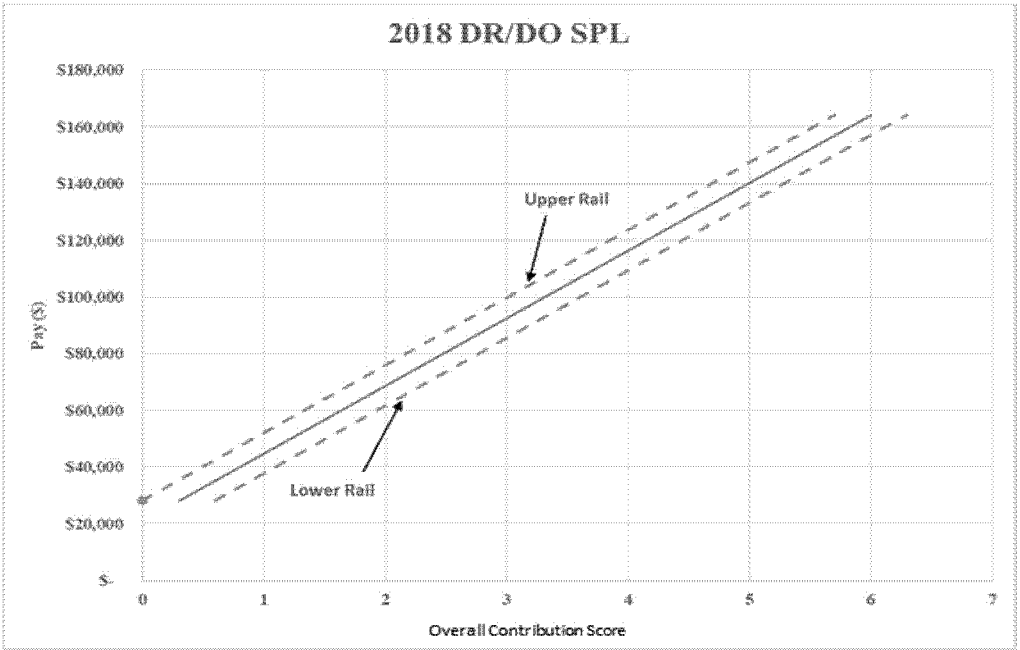
Mission Support (DU) Broadband Score and 2018 Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
I	0.75	2.25	$15,932	$33,091
II	1.75	3.25	$27,371	$44,530
III	2.75	4.25	$38,810	$55,969
IV	3.75	5.25	$50,249	$67,408

4. Standard Pay Line (SPL)

A mathematical relationship between assessed contribution and basic pay will be used to create the SPLs for each career path used in the CCS, similar to the formulas adopted by AFRL in 75 FR 53076, dated August 30, 2010. The SPL is a straight line which yields a reasonable correlation between basic pay rates in the broadband levels and those of the corresponding GS grade(s); provides a single relationship (equation) for the entire range of pay and OCS; and demonstrates equitable *(i.e., consistent*) growth at each CCS score.

The JWAC equation for the 2018 S&E (DR) and the Business Management and Professional (DO) SPL is BASIC PAY = $21,011 + ($23,864 × CCS SCORE). Figure 1 provides a pictorial representation of the 2018 DR & DO SPL.

FIGURE 1. CCS RELATIONSHIP – S&E (DR) AND BUSINESS MANAGEMENT AND PROFESSIONAL (DO) CAREER PATHS



The JWAC equation for the 2018 Mission Support (DU) SPL is BASIC PAY = $7,353 + ($11,439 × CCS SCORE), and JWAC equation for the 2018 Technician (DX) SPL is BASIC PAY = $2,183 + ($16,611 × CCS SCORE); as shown in Figures 2 and 3. The equations for future JWAC SPLs may be modified consistent with this notice and the IOP.

FIGURE 2. CCS RELATIONSHIP – MISSION SUPPORT (DU) CAREER PATH

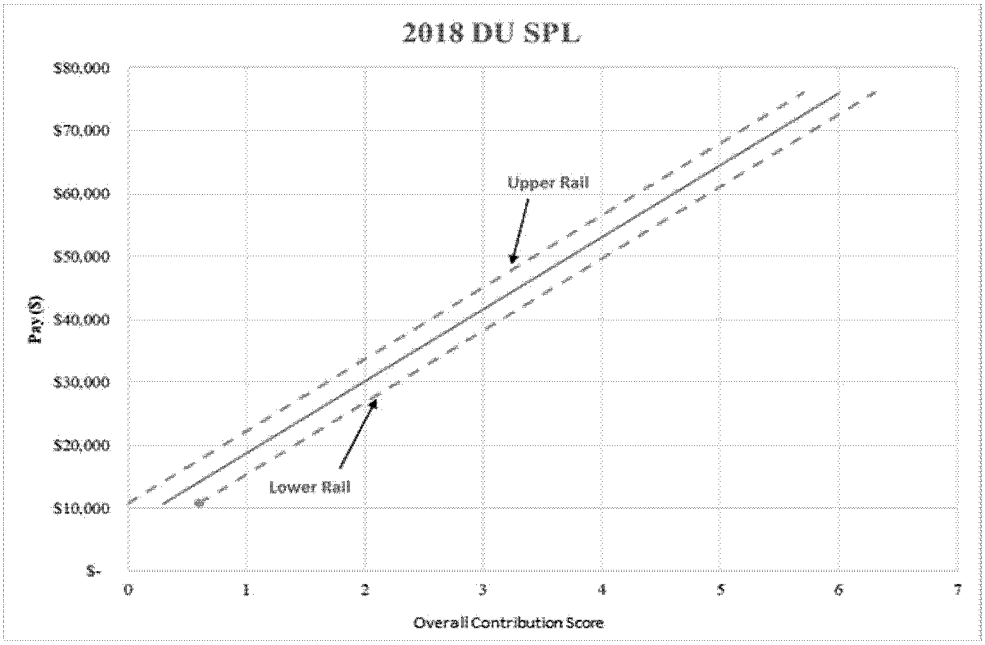
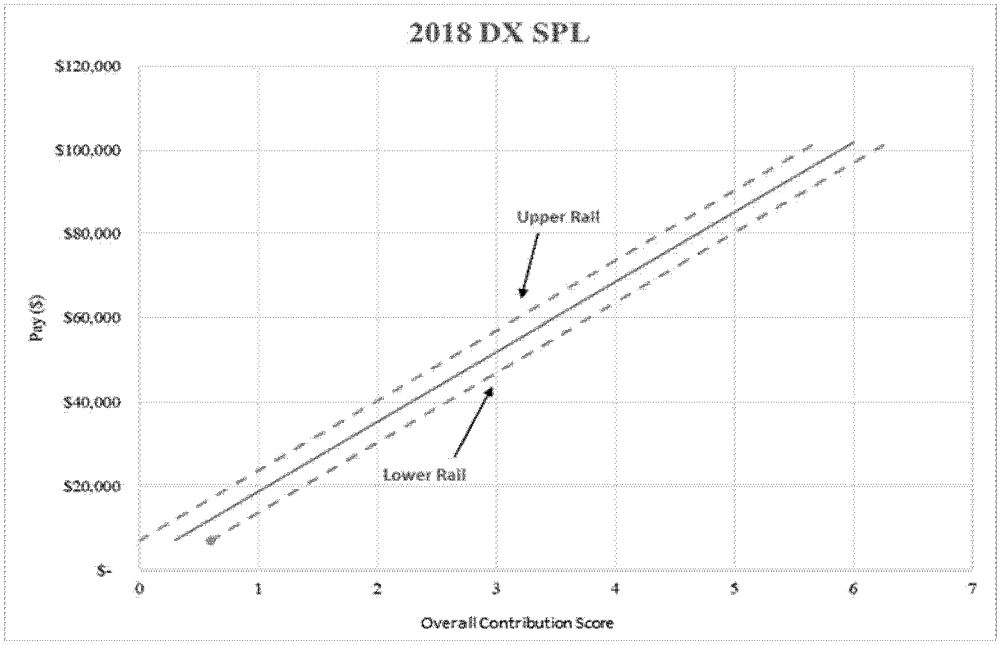


FIGURE 3. CCS RELATIONSHIP – TECHNICIAN (DX) CAREER PATH



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5. The CCS Assessment Process

The rating official is the first-level supervisor of record for at least 90 days during the rating cycle. If the current immediate supervisor has been in place for less than 90 days during the rating cycle, the next higher level supervisor in the employee's rating chain who has been in place for more than 90 days during the rating cycle conducts the assessment.

The annual assessment cycle begins on September 1 and ends on August 31 of the following year. At the beginning of the annual assessment period, the broadband level factors and descriptors are provided to employees setting forth the basis on which their contribution is assessed.

A midyear review, in the February to March timeframe, is conducted for employees. During this review the employee's professional qualities, competence, developmental needs, and mission contribution are discussed, as well as future development and career opportunities. Additionally, employees provide feedback to supervisors on their supervisory qualities and skills. To highlight its importance, all feedback sessions are certified as completed by the rating official conducting the feedback session. While one documented formal midyear feedback session is required, supervisors are encouraged to conduct informal feedback sessions throughout the rating period. The preferable method for all feedback sessions is face-to-face.

At the end of the annual assessment period, employees summarize their contributions in each factor for their rating official. Employees are highly encouraged to submit written self-assessments identified to management, to ensure that all of the employee's contributions accomplished during the rating cycle are taken into consideration. The rating official first determines preliminary CCS scores using the employee's input and the rating official's assessment of the employee's overall contribution to the laboratory mission, based on the appropriate broadband level factor descriptor. The preliminary score is determined by comparing an employee's contribution results to the descriptors for a particular factor and selecting the most appropriate general range (*e.g.,* high, medium, or low).

The rating officials (*e.g.,* branch chiefs) and the next level supervisors (*e.g.,* the respective division chief) then meet as a group (*e.g.,* first-level Meeting of Managers (MoM)) to review and discuss all proposed employee assessments and preliminary CCS factor scores. Giving authority to the group of managers to determine CCS factor scores ensures that contributions are assessed and measured similarly for all employees. During the MoM, the preliminary factor scores are further refined into decimal scores. For example, if the employee's contribution level for a factor is at the lowest level of broadband level I, a factor score of 1.0 is assigned. Higher levels of contribution are assigned factor scores increasing in 0.1 increments up to 4.9. A factor score of 0.0 can be assigned if the employee does not demonstrate a minimum broadband level I contribution. Likewise, a factor score of 5.9 can be assigned if an employee demonstrates a contribution that exceeds the broadband level IV descriptor. Rating officials must document justification for each proposed factor score.

Factor scores are then averaged to give an overall CCS score (OCS). Each broadband level is defined for OCS from 0.75 to 5.25 as shown in Table 2. The maximum OCS for broadband level IV is set at 5.25, to be consistent with the maximum overall CCS scores for other broadband levels (4.25 for broadband level III, 3.25 for broadband level II, and 2.25 for broadband level I). Therefore, when the average of CCS factor scores exceeds 5.25, the overall CCS score is set to 5.25, and the employee who was scored above 5.25 will be identified to upper management as having exceeded the maximum contribution defined by the broadband. The maximum basic pay for each broadband is the basic pay corresponding with an X.25 OCS (*i.e.,* 2.25, 3.25, 4.25, and 5.25). Once the scores have been finalized, the pay pool manager approves the scores for the entire pay pool. The pay pool manager has the ability to look across the entire pay pool and may address anomalies

through the appropriate management chain.

If, on September 1, an employee has been covered by the CCS for less than 90 days, the rating official waits for the subsequent annual cycle to assess the employee. Such an employee is considered ''presumptive due to time'' and is assigned a score at the intersection of their basic pay and the SPL. Periods of approved, paid leave are counted toward this 90-day time period. When an employee cannot be evaluated readily by the normal CCS assessment process due to special circumstances that take the employee away from normal duties or duty station (*e.g.,* long-term full-time training, extended sick leave, leave without pay, etc.), the rating official documents the rating as ''presumptive due to circumstance'' in the CCS software. The rating official then assesses the employee using one of the following options:

- Recertify the employee's last OCS; or
- Assign a score at the intersection of the employee's basic pay and the SPL.

Basic pay adjustments, *i.e.,* decisions to give or withhold basic pay increases or bonuses, are based on the relationship between the employee's actual CCS score and the employee's current basic pay (as discussed in section III.E.5). Decisions for seamless broadband movement (discussed in section III.E.6.) are also based on this relationship. Final pay determinations and broadband level changes are made by the pay pool manager.

6. Pay Pools

The pay pool structure is under the authority of the JWAC Commander who, in-turn, may delegate this authority. The following guidelines apply to pay pools: (a) A pay pool is based on the JWAC organizational structure and should include a range of basic pay rates and broadband levels; (b) a pay pool must be large enough to constitute a reasonable statistical sample, *i.e.,* 35 or more employees; (c) a pay pool must be large enough to encompass a second level of supervision since the CCS process uses a group of supervisors in the pay pool to determine assessments and recommend basic pay adjustments; (d) the pay pool manager holds annual pay adjustment authority; and (e) neither the pay pool manager nor the supervisors within the pay pool recommend or set their own individual pay.

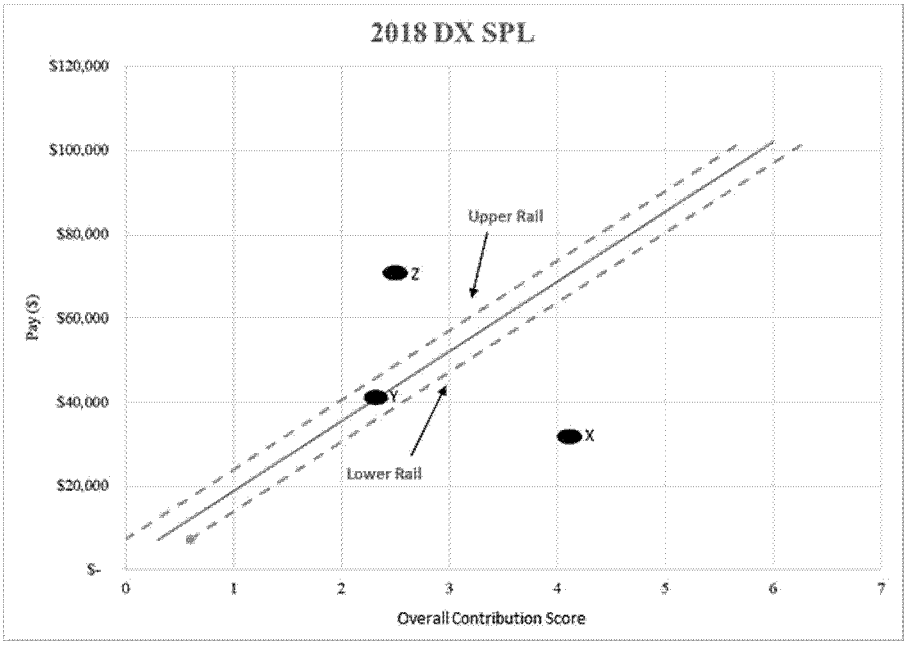
The amount of money available for basic pay increases within a pay pool is determined by the amount of the general increase (''G'') authorized by law or the President for the GS under 5 U.S.C. 5303, and an incentive amount (''I'') drawn from money that, under the GS system, would be available for step increases and career ladder promotions. The incentive amount is set by the PPB each year and is adjustable to ensure cost discipline over the life of the JWAC–DP. The dollars derived from ''G'' and ''I'' percentages included in the pay pool are computed based on the basic pay of eligible employees in the pay pool as of August 31 of each year. The Under Secretary of Defense (Personnel & Readiness) has discretion to adjust the minimum funding levels to take into account factors such as the Department's fiscal condition, guidance from the Office of Management and Budget, and equity in circumstances when funding is reduced or eliminated for GS pay raises or awards.

7. Basic Pay Adjustment Guidelines

The maximum basic pay for any employee is limited to GS–15, step 10, except for employees in SSTM positions. Any employee whose basic pay would exceed GS–15, step 10, based on the employee's OCS, will be identified to upper management as having exceeded the maximum allowable basic pay and will be paid a bonus to cover any difference between the GS–15, step 10, basic pay and the basic pay associated with the employee's OCS. There are no changes to 5 U.S.C., regarding locality pay under the JWAC–DP.

Employees' OCSs are determined by the CCS assessment process described in Section III.E.3. Employees' OCSs are plotted on the appropriate SPL graph based on their current basic pay as shown in Figure 5. The position of those points in relation to the SPL provides a relative measure (Delta Y) of the degree of over-compensation or under-compensation for each employee. This process permits all employees within a pay pool to be rank-ordered by Delta Y, from the most undercompensated employee to the most overcompensated.

Figure 5. EMPLOYEE POSITIONING



In general, those employees who fall below the SPL (indicating under-compensation; for example, employee X in Figure 5) should expect to receive greater basic pay increases than those who fall above the line (indicating overcompensation; for example, employee Z in Figure 5). An OCS that falls on either rail is considered to be within the rails. Over time, employees will migrate closer to the SPL. The following provides more specific guidelines: (a) Employees who fall above the upper rail (for example, employee Z in Figure 5) are given an increase ranging from zero to a maximum of the dollar amount determined by the ''G'' percentage increase; (b) those who fall within the rails (for example, employee Y in Figure 5) are given a minimum of the dollar amount determined by the ''G'' percentage increase; and (c) those who fall below the lower rail (for example, employee X in Figure 5) are given at least their basic pay multiplied by ''G'' and ''I'' percentages. The pay pool manager may give a CCS bonus (a lump sum payment made to an employee in lieu of a basic pay increase as part of the CCS assessment process) to an employee as compensation, in whole or part. This may be appropriate in a situation when the employee's continued contribution at this level is uncertain. The CCS Bonus criteria will be documented in JWAC IOPs.

The pay pool manager sets the necessary guidelines for pay adjustments in the pay pool based on guidance from the PPB. Decisions will be consistent in the pay pool within these general rules: final decisions are standard and consistent within the pay pool; are fair and equitable across the organization; and maintain cost discipline.

8. Broadband Level Movements

A key concept of the JWAC–DP is that career growth may be accomplished by seamless broadband movement, *i.e.,* movement through the broadband levels within a particular career path by significantly increasing levels of employee contribution toward the JWAC mission. Seamless broadband level movement may occur once a year during the CCS process, if certain conditions are met. An employee's contribution is a reflection of their OCS, which is derived from a comparison of the employee's contribution to each of the factors and descriptors. Because the descriptors are written at progressively higher levels of work and are the same descriptors used in the classification process, higher scores reflect that an employee's contribution is equivalent to the level associated with the score they are awarded. An employee's broadband level may be increased when an employee consistently contributes at a level consistent with the expectations for a higher broadband level than the one to which the employee is currently assigned, such as through increased expertise and by performing expanded duties and responsibilities commensurate with the higher broadband level factor and descriptors. If an employee's contributions impact and broaden the scope, nature, intent, and expectations of the position and are reflective of higher level factors and descriptors, the classification of the position is updated accordingly. This form of movement through broadband levels is referred to as a seamless broadband movement and can only happen within the same career path; employees cannot cross over career paths through this process. The criteria is similar to that used in an accretion of duties scenario and must be met for an employee to move seamlessly to a higher broadband level. For seamless broadband movement to occur: (1) The employee's current position must be absorbed into a reclassified position, while the employee continues to perform the same basic duties and responsibilities (although at the higher level); and (2) the employee's current position must be reclassified to a higher broadband level as a result of additional, higher- level duties and responsibilities. It may take a number of years for contribution levels to increase to the extent a seamless broadband movement is warranted, and not all employees achieve the increased contribution levels required for such moves.

This simplified classification and broadbanding structure allows management to assign duties consistent with the broadband level of a position without the necessity to process a personnel action and provides managers

authority to move employees between positions within their current broadband level, at any time during the year. However, management also has the option to fill vacancies throughout the year using various staffing alternatives, to include details, reassignments, or competitive selection procedures (as applicable and/or required) for competitive promotions or temporary promotions (typically used for filling supervisory positions). Employees may be considered for vacancies at higher broadband level positions consistent with the JWAC–DP competitive selection procedures.

Any resulting changes in broadband levels that occur through the CCS process are not accompanied by pay increases normally associated with formal promotion actions, but, rather, are processed and documented with a pay adjustment action to include appropriate changes/remarks (*e.g.,* change in title (if appropriate), change in broadband level, and classification of a new SDE). The terms ''promotion'' and ''demotion'' are not used in connection with the CCS process.

The broadbanding structure creates an overlap between adjacent broadband levels that facilitates broadband movement. For instance, the minimum basic pay for a broadband level I is that basic pay from the SPL corresponding to a CCS score of 0.75. And the maximum basic pay for broadband level I is that basic pay from the SPL corresponding to a CCS score of 2.25. The minimum basic pay for broadband level II is that basic pay from the SPL corresponding to a CCS score of 1.75. And the maximum basic pay for broadband level II is that basic pay from the SPL corresponding to a CCS score of 3.25. Likewise, the minimum basic pay for broadband level III is that basic pay from the SPL corresponding to a CCS score of 2.75, and so on for the different broadband levels. This structure provides a basic pay overlap between broadband levels that is consistent with, and similar to, basic pay overlaps in the GS schedule.

9. Voluntary Pay Reduction and Pay Raise Declination

Under CCS, an employee may voluntarily request a pay reduction or a voluntary declination of a pay raise which would effectively place an overcompensated employee's pay closer to the SPL. Since an objective of the CCS is to properly compensate employees for their contribution to the JWAC, granting such requests is consistent with this goal. Under normal circumstances, all employees should be encouraged to advance their careers through increasing contribution rather than being undercompensated at a fixed level of contribution.

To handle these special circumstances, employees must submit a request for voluntary pay reduction or pay raise declination during the 30-day period immediately following the annual payout and document the reasons for the request. The pay pool manager may consider voluntary pay reductions at other times throughout the year, as documented in internal operating procedures. Management must properly document all decisions to approve or disapprove such requests. This type of basic pay change is not considered to be an adverse personnel action.

F. Dealing With Inadequate Contributions

The CCS is a contribution-based assessment system that goes beyond a performance-based rating system. Contribution is measured against factors, with each factor having descriptors that describe increasing levels of contribution corresponding to the broadband level. Employees are plotted against the SPL based on their score and current basic pay, which determines the amount of over-compensation or under compensation the employees are receiving. When an employee's contribution plots in the area above the upper rail of the SPL (Section III.E.3.), the employee is overcompensated for their level of contribution and is considered to be in the Automatic Attention Zone (AAZ).

This section addresses reduction in pay or removal of JWAC–DP employees based solely on inadequate contribution, as determined by the amount an employee is overcompensated. The following procedures are similar to and replace those established in 5 CFR part 432 pertaining to performance-based reduction in grade and removal actions. Adverse action procedures under 5 CFR part 752 remain unchanged. The immediate supervisor has two options when an employee's contribution plots in the AAZ. The first option is document the employee's inadequate contributions in a memorandum for record. In this memorandum, the supervisor should state, in writing, the specifics regarding where the employee failed to contribute at an adequate level and provide a rationale for not taking a formal action. Examples where this might be used are when an employee's contribution plots just above the upper rail of the SPL, or extenuating circumstances exist that may have decreased the employee's overall CCS score during the rating period and are expected to be temporary in nature. A copy of this memorandum is provided to the employee and to higher levels of management.

The second option is to take a formal action by placing the employee on a Contribution Improvement Plan (CIP), providing the employee an opportunity to improve. The CIP must inform the employee, in writing, that unless the employee's contribution increases and is sustained at the expected contribution level, the employee may be reduced in pay or removed. The supervisor will afford the employee a reasonable improvement opportunity period, generally 30 days, to demonstrate increased contribution commensurate with the duties and responsibilities of the employee's position. As part of an employee's opportunity to demonstrate increased contribution, management will offer appropriate assistance to the employee.

If an employee has been placed on a CIP and afforded a reasonable opportunity to demonstrate increased contribution, yet fails to do so, management has sole and exclusive discretion to initiate reduction in pay or removal for that employee. If the employee's contribution increases to a higher level during the opportunity period and is again determined to deteriorate in any area within two years from the beginning of the improvement opportunity period, management has sole and exclusive discretion to initiate a reduction in pay or removal with no additional opportunity to improve. If an employee has contributed appropriately for two years (or longer) from the beginning of an improvement opportunity period and the employee's overall contribution once again declines, management will afford the employee an additional improvement opportunity period to demonstrate increased contribution before determining whether or not to propose a reduction in pay or removal.

An employee is entitled to at least a 30-day advance notice of a proposed reduction in pay or removal action. This advanced notice will identify specific instances of the employee's inadequate contribution. The employee will be afforded a reasonable time (as stated in 5 U.S.C. 7513(b)(2)), but not less than seven days, to answer the notice of proposed action, which may be done orally and/or in writing, at the employee's discretion.

A decision to reduce pay or remove an employee for inadequate contribution may only be based on those instances of inadequate contribution that occurred during the two-year period immediately preceding the date of the notice of proposed action is

issued. Management will issue a written notice of its decision on reduction in pay or removal to the employee at or before the time the action will be effective. This notice will specify the instances of inadequate contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights as specified in 5 CFR 432.106.

Management will preserve all relevant documentation concerning a reduction in pay or removal based on inadequate contribution and make the relevant documentation available for review by the affected employee and/or the employee's designated representative. At a minimum, the documentation will consist of a copy of the notice of proposed action; the employee's written answer or a written summary of the employee's oral reply; and the written notice of decision to take the action, including the reasons therefore, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate increased contribution.

G. Voluntary Emeritus Corps

The JWAC Commander has the authority to offer former Federal employees who have retired or separated from the Federal service, voluntary assignments at JWAC. Voluntary Emeritus Corps assignments are not considered ''employment'' by the Federal government (except as indicated below). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The Volunteer Emeritus Corps will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. This authority will be of most benefit during manpower reductions as senior employees could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. Volunteer service will not be used to replace any employee, or interfere with career opportunities of employees. The Volunteer Emeritus Corps may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the JWAC's mission.

To be accepted into the Volunteer Emeritus Corps, a volunteer must be recommended by a JWAC manager to the JWAC Commander. Everyone who applies is not entitled to a volunteer assignment. The JWAC Commander will document the decision process for each candidate and retain selection and non-selection documentation for the duration of the assignment or two years, whichever is longer.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a volunteer capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the JWAC Commander, and the JWAC/J1. The agreement will be reviewed by the USSTRATCOM Legal Office. The agreement must be finalized before the assumption of duties and will include:

a. A statement that the service provided is gratuitous, that the volunteer assignment does not constitute an appointment in the civil service and is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government (stemming from or in connection with the volunteer assignment) are waived by the volunteer;

b. A statement that the volunteer will be considered a federal employee for the purpose of:

(1) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(2) 31 U.S.C. 1343, 1344, and 1349(b);

(3) 5 U.S.C. chapters 73 and 81;

(4) The Ethics in Government Act of 1978;

(5) 41 U.S.C. chapter 21;

(6) 28 U.S.C. chapter 171 (tort claims procedure), and any other Federal tort liability statute;

(7) 5 U.S.C. 552a (records maintained on individuals); and

c. The Volunteer Emeritus/Corps participant's work schedule;

d. The length of agreement (defined by length of project or time defined by weeks, months, or years);

e. The support to be provided by the JWAC (travel, administrative, office space, supplies);

f. The Volunteer Emeritus Corps participant's duties,

g. A provision that states no additional time will be added to a participant's service credit for such purposes as retirement, severance pay, and leave as a result of being a participant in the Volunteer Emeritus Corps,

h. A provision allowing either party to void the agreement with 10 working days written notice;

i. The level of security access required (any security clearance required by the assignment will be managed by the JWAC while the participant is a member of the Volunteer Emeritus Corps);

j. A provision that any written products prepared for publication that are related to Volunteer Emeritus Corps participation will be submitted to the JWAC Commander for review and must be approved prior to publication;

k. A statement that the Volunteer Emeritus Corps participant accepts accountability for loss or damage to Government property occasioned by the Volunteer Emeritus Corps participant's negligence or willful action;

1. A statement that the activities of the Volunteer Emeritus Corps participant on the premises will conform to the JWAC's regulations and requirements;

m. A statement that the Volunteer Emeritus Corps participant will not improperly use or disclose any non-public information, to include any pre-decisional or draft deliberative information related to DoD programming, budgeting, resourcing, acquisition, procurement or other matter, for the benefit or advantage of the Volunteer Emeritus Corps participant or any non-Federal entities. Volunteer Emeritus Corps participants will handle all non-public information in a manner that reduces the possibility of improper disclosure;

n. A statement that the Volunteer Emeritus Corps participant agrees to disclose any inventions made in the course of work performed at the JWAC. The JWAC Commander will have the option to obtain title to any such invention on behalf of the U.S. Government. Should the JWAC Commander elect not to take title, the JWAC will retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government;

o. A statement that the Volunteer Emeritus Corps participant must complete either a Confidential or Public Financial Disclosure Report, whichever applies, and ethics training in accordance with office of Government Ethics regulations prior to implementation of the agreement; and

p. A statement that the Volunteer Emeritus Corps participant must receive

post-government employment advice from a DoD ethics counselor at the conclusion of program participation. Volunteer Emeritus Program participants are deemed Federal employees for purposes of post-government employment restrictions.

H. Employee Development

1. Training for Degrees: degree training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of laboratories is also a critical tool for recruiting and retaining employees with critical skills. Constraints under current law and regulation limit degree payment to shortage occupations. In addition, current government-wide regulations authorize payment for degrees based only on recruitment or retention needs. Degree payment is currently not permitted for non-shortage occupations involving critical skills.

Under the JWAC–DP, JWAC will expand the authority to provide degree training for purposes of meeting critical skill requirements, to ensure continuous acquisition of advanced and specialized knowledge essential to the organization, and to recruit and retain personnel critical to the present and future requirements of the organization. It is expected that the degree payment authority will be used primarily for attainment of advanced degrees.

2. Sabbaticals: JWAC will have the authority to grant paid sabbaticals to career employees to permit them to engage in study or uncompensated work experience that will contribute to their development and effectiveness. Each sabbatical should benefit JWAC as well as increase the employee's individual effectiveness. Examples are as follows: advanced academic teaching, study, or research; self-directed (independent) or guided study; and on-the-job work experience with a public, private, or nonprofit organization. Each recipient of a sabbatical must sign a continued service agreement and agree to serve a period equal to at least three times the length of the sabbatical.

IV. JWAC—DP Training

The key to the success of the JWAC–DP will be the training provided for all involved. This training format and content will provide the workforce with the knowledge and skills necessary to implement the proposed changes and foster participant commitment to the program

Training, which will begin prior to implementation and continue throughout the JWAC–DP, will be tailored to the needs of supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operating the new system. At a minimum, the following subjects will be covered:

- An overview of the JWAC–DP personnel system.
- How employees are converted into and out of the system.
- Broadbanding.
- The Contribution-based Compensation System.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the JWAC–DP for covered employees is accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate broadband level without loss of pay. Employees are converted into the career path and broadband level which corresponds to their permanent GS grade and occupational series of their current appointment (temporary promotions are not retained), unless there are extenuating circumstances which require individual attention, such as special pay rates or pay retention. Adverse action provisions do not apply to the conversion process as there is no change in total adjusted pay.

Under the GS pay structure, successful employees automatically progress, from step 1 to 10, within grade, in periodic increments. In the JWAC–DP, basic pay progression within and through the broadband levels depends on contribution to the mission, and there are no automatic within-grade increases (WGIs). Rules governing WGIs under the current DAF performance plan will continue in effect until the implementation date. Adjustments to the employees' basic pay for WGI equity will be computed effective the date of conversion to the JWAC–DP. WGI equity is acknowledged by increasing basic pay rates by a prorated share based upon the number of days the employee has performed at a successful level for purposes of eligibility for the next higher step under the GS system. Employees at step 10 on the date of conversion are not eligible for WGI equity adjustments since they are already at the top step of the corresponding GS pay grade.

All employees are eligible for future locality pay increases for the geographical areas of their official duty station. Special salary rates are not applicable to JWAC–DP employees. Employees on special salary rates at the time of conversion receive a new basic pay rate which is computed by dividing their highest adjusted basic pay (*i.e.,* special pay rate or, if higher, the locality rate) by one plus the locality pay percentage for their area. The new basic pay rate is then multiplied by the locality pay percentage and the result is added to the new basic pay rate to obtain the adjusted basic pay, which is equal to the adjusted basic pay prior to conversion.

Grade and pay retention entitlements are eliminated. At the time of conversion, an employee on grade retention will be converted to the career path and broadband level based on the employee's assigned position, not the retained grade. The employee's basic pay and adjusted basic pay while on grade retention status will be used in setting appropriate pay upon conversion to the JWAC–DP and in determining the amount of any WGI equity adjustment. An employee's adjusted basic pay will not be reduced upon conversion.

B. Conversion to Another Personnel System

1. Demonstration Project Termination

In the event the JWAC–DP ends, a conversion back to the former (or another applicable) Federal Civil Service system may be required. The grade of employees' positions in the new system will be based upon the position classification criteria of the gaining system. Employees, when converted to positions classified under the new system, may be eligible for pay retention under 5 CFR part 536, if applicable.

However, an employee will not be provided a lower grade than the grade held by the employee immediately preceding conversion, lateral reassignment, or lateral transfer into the JWAC–DP, unless since that time the employee has undergone either a reduction in broadband level or a reduction in basic pay within the same broadband due to unacceptable contribution.

2. Conversion or Movement from a Project Position to a General Schedule Position:

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and all project employees must be converted back to the GS system, the following procedures will be used to convert the employee's broadband level to a GS-equivalent grade and the employee's JWAC–DP basic pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined

before movement or conversion out of the JWAC–DP and any accompanying geographic movement, promotion, or other simultaneous action.

An employee in a broadband level corresponding to a single GS grade is placed into that grade as the GS-equivalent grade. An employee in a broadband corresponding to two or more grades is determined to have a GS equivalent grade corresponding to one of those grades according to the following rules:

The employee's adjusted basic pay under the JWAC–DP (including any locality payment) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

a. the GS base schedule;

b. the locality rate schedule for the locality pay area in which the position is located; or

c. the appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

3. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the JWAC–DP (before any other action).

For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the JWAC–DP (*e.g.,* promotion rules, highest previous rate rules, and/or pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the JWAC–DP.

VI. Project Duration and Changes

Pub. L. 103–337 removed the mandatory expiration date for STRL Demonstration Projects, such as the JWAC–DP. The JWAC–DP evaluation plan adequately addresses how each flexibility is comprehensively evaluated.

Many aspects of a Demonstration Project are experimental. Minor modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working.

VII. Evaluation Plan

A. Overview

Chapter 47 of title 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project, and its impact on improving public management. A comprehensive evaluation plan for the entire STRL demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction). That plan, while useful, is dated and does not fully afford the laboratories the ability to evaluate all aspects of the demonstration project in a way that fully facilitates assessment and effective modification based on actionable data. Therefore, in conducting the evaluation JWAC will ensure USD(R&E) evaluation requirements are met in addition to applying knowledge gained from other DoD laboratories and their evaluations to ensure a timely, useful evaluation of the demonstration project.

B. Evaluation Model

An evaluation model for the JWAC–DP will identify elements critical to an evaluation of the effectiveness of the flexibilities. However, the main focus of the evaluation will be on intermediate outcomes, *i.e.,* the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and JWAC customer satisfaction.

C. Method of Data Collection

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual survey data from employees will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the JWAC–DP is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of qualitative and/or quantitative data may be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews, and focus groups; (4) local activity histories; and/or, (5) core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

Costs associated with the development of the JWAC–DP system include software automation, training, and project evaluation. All funding will be provided through JWAC's budget. The timing of the expenditures depends on the implementation schedule. The projected annual expenses for each area is summarized in Table 2.

Table 2. PROJECTED DEVELOMENTAL COSTS

	FY19	FY20	FY21	FY22	FY23
Training	25K	25K	25K	0K	0K
Automation	275K	175K	100K	100K	100K
Project Evaluation	0K	25K	50K	50K	50K
TOTALS	300K	225K	175K	150K	150K

IX. Required Waivers to Law and Regulation

Public Law 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the JWAC–DP. In due course, additional laws and regulations may be identified for waiver requests.

The following waivers and adaptations of certain 5 U.S.C. provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the JWAC–DP from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Title 5, United States Code

1. Chapter 5, section 522a: Records. Waived to the extent required to clarify that volunteers under the Voluntary Emeritus Corps are considered employees of the Federal government for purposes of this section.

2. Chapter 29, section 2903: Oath; authority to administer. Waived insofar as the JWAC Commander may administer the oath of office.

3. Chapter 31, section 3104: Employment of Specially Qualified Scientific and Professional Personnel. Waived to allow SSTM authority as described in this FRN and 79 FR 43722.

4. Chapter 31, section 3132: The Senior Executive Service; Definitions and exclusions. Waived to allow SSTM authority as described in this FRN and 79 FR 43722.

5. Chapter 33, Subchapter 1, Examination, Certification, and Appointment. Waived to the extent necessary to utilize the authorities authorized in 82 FR 43339.

6. Chapter 33, section 3308: Competitive Service; Examinations; Educational Requirements Prohibited. This section is waived with respect to the scholastic achievement appointment authority.

7. Chapter 33, section 3317(a), Competitive Service; certification from registers. Waived insofar as ''rule of three'' is eliminated.

8. Chapter 33, section 3318(a), Competitive Service; selection from certificates. Waived insofar as ''rule of three'' is eliminated under the JWAC–DP.

9. Chapter 33, section 3321: Competitive Service; Probationary Period. This section waived only to the extent necessary to replace ''grade'' with ''broadband level.''

10. Chapter 33, section 3324 and section 3325: Appointments to Positions Classified Above GS–15. Waived in entirety to allow SSTM authority as described in this FRN and 79 FR 43722.

11. Chapter 33, section 3327: Civil service employment information. Waived to the extent necessary to allow public notice other than USAJobs for the Distinguished Scholastic Achievement Authority described in this FRN.

12. Chapter 33, section 3330: Government-wide list of vacant positions. Waived to the extent necessary to allow public notice other than USAJobs for the Distinguished Scholastic Achievement Authority described in this FRN.

13. Chapter 33, section 3341: Details. This waiver applies to the extent necessary to waive the time limits for details.

14. Chapter 35, section 3522: Agency VSIP Plans approval. Waived to remove the requirement to submit a plan to OPM prior to obligating any resources for voluntary separation incentive payments.

15. Chapter 35, section 3523(b)(3): Related to voluntary separation incentive payments. Waived to the extent necessary to utilize the authorities authorized in 82 FR 43339.

16. Chapter 41, section 4107: Pay for Degrees. Waived to the extent necessary to allow degree training under the Developmental Opportunities described in this FRN.

17. Chapter 41, section 4108. Employee Agreements; Service after Training. Waived to the extent necessary to (1) provide that the employee's service obligation is to JWAC for the period of the required service; (2) permit the JWAC Commander to waive in whole or in part a right of recovery; and (3) require an employee in the student educational employment program who has received tuition assistance to sign a service agreement up to three times the length of the training.

18. Chapter 43, sections 4301–4305: Related to performance appraisal. These sections are waived to the extent necessary to allow provisions of the Contribution-based Compensation System as described in this FRN.

19. Chapter 51, sections 5101–5112: Related to classification standards and grading. Waived to the extent that white collar employees will be covered by the broadbanding system and to the extent necessary to allow classification provisions described in this FRN.

20. Chapter 53, sections 5301–5307: Related to pay comparability system and GS pay rates. Waived to the extent necessary to allow JWAC–DP employees, including SSTM employees, to be treated as GS employees, and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of pay. SSTM pay will not exceed EX–IV and locality adjusted SSTM rates will not exceed EX III.

21. Chapter 53, sections 5331–5336: General Schedule pay rates. These waivers apply to the extent necessary to: (1) Allow JWAC–DP employees to be treated as GS employees; (2) allow the provisions of this FRN pertaining to setting rates of pay; and (3) waive sections 5335 and 5336 in their entirety.

22. Chapter 53, sections 5361–5366: Grade and pay retention. Waived to the extent necessary to allow for the elimination of pay and grade retention provisions as described in this FRN.

23. Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. These sections are adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

24. Chapter 55, section 5545(d): Hazardous duty differential. This waiver applies only to the extent necessary to allow JWAC–DP employees to be treated as GS employees.

25. Chapter 57, section 5753: Recruitment and Relocation Bonuses. Waived to the extent necessary to allow JWAC–DP employees, including SSTM employees, to be treated as GS employees.

26. Chapter 57, section 5754: Relocation Bonuses. Waived to the extent necessary to allow provisions of the retention counteroffer and incentives as described in this FRN.

27. Chapter 57, section 5755: Supervisory Differentials. Waived to the extent necessary to allow SSTM supervisory pay differential provisions as described in 79 FR 43722.

28. Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to: (1) Allow for up to a three-year probationary period, (2) remove the reference to one year of current continuous service, and (3) permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

29. Chapter 75, section 7512(3): Adverse actions. This waiver applies only to the extent necessary to replace ''grade'' with ''broadband level'' and to exclude reductions in broadband level not accompanied by a reduction in pay.

30. Chapter 75, section 7512(4): Adverse actions. This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to conversions from GS special rates to JWAC–DP pay, as long as total pay is not reduced.

31. Chapter 99, section 9902(f): Related to voluntary separation incentive payments. Waived to the extent necessary to utilize the authorities authorized in 82 FR 43339.

B. Title 5, Code of Federal Regulations

1. Part 300, Employment (General), other than Subpart G of Part 300. Waived to the extent necessary to allow provisions of the direct hire authorities as described in 79 FR 43722 and 82 FR 29280.

2. Part 300.601–300.605: Time-in-Grade requirements. Waived to eliminate time-in-grade restrictions.

3. Part 315.801–315.802: Probationary Period. Waived to allow the extended probationary period.

4. Part 315.803(b): Agency Action during probationary period (general). Waived to allow for termination during an extended probationary period without using adverse action procedures under subpart D of part 752, 5 U.S.C.

5. Part 315, section 315.901 and 315.907: Statutory requirements. This waiver applies only to the extent necessary to replace ''grade'' with ''broadband level.''

6. Part 316, sections 316.301, 316.303, and 316.304: Term Employment. Waived to the extent necessary to allow Flexible Length and Renewable Term Technical Appointments as described in this FRN and in 82 FR 43339.

7. Part 330.103–330.105: Related to filling vacancies. Waived to the extent necessary to allow the STRL to publish competitive announcements outside of USAJobs.

8. Part 332 and 335: Related to competitive examination and agency promotion programs. Waived to the extent necessary to (1) allow employees appointed on a Flexible Length and Renewable Term Technical Appointment to apply for federal positions as status candidates; (2) allow no rating and ranking when there are 15 or fewer qualified applicants and no preference eligible candidates; (3) allow the hiring and appointment authorities as described in this FRN; (4) eliminate the ''rule of three'' requirement; and (5) to extend the length of details and temporary promotions without requiring competitive procedures as described in this FRN.

9. Part 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligible candidates.

10. Part 338.301: Competitive service appointment. Waived to allow for Distinguished Scholastic Achievement Authority grade point average requirements as described in this FRN.

11. Part 359.705: Removal from the Executive Service, Pay. Waived to allow demonstration project rules governing pay retention to apply to a former SES employee placed in an SSTM or broadband level IV position.

12. Part 410, section 410.308(a–f): Training to obtain an academic degree. Waived to the extent necessary to allow provisions described in this FRN.

13. Part 410, section 309: Agreements to continue in Service. This waiver applies to that portion that pertains to the authority of the head of the agency to determine continued service requirements, to waive repayment of such requirements, and to the extent that the service obligation is to JWAC.

14. Part 430, Subpart B: Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees. Waived to the extent necessary to apply the Contribution-based Compensation System described in this FRN.

15. Part 432.102–432.105: Related to performance based actions. (1) Modified to the extent that an employee may be removed, reduced in broadband level with a reduction in pay, reduced in pay without a reduction in broadband level and reduced in broadband level without a reduction in pay based on unacceptable performance; (2) modified to delete reference to critical element; (3) waived to the extent necessary to replace ''grade'' with ''broadband''; (4) waived to exclude reductions in broadband level not accompanied by a reduction in pay; (5) allow provisions of CCS and addressing inadequate contribution as described in this FRN; and (6) waive ''If an employee has performed acceptably for 1 year'' to allow for ''within two years'' from the beginning of an opportunity period.

16. Part 511 Subpart A, B, and F: Classification Under the General Schedule. Waived to the extent necessary to allow classification provisions outlined in this FRN, to include the list of issues that are neither appealable nor reviewable, the assignment of series under the JWAC–DP plan to appropriate career paths; and to allow informal appeals to be decided by the JWAC Commander.

17. Part 530, Subpart C: Special salary rates. Waived in its entirety.

18. Part 531, Subparts B, D, and E: Determining rate of basic pay, within-grade increases, and quality step increases. Waived in its entirety.

19. Part 531, Subpart F: Locality pay. This waiver applies only to the extent necessary to allow JWAC–DP employees, including SSTMs, to be treated as GS employees, and basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

20. Part 536: Grade and pay retention. Waived to the extent necessary to allow the maintained pay provisions described in this FRN and to allow personnel in SSTM positions to receive maintained pay as described in this FRN.

21. Part 550.703: Severance Pay. This waiver applies only to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grades or pay levels'' with ''one band level'' and ''grade or pay level'' with ''band level.''

22. Part 575, subparts A, B, and C: Recruitment Incentives, Relocation Incentives, and Retention Incentives. Waived to the extent necessary to allow employees and positions under the JWAC–DP covered by the broadbanding system to be treated as employees and positions under the GS system.

23. Part 752, sections 752.201 and 752.401: Principal statutory requirements and coverage. Waived to the extent necessary to: (1) Allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment; (2) replace ''grade'' with ''broadband level''; and (3) provide that adverse action provisions do not apply to conversions from GS special rates to JWAC–DP pay, so long as total pay is not reduced.

BILLING CODE 5001–01–P

APPENDIX A. CAREER PATH OCCUPATIONAL SERIES

Occupational Series in S&E Career Path (DR)		Occupational Series in Business Management and Professionals Career Path (DO)	
Series	Occupation	Series	Occupation
0110	Economist	0080	Security Administration
0130	Foreign Affairs Specialist	0201	Human Resources Management
0131	International Relations	0260	Equal Opportunity
0150	Geographer	0301	Misc. Admin and Program
0401	Biologist	0341	Administrative Officer
0801	General Engineering	0343	Management and Program Analysis
0810	Civil Engineering	0501	Financial Administration & Program
0830	Mechanical Engineering	0560	Budget Analysis
0840	Nuclear Engineering	1035	Public Affairs
0850	Electrical Engineering	1071	Audio-Visual Production
0854	Computer Engineering	1083	Technical Writing & Editing
0855	Electronics Engineering	1084	Visual Information
0861	Aerospace Engineering	1101	Business & Industry
0893	Chemical Engineering	1410	Librarian
0896	Industrial Engineering	1412	Technical Information Services
1301	General Physical Science	2010	Inventory Management
1310	Physics	2210	Information Technology Specialist
1370	Cartography	**Student Trainee Series**	
1515	Operations Research	0399	Administrative Support
1520	Mathematics	0599	Financial Management Student
1529	Mathematical Statistics	1099	Information & Arts
1550	Computer Scientist	2299	Information Technology
2210	Information Technology Specialist		

Occupational Series in Mission Support (DU)		Occupational Series in Technician (DX)	
Series	Occupation	Series	Occupation
0086	Security Clerical	0802	Engineering Technician
0318	Secretary	0856	Electronics Technician
0335	Computer Assistant		
0342	Support Services Administration		

APPENDIX B. EXAMPLE OF FACTORS AND DESCRIPTORS

SCIENTISTS AND ENGINEERS CAREER PATH, PAY PLAN DR

KEY ELEMENTS	DR PROBLEM SOLVING FACTOR			
	DR-I	DR-II	DR-III	DR-IV
Scope/Impact	Applies knowledge of science, technology, or processes to assigned tasks. Efforts are within the technology area or own organization.	Develops new or modifies existing methods, approaches, or scientific knowledge to solve challenges. Shares new methods across discipline to further analytical capabilities. Efforts involve appropriate technology areas and if needed, other organizations.	Defines, leads and manages an area which incorporates multidisciplinary science/engineering/technology applications. Makes critical decisions which significantly impact science/engineering/technology.	Defines, leads, and manages an overall technology area which includes multidisciplinary science/engineering/technology and/or non-science/engineering/technology aspects. Makes critical decisions which significantly impact mission goals.
Complexity	Analyzes and resolves routine to moderately-difficult problems within assigned area, using established methodologies and processes, often under the guidance of senior personnel. Develops limited variations to established methods and/or techniques.	Applies knowledge of science/`engineering/technology to analyze and resolve multifaceted issues/problems with minimal guidance. Develops comprehensive modifications to established methods and/or techniques and communicates them throughout own organization.	Applies and expands knowledge of science/engineering/technology applications to resolve critical, multifaceted problems and/or develops new theories or methods. Adapts to tasks involving changes or competing requirements. Solves complex problems involving strategic implications across multiple disciplines	Applies considerable judgment to resolve critical, multifaceted problems spanning multiple disciplines with command-level impacts. Expertly accomplishes tasks or resolves issues involving significant uncertainties, changes, or competing requirements.
Relevance and Recognition	Efficiently provides solutions that resolve assigned problems with some oversight/assistance from senior personnel. Completed work is reviewed for soundness, appropriateness, and conformity. Ability is recognized within own organization.	Consults appropriately to develop objectives, priorities, and deadlines. Plans and carries out work that is well aligned with organizational goals. Completed work is generally accepted upon review. Contributes expertise internally or externally with academia, industry, think tanks, government peers, and/or national laboratories.	Actively engages organizational planning activities. Defines and leads work efforts that are focused on organizational priorities. Results of work are considered authoritative. Contributes expertise at the national/external level with academia, industry, think tanks, government peers, and/or national laboratories	Sets objectives and plans, designs, and directs work at a strategic level to meet evolving organizational goals, given only broadly defined mission and functions. Leadership/expertise is recognized at the national and/or international level across other laboratories, services, governments/DoD, industry think tanks and/or academia.
Creativity	Uses critical thinking in selecting, interpreting, and adapting known scientific principles. Considers existing approaches and researches novel alternatives.	Uses critical thinking and originality in developing innovative approaches to define and resolve complex situations. Approaches to solving problems require initiative and resourcefulness in interpreting and applying scientific/ engineering/technology	Uses critical thinking and ingenuity in making decisions/developing technologies for areas with substantial uncertainty in methodology, interpretation, and/or evaluation. Approaches to solving problems require interpretation, deviation	Using broadly stated organizational goals fosters a culture which rewards ingenuity and generates/implements innovative ideas for developing new technologies. Develops innovative approaches which significantly expand

		principles that are applicable but not clearly developed.	from existing methods, or research of trends and patterns in order to develop new methods/scientific knowledge that are applied to organizational practices.	the scientific/engineering/technology knowledge base and/or the overall effectiveness of the organization.

KEY ELEMENTS	DR COMMUNICATION FACTOR			
	DR-I	DR-II	DR-III	DR-IV
Level/ Breadth	Prepares information to use within own organization and technical area. Exchanges information with other functional areas or external contacts. Coordinates with others in order to understand/adapt to the team concept.	Provides information to peers, senior technical leaders, and/or managers within and beyond own organization to influence decisions or recommend solutions. Exchanges information with established internal/external networks. Effectively partners, negotiates and enhances team effectiveness.	Communicates complex technical, programmatic, and/or management information across multiple organizational levels and external networks to drive decisions by senior leaders. Establishes and facilitates effective, collaborative interfaces with broad functional and technical areas.	Communicates with a wide range of peers/organizations across multiple levels inside and outside the laboratory to influence major technical, programmatic, and/or management activities. Builds collaborative relationships across broad functional and technical areas and engages with leaders at the national and/or international level.
Written	Documents routine information in a clear and timely manner. Effectively utilizes communications tools to contribute to reports, documents, presentations, etc. Written communication typically requires minimal revision.	Documents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Effectively authors reports, documents, and presentations pertaining to area(s) of expertise. Written communication typically requires minimal revision.	Leads documentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Authors and enables authoritative reports, documents, and presentations pertaining to multiple areas of expertise, with minimal oversight or guidance required.	Promotes a culture of excellence in synthesizing and documenting diverse and highly complex information, concepts, and ideas. Authors and directs authoritative reports, documents, and presentations integrating multiple disciplines. Written communication is suitable for senior executive level.
Oral	Presents routine information in a clear and timely manner. Actively listens and responds appropriately. Develops speaking skills for basic briefings and effectively adjusts to the audience with guidance.	Presents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Actively listens to others' questions, ideas, and concerns and considers diverse viewpoints. Demonstrates effective speaking skills for advanced briefings, tailoring presentations to facilitate understanding.	Leads presentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Seeks opinions and ideas from others and carefully considers and incorporates diverse viewpoints. Demonstrates expert speaking skills and adaptability for critical briefings.	Develops strategies to improve presentations of diverse and highly complex information, concepts, and ideas. Fosters an atmosphere of respect for others at all levels and promotes expression of alternative viewpoints. Displays mastery of speaking skills and delivers compelling, authoritative briefings.
Review/ Oversight	Provides reports, documents, and presentations to senior personnel for review. Makes necessary revisions per guidance from senior personnel. Adapts to changes in policies, processes, programs, and/or projects with supervision.	Reviews own communication products prior to submittal to peers, senior technical leaders, managers, and/or external contacts, resulting in minimal revision. May assist with the communications of others. Adapts to changes in policies, processes, programs, and/or projects with minimal supervision.	Produces required forms of communication with minimal guidance from others. Reviews communications of others for appropriate and accurate content. Leads changes in policies, processes, programs, and/or projects at the organizational level.	Establishes guidance and oversight requirements for communication in the organization. Responsible and accountable for overall development of reports, documents, and presentations of self and others within area of responsibility. Leads and communicates change at the command and external level.

KEY ELEMENTS	DR TECHNOLOGY MANAGEMENT FACTOR			
	DR-I	DR-II	DR-III	DR-IV
Level/Scope/ Complexity	Interacts within technical area on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of technical goals within own organization.	Collaborates with technical partners to develop strategies and lead project teams for operations or R&D. Lead development and execution of projects within division or branch to execute or advance organization mission within required quality standards and assigned timelines.	Leads technical areas, coordinating and working across the command to develop strategies for research and development programs and mission-support tasking. Leads development and execution at the organizational level. Works jointly with stakeholders to identify highly complex, sensitive, or controversial problems and develop strategies for effective resolution.	Integrates wide-ranging activities across the command and with external partners involving multiple technical areas, to develop strategic direction for the command. Directs program/process formulation and implementation to achieve the mission goals at the command-wide level that achieve the broader mission of HHQ and DoD.
Technical & Customer Relations	Carries out tasking in accordance with best practices defined by own organization. Participates in professional growth and training. Participates in technology area planning within own organization.	Recognizes opportunities to develop technical expertise and formulates plans within own organization. Generates key ideas and contributes technically to advance technical capability of command.	Leads/contributes significantly to technical advancement of technology or discipline, including strategic planning, execution and coalition building. Pursues near term opportunities by leveraging collaborations across the command and/or with external partners.	Leads command level change management through requirements generation, strategic planning, and prioritization. Creates opportunities by identifying/proposing diverse and timely HHQ and DoD mission relevant solutions while leveraging command-wide and external collaborations.
Technical Effectiveness	Contributes within own organization to the development/integration of technology solutions. Seeks out and uses relevant technologies to support own technical and functional activities.	Implements the development/integration and transition/transfer of technology solutions, within or beyond own organization, based upon awareness of customer requirements. Evaluates and incorporates appropriate outside technology to support mission requirements.	Leads development/integration activities based upon extensive customer interactions and appropriate partnerships. Develops/integrates technology solutions by exploiting external technology to meet mission requirements	Leads world class technical programs based upon anticipating customer requirements and leveraging external partners and capabilities. Develops/integrates innovative solutions that exploit emerging technology and fosters an environment of technology exploitation.
Resource Stewardship	Efficiently performs tasks utilizing available resources, including one's own time, to successfully accomplish assigned work. Provides inputs to risk management and process improvements.	Demonstrates knowledge of corporate processes by effective application of resources. Actively manages cost, schedule, and resource risks, seeking timely remedies. Collaborates with others in using resources more efficiently and suggests innovative ideas to optimize available resources.	Manages evolution of cost, schedule, and resource risk. Anticipates changes in resource requirements and develops and advocates solutions in advance. Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources.	Identifies, acquires and manages and defends the resources needed to achieve organizational goals and expertly guides the implementation of these resources in a dynamic environment. Leads, promotes, and enables process improvements to maximize resource utilization.

KEY ELEMENTS	DR TEAMWORK AND LEADERSHIP FACTOR			
	DR-I	DR-II	DR-III	DR-IV
Teaming and Collaboration (Cooperation)	Actively participates, works flexibly, and makes positive contributions in assigned areas in order to meet team goals/responsibilities. May participate as a member of cross functional teams. Communicates and shares knowledge and information with others. Develops positive working relationships with peers and superiors, treating others fairly and professionally.	Contributes as lead or key member of the team performing substantive analytical duties in support of the organizational mission. Demonstrates the ability to focus on team efforts toward goal/ responsibility accomplishment. Recognizes when others need assistance and provides support. Resolves conflicts in a positive and constructive manner. Works collaboratively with others in a dynamic environment, demonstrating respect for other people and alternative viewpoints.	Effectively seeks out and capitalizes on opportunities for the organization to achieve significant results that support organizational goals. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams. Initiates and leads strategic change initiatives. Leads and provides oversight to effectively manage specific areas of responsibility.	Formulates short- and long-term teaming/collaboration strategies across organization to achieve significant results in support of the organization's goals and long-term vision. Aligns team goals with broader organizational goals and strategies. Provides expert, accurate, and timely information to organization and partners. Builds coalitions to establish integrated approaches that meet overall organizational mission requirements. Sets and maintains a tone of cooperation, cohesion, teamwork, and respect/value for others. Sought out for consultation and leadership.
Level / Breadth of Influence	Performs moderately complex assignments within a team environment. Performs work that affects the effectiveness of broader projects and programs. Coordinates actions and gains understanding of other areas sufficiently to make appropriate recommendations.	Performs complex assignments within a team environment as the lead or key team member to improve capability of a technology area or address command initiatives. Integrates efforts or works across disciplines. Leads/mentors/ provides oversight to analysts same or lower level. Provides authoritative advice to management.	Leads the critical aspects of analytical efforts of individuals and/or teams with focus on accountability, quality, and effectiveness. Has impact on analytical recommendations that affect both internal and external relationships. Integrates efforts across disciplines/organization. Sought out for consultation on complex issues that affect internal/external organizations and/or relationships.	Leads/manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization. Has broad and substantial impact on organizational decisions affecting internal/external organizations and relationships.
Mentoring and Development	Actively pursues guidance and opportunities for professional growth and to improve/expand skills. Actively supports the development of others through teaching, mentoring, sharing knowledge and incorporating feedback. Maintains currency in area of expertise.	Demonstrates the ability to mentor new employees and actively seeks the development and training of subordinates or peers (as appropriate), directly linked to organizational goals. Assists in the development and training of internal/external team members. Works to develop/improve self in order to more effectively accomplish directorate goals.	Identifies and addresses skill deficiencies within organization. Initiates and leads the development and training of subordinates and/or team members. Participates in mentoring and motivation, actively seeking out mentoring opportunities. Proactively develops/improves self in order to more effectively accomplish organizational goals.	Initiates development and training of subordinates; demonstrates the ability to provide developmental opportunities that maximize employee's capabilities and contribute to the achievement of organizational goals. Mentors and develops future organizational leaders and personnel through evaluations/feedback. Supports and fosters a culture that encourages and rewards mentoring and development. Proactively develops/improves self in order to more effectively accomplish agency DoD goals.
Supervision	Receives close guidance	Requires minimal	Receives only broad	Establishes policy and/or

and Oversight Required	from others. Performs duties in a professional, responsive, and cooperative manner in accordance with established policies and procedures.	guidance in terms of established policies, objectives, and decisions from others. Selects or recommends selection of staff or team members. Participates in mentoring opportunities to grow personal and peer skillsets. Contributes to position/ performance management, as required. Provides constructive feedback. Recommends novel concepts and significant departures from previous practices with supervisor or team leader.	policy/guidance. Provides guidance/direction to others. Selects or recommends selection of staff, team members, and/or subordinate supervisors. Participates in coaching, instruction, and position/performance management. Assigns tasks that provide opportunities to demonstrate proficiency in acquired skills; provides sincere and constructive feedback.	provides guidance/direction to others. Works within the framework of agency policies, mission objectives, and time and funding limitations leading change as required. Effectively manages an organization involving subordinate supervisors. Selects staff, team members, and subordinate supervisors. Directs and is responsible for position/ performance management execution.

Dated: May 12, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–10481 Filed 5–14–20; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 3511 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce waivers that the U.S. Department of Education (Department) granted, within the last 30 days, under the CARES Act.

FOR FURTHER INFORMATION CONTACT: Hugh Reid, U.S. Department of Education, 400 Maryland Avenue SW, Room Potomac Center Plaza (PCP)—11114, Washington, DC 20202. Telephone: (202) 245–7491. Email: *Hugh.Reid@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3511(d)(3) of the CARES Act requires the Secretary to publish, in the **Federal Register** and on the Department's website, a notice of the Secretary's decision to grant a waiver. The Secretary must publish this notice no later than 30 days after granting the waiver and the notice must include which waiver was granted and the reason for granting the waiver. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted under section 3511.

The Department has approved waivers of the following requirement: Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of fiscal year (FY) 2018 funds for programs in which the State educational agency (SEA) participates as the eligible agency until September 30, 2021.

In the last 30 days, the Department's Office of Career, Technical, and Adult Education (OCTAE) granted 41 waivers to SEAs.

Waiver Data

I. Extensions of the Obligation Period

A. Twenty-eight waivers were granted to SEAs for State grants authorized by Title I of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins), and 13 waivers to SEAs for State grants authorized by Title II of the Workforce Innovation and Opportunity Act (WIOA) (*i.e.,* the Adult Education and Family Literacy Act (AEFLA)).

1. *Provision waived:* Tydings Amendment, section 421(b) of GEPA (*20 U.S.C. 1225*(b)).[1]

Reasons: These waivers were granted under section 421(b) of GEPA to extend the period of availability of FY 2018 funds until September 30, 2021, pursuant to the 2018 Consolidated Appropriations Act (GEPA section 421(b) waivers). It is not possible to obligate funds on a timely basis, as originally planned, due to extensive school and program disruptions in the States. These disruptions are in response to extraordinary circumstances for which a national emergency related to the COVID–19 pandemic has been duly declared by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 100 Public Law 707, and will protect the health and safety of students, staff, and our communities.

Waiver Applicants: The SEA GEPA section 421(b) waiver applicants provided assurance that the SEA will: (1) Use, and ensure that its subgrantees will use, funds under the respective programs in accordance with the provisions of all applicable statutes, regulations, program plans, and applications not subject to these waivers; (2) work to mitigate, and ensure that its subgrantees will work to mitigate, any negative effects that may occur as a result of the requested waiver; and (3) provide the public and all subgrantees in the State with notice of, and the opportunity to comment on, this request by posting information regarding the waiver request and the process for commenting on the State website.

The Assistant Secretary for Career, Technical, and Adult Education, reviewed the SEAs' requests for a GEPA section 421(b) waiver and determined that the following SEAs met the requirements for a GEPA section 421(b) waiver on the dates indicated below:

(1) State grants authorized by Title I of Perkins:

- Alabama State Department of Education, April 21, 2020;
- Alaska Department of Education and Early Development, April 21, 2020;

[1] Section 3511(b) of the CARES Act only authorizes the Secretary to grant waivers requested by SEAs of the Tydings Amendment, section 421(b) of GEPA, to extend the period of availability of State formula grant funds authorized by the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act) and the Adult Education and Family Literacy Act (AEFLA). The Department currently does not have the authority to grant a waiver of the Tydings Amendment with respect to the Perkins Act or AEFLA to States in which the SEA is not the grantee for these State-administered programs.

• Arkansas Department of Education, April 17, 2020;
• Connecticut State Department of Education, April 27, 2020;
• Delaware Department of Education, April 22, 2020;
• Florida Department of Education, April 30, 2020;
• Georgia Department of Education, April 17, 2020;
• Illinois State Board of Education, April 21, 2020;
• Kentucky Department of Education, April 27, 2020;
• Maine Department of Education, April 23, 2020;
• Massachusetts Department of Elementary and Secondary Education, April 20, 2020;
• Mississippi Department of Education, April 17, 2020;
• Nevada Department of Education, April 23, 2020;
• New Hampshire Department of Education, April 17, 2020;
• New Jersey Department of Education, April 27, 2020;
• New Mexico Public Education Department, April 30, 2020;
• New York State Education Department, April 21, 2020;
• North Carolina Department of Public Instruction, April 17, 2020;
• Oregon Department of Education, April 27, 2020;
• Puerto Rico Department of Education, April 17, 2020;
• Rhode Island Department of Education, April 20, 2020;
• South Carolina Department of Education, April 21, 2020;
• Tennessee Department of Education, April 28, 2020;
• Texas Education Agency, April 21, 2020;
• Utah State Board of Education, April 24, 2020;
• Vermont Agency of Education, May 4, 2020;
• Virgin Islands Department of Education, April 22, 2020; and
• Virginia Department of Education, April 17, 2020.

(2) State grants authorized by Title II of WIOA (AEFLA):
• Connecticut State Department of Education, April 27, 2020;
• Delaware Department of Education, April 22, 2020;
• Florida Department of Education, April 30, 2020;
• Iowa Department of Education, April 23, 2020;
• Massachusetts Department of Elementary and Secondary Education, April 20, 2020;
• Nevada Department of Education, April 23, 2020;
• New York State Education Department, April 21, 2020;
• Puerto Rico Department of Education, April 17, 2020;
• Rhode Island Department of Education, April 20, 2020;
• South Carolina Department of Education, April 21, 2020;
• Virgin Islands Department of Education, April 22, 2020;
• Virginia Department of Education, April 17, 2020; and
• West Virginia Department of Education, April 21, 2020.

The Secretary also announced the waiver decisions at: *https://www2.ed.gov/about/offices/list/ovae/pi/covid19/index.html.*

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Scott Stump,

Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2020–10488 Filed 5–14–20; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine act notice; notice of public hearing agenda.

SUMMARY: The U.S. Election Assistance Commission is holding an virtual hearing, titled ''VVSG 2.0 Requirements Hearing 3: Manufacturers, Technology, & Testing Labs.''

DATES: Wednesday, May 20, 2020 1:30 p.m.–3:30 p.m. Eastern

ADDRESSES: Virtual via Zoom.

The hearing is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Jerome Lovato, Telephone: (301) 960–1216, Email: *jlovato@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual hearing to discuss the proposed Voluntary Voting System Guidelines (VVSG) 2.0 Requirements as submitted by the Technical Guidelines Development Committee (TGDC).

Agenda: The U.S. Election Assistance Commission (EAC) will host a third virtual hearing to discuss the proposed VVSG 2.0 Requirements. This hearing will include panels with manufacturers to discuss building the next generation of voting systems to the new requirements, the associated timelines, general information on the anticipated feasibility for the manufacturers, an assessment of the currently proposed technology in the requirements, and ultimately the testing of the voting system.

Commissioners will also hear from members of the public who wish to offer verbal testimony on the VVSG 2.0 requirements. Public testimony during the hearing will be limited to 5 minutes maximum per person. If you would like to participate in public testimony, please contact Jerome Lovato (*jlovato@eac.gov*) with your full name and phone number no later than 5 p.m. Eastern Time on May 19, 2020.

The VVSG 2.0 Requirements are currently published for a 90-day public comment period that concludes on June 22nd. The first VVSG public hearing on March 27, 2020 covered an introduction to the VVSG process as well a high-level overview of the proposed VVSG 2.0 requirements. A recording of the hearing is available on the EAC's website. The second public hearing on May 6, 2020 addressed the importance of VVSG 2.0 at the state and local level, and the consideration of accessibility and security in VVSG 2.0. A recording of the second hearing is available on the EAC's website.

The TGDC unanimously approved to recommend VVSG 2.0 Requirements on February 7, 2020, and sent the Requirements to the EAC Acting Executive Director via the Director of the National Institute of Standards and

Technology (NIST), in the capacity of the Chair of the TGDC on March 9, 2020. Upon adoption, the VVSG 2.0 would become the fifth iteration of national level voting system standards. The Federal Election Commission published the first two sets of federal standards in 1990 and 2002. The EAC then adopted Version 1.0 of the VVSG on December 13, 2005. In an effort to update and improve version 1.0 of the VVSG, on March 31, 2015, the EAC commissioners unanimously approved VVSG 1.1. The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This hearing will be open to the public.

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2020–10576 Filed 5–13–20; 11:15 am]

BILLING CODE 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: RP20–842–000.
Applicants: Sabal Trail Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Amended FPL 850013 eff 5–1–20 to be effective 5/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5000.
Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: RP20–851–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Annual Operational Transactions Report of Cameron Interstate Pipeline, LLC under RP20–851.
Filed Date: 4/30/20.
Accession Number: 20200430–5479.
Comments Due: 5 p.m. ET 5/14/20.

Docket Numbers: RP20–863–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Annual Report of Interruptible Transportation Revenue Sharing of Cameron Interstate Pipeline, LLC under RP20–863.
Filed Date: 5/7/20.
Accession Number: 20200507–5181.
Comments Due: 5 p.m. ET 5/19/20.

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: May 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10476 Filed 5–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1790–000]

Aurora Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Aurora Wind Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 1, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically 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 Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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.

Dated: May 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10475 Filed 5–14–20; 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 exempt wholesale generator filings:

Docket Numbers: EG20–154–000.
Applicants: Weatherford Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Weatherford Wind, LLC.
Filed Date: 5/8/20.
Accession Number: 20200508–5288.
Comments Due: 5 p.m. ET 5/29/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1792–000.

Applicants: Horizon West Transmission, LLC.
Description: § 205(d) Rate Filing: Horizon West Transmission, LLC Administrative Clean-Up Filing to be effective 4/24/2019.
Filed Date: 5/8/20.
Accession Number: 20200508–5261.
Comments Due: 5 p.m. ET 5/29/20.
Docket Numbers: ER20–1793–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5633 & ICSA, SA No. 5634; Queue No. AC2–088/AD1–136 to be effective 4/9/2020.
Filed Date: 5/8/20.
Accession Number: 20200508–5263.
Comments Due: 5 p.m. ET 5/29/20.
Docket Numbers: ER20–1794–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Request for Waiver of Tariff Provisions, et al. of the Midcontinent Independent System Operator, Inc.
Filed Date: 5/8/20.
Accession Number: 20200508–5312.
Comments Due: 5 p.m. ET 5/15/20.
Docket Numbers: ER20–1795–000.
Applicants: Pacific Gas and Electric Company.
Description: Petition for Limited Waiver of Pacific Gas and Electric Company.
Filed Date: 5/8/20.
Accession Number: 20200508–5320.
Comments Due: 5 p.m. ET 5/29/20.
Docket Numbers: ER20–1796–000.
Applicants: Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc.
Description: Compliance Filing with Order No. 864 of Entergy Arkansas, LLC, et al.
Filed Date: 5/8/20.
Accession Number: 20200508–5332.
Comments Due: 5 p.m. ET 5/29/20.
Docket Numbers: ER20–1797–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: EDP Renewables North America (Shelby Solar) LGIA Filing to be effective 4/27/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5054.
Comments Due: 5 p.m. ET 6/1/20.
Docket Numbers: ER20–1798–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: EDP Renewables North America (Dodge Solar) LGIA Filing to be effective 4/27/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5055.
Comments Due: 5 p.m. ET 6/1/20.
Docket Numbers: ER20–1799–000.
Applicants: Techren Solar III LLC.
Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 6/30/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5089.
Comments Due: 5 p.m. ET 6/1/20.
Docket Numbers: ER20–1800–000.
Applicants: Techren Solar IV LLC.
Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 6/30/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5091.
Comments Due: 5 p.m. ET 6/1/20.
Docket Numbers: ER20–1801–000.
Applicants: Techren Solar V LLC.
Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 6/30/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5095.
Comments Due: 5 p.m. ET 6/1/20.
Docket Numbers: ER20–1802–000.
Applicants: Entergy Louisiana, LLC.
Description: Request for Limited Waiver of Entergy Louisiana, LLC.
Filed Date: 5/11/20.
Accession Number: 20200511–5096.
Comments Due: 5 p.m. ET 6/1/20.
Docket Numbers: ER20–1803–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–05–11_SA 3493 METC-River Fork Solar GIA (J806) to be effective 4/27/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5116.
Comments Due: 5 p.m. ET 6/1/20.
Docket Numbers: ER20–1804–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 864 to be effective 4/30/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5129.
Comments Due: 5 p.m. ET 6/1/20.

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: May 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10474 Filed 5–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–436–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on May 1, 2020, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket No. CP20–436–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authorization for its proposed Appalachia to Market Project (Project). Specifically, Texas Eastern proposes to: (1) Construct and operate approximately 0.8 mile of 30-inch diameter loop pipeline on Texas Eastern's system downstream of the Delmont Compressor Station in Westmoreland County, Pennsylvania; and (2) establish initial incremental recourse rates and the applicable fuel percentage for firm transportation service on the Project facilities. Texas Eastern avers the Project will provide UGI Utilities, Inc. with up to 18,000 dekatherms per day of firm natural gas transportation service. The estimated cost of the project is $21.5 million.

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.

Any questions concerning this application may be directed to Berk Donaldson, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, by phone (713) 627–4488, or by fax (713) 627–5947.

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 final environmental impact statement (FEIS) or 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 will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or 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 five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. 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 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 NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on June 1, 2020.

Dated: May 11, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10460 Filed 5–14–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[2] 18 CFR 385.214(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–448–000]

Dominion Energy Overthrust Pipeline, LLC; Notice of Request Under Blanket Authorization

Take notice that on May 5, 2020, Dominion Energy Overthrust Pipeline, LLC (DEOP), 333 South State Street, Salt Lake City, Utah 84111, filed in the above referenced docket a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) and its blanket certificate issued in Docket No. CP82–493–000. DEOP requests authorization to construct its Wamsutter West Expansion Project comprising piping and valve modifications at the Wamsutter, Rock Springs and Granger facilities located in Sweetwater County, Wyoming, and the Roberson facility located in Lincoln County, Wyoming. Construction of these modifications would create 120,000 dekatherms per day of new firm transportation service between the Wamsutter facility and the Opal interconnect located in Lincoln County, Wyoming. DEOP estimates the cost of the project to be approximately $5,400,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Greg Williams, Regulatory Specialist, Dominion Energy Services, 333 South State Street, Salt Lake City, Utah 84111, by telephone at (801) 324–5370, or by email at *greg.williams@dominionenergy.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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 Commission staff's EA.

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.

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 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: May 11, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10459 Filed 5–14–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10009–58–OAR]

Administration of Cross-State Air Pollution Rule Trading Program Assurance Provisions for 2019 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on the administration of the assurance provisions of the Cross-State Air Pollution Rule (CSAPR) trading programs for the control periods in 2019. Total emissions of nitrogen oxides (NO_X) reported by Mississippi units participating in the CSAPR NO_X Ozone Season Group 2 Trading Program during the 2019 control period exceeded the state's assurance level under the program. Data demonstrating the exceedance and EPA's preliminary calculations of the amounts of additional allowances that the owners and operators of certain Mississippi units must surrender have been posted in a spreadsheet on EPA's website. EPA will consider timely objections to the data and calculations before making final determinations of the amounts of additional allowances that must be surrendered.

DATES: Objections to the information referenced in this notice must be received on or before July 1, 2020.

ADDRESSES: Submit your objections via email to *CSAPR@epa.gov.* Include ''2019 CSAPR Assurance Provisions'' in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be addressed to Garrett Powers at (202) 564–2300 or *powers.jamesg@epa.gov.*

SUPPLEMENTARY INFORMATION: The regulations for each CSAPR trading program contain ''assurance provisions'' designed to ensure that the emissions reductions required from each state covered by the program occur within the state. If the total emissions from a given state's affected units exceed the state's assurance level under the program, then two allowances must be surrendered for each ton of emissions exceeding the assurance level (in addition to the ordinary obligation to surrender one allowance for each ton of emissions). In the quarterly emissions reports covering the 2019 control period, Mississippi units participating in the CSAPR NO_X Ozone Season Group 2 Trading Program collectively reported emissions that exceed the state's assurance level under the program by 473 tons, resulting in a requirement for the surrender of 946 additional allowances.

When a state's assurance level is exceeded, responsibility for surrendering the required additional allowances is apportioned among groups of units in the state represented by ''common designated representatives'' based on the extent to which each such group's emissions exceeded the group's share of the state's assurance level. For the CSAPR NO_X Ozone Season Group 2 Trading Program, the procedures are set forth at 40 CFR 97.802 (definitions of ''common designated representative,'' ''common designated representative's assurance level,'' and ''common designated representative's share''), 97.806(c)(2), and 97.825. Applying the procedures in the regulations for the 2019 control period for Mississippi, EPA has completed preliminary calculations indicating that responsibility for surrendering 946 additional allowances should be apportioned entirely to the group of units operated by Mississippi Power Company, all of which are represented by one common designated representative.

In this document, EPA is providing notice of the data relied on to determine the amount of the exceedance of the Mississippi assurance level discussed above, as required under 40 CFR 97.825(b)(1)(ii), and notice of the preliminary calculations of the amounts of additional allowances that the owners and operators of certain Mississippi units must surrender as a result of the exceedance, as required under 40 CFR 97.825(b)(2)(ii).[1] By October 1, 2020,

[1] The regulations allow the notice of data availability required under 40 CFR 97.825(b)(2)(ii) to be published approximately two months after the notice of data availability required under 40 CFR 97.825(b)(1)(ii), but in this instance EPA already has all the information needed to prepare both of the required notices and is therefore combining the two required notices into this single document.

EPA will provide notice of the final calculations of the amounts of additional allowances that must be surrendered, incorporating any adjustments made in response to objections received, as required under 40 CFR 97.825(b)(2)(iii)(B). Each set of owners and operators identified pursuant to the notice of the final calculations must hold the required additional allowances in an assurance account by November 2, 2020.

The data and preliminary calculations are set forth in an Excel spreadsheet entitled ''2019_CSAPR_assurance_provision_calculations_prelim.xlsx'' available at *http://www.epa.gov/csapr/csapr-assurance-provision-nodas.* The spreadsheet contains data for the 2019 control period showing, for each Mississippi unit identified as affected under the CSAPR NO_X Ozone Season Group 2 Trading Program, the amount of NO_X emissions reported by the unit and the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated to the unit, including any allowances allocated from a new unit set-aside. The spreadsheet also contains calculations for the 2019 control period showing the total NO_X emissions reported by all such units and the amount by which the total reported NO_X emissions exceeded the state's assurance level under the program. Finally, the spreadsheet also includes calculations for the 2019 control period showing, for each common designated representative for a group of such units in the state, the common designated representative's share of the total reported NO_X emissions, the common designated representative's share of the state's assurance level, and the amount of additional CSAPR NO_X Ozone Season Group 2 allowances that the owners and operators of the units in the group must surrender.

Any objections should be strictly limited to whether EPA has identified the data and performed the calculations in the spreadsheet correctly in accordance with the regulations. Objections must include (1) precise identification of the specific data or calculations the commenter believes are inaccurate, (2) new proposed data or calculations upon which the commenter believes EPA should rely instead, and (3) the reasons why EPA should rely on the commenter's proposed data or calculations and not the data and calculations referenced in this notice.

Authority: 40 CFR 97.825(b).

Reid P. Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2020–10441 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9050–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed May 4, 2020, 10 a.m. EST Through May 11, 2020, 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200102, Final, USFWS, CA, Final Environmental Impact Statement/Supplemental Environmental Impact Report for the Proposed Upper Santa Ana River Wash Habitat Conservation Plan, *Review Period Ends:* 06/15/2020, *Contact:* Kerin Cleary-Rose 760–322–2070.

EIS No. 20200103, Draft Supplement, FTA, TX, Dallas CBD Second Light Rail Alignment (D2 Subway), *Comment Period Ends:* 06/29/2020, *Contact:* Terence Plaskon 817–978–0573.

EIS No. 20200104, Final, NRCS, RI, Pocasset River Flood Damage Reduction Project, *Review Period Ends:* 06/15/2020, *Contact:* Ayana Brown 401–822–8812.

EIS No. 20200105, Final, USFS, WY, 2020 Thunder Basin National Grassland Plan Amendment, *Review Period Ends:* 07/14/2020, *Contact:* Monique Nelson 307–275–0956.

Amended Notice

EIS No. 20200060, Draft, FHWA, VA, Route 220 Martinsville Southern Connector, Comment Period Ends: 06/19/2020, *Contact:* Mack A Frost 804–775–3352. Revision to FR Notice Published 4/17/2020; Extending the Comment Period from 5/15/2020 to 6/19/2020.

Dated: May 11, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–10436 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0501; FRL–10009–72]

Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC); Notice of Rescheduled Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the rescheduled meeting dates for the 4-day meeting of the Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC) that had been previously scheduled for April to consider and review the draft Risk Evaluation for asbestos and associated documents. This will be a virtual public meeting of the TSCA SACC, with participation by phone and webcast only. As previously announced in April, the public is invited to comment on the draft risk evaluation for asbestos and related documents in advance of and during this peer review virtual meeting. The TSCA SACC will consider these comments during their discussions.

DATES:

Peer Review Virtual Meeting: The 4-day virtual meeting will be held from 10:00 a.m. to approximately 5:00 p.m. Eastern Time, June 8 to 10, 2020; and from 11:30 a.m. to approximately 5:00 p.m. Eastern Time on June 11, 2020 (as needed, updated times for each day may be provided in the meeting agenda that will be posted in the docket at *http://www.regulations.gov* and on the TSCA SACC website at *http://www.epa.gov/tsca-peer-review*).

Required Registration: You must register online to receive the webcast meeting link and audio teleconference information. You may register as a listen-only attendee at any time up to the end of the virtual meeting. To make oral comments during the peer review virtual public meeting, please register by noon on June 2, 2020, to be included on the meeting agenda.

Comments: Submit your written comments, using the detailed instructions provided in the **Federal Register** on April 3, 2020 (85 FR 18954; FRL–10006–93) and the **ADDRESSES**

section of this document, on or before June 2, 2020.

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES:

Peer Review Virtual Meeting: Please visit *http://www.epa.gov/tsca-peer-review* to register. You must register online to receive the webcast meeting link and audio teleconference information for participation.

Comments: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0501, using the instructions provided in in the **Federal Register** on April 3, 2020 (85 FR 18954; FRL–10006–93). Please use the Federal eRulemaking Portal*: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

Requests to present oral comments: Submit requests to present oral comments during the virtual meeting when registering. Please visit *http://www.epa.gov/tsca-peer-review* to register.

Requests for special accommodations: Submit requests for special accommodations to the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *TSCS SACC:* Dr. Diana Wong, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–2049; email address: *wong.diana-m@epa.gov.*

Draft Risk Evaluation: Dr. Stan Barone, Office of Pollution Prevention and Toxics (7403M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1169; email address: *barone.stan@epa.gov.*

SUPPLEMENTARY INFORMATION: The original meeting announcement appeared in the **Federal Register** on April 3, 2020 (85 FR 18954; FRL–10006–93). This document announces the new dates for the rescheduled peer review meeting and provides instructions for registering for this virtual meeting, please consult the April 3, 2020 document for details about the purpose of the meeting, as well as instructions for participating or providing comments.

As indicated previously, EPA's background documents, related supporting materials, and draft charge questions to the TSCA SACC are available on the TSCA SACC website and in the docket established for the specific chemical substance. In addition, EPA will provide additional background documents (*e.g.,* TSCA SACC meeting agenda) as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available, in the docket at *http://www.regulations.gov* and the TSCA SACC website at *http://www.epa.gov/tsca-peer-review.*

After the public meeting, the TSCA SACC will prepare meeting minutes summarizing its recommendations to the EPA. The meeting minutes will be posted on the TSCA SACC website and in the relevant docket.

Authority: 15 U.S.C. 2625(o) *et seq.;* 5 U.S.C Appendix 2 *et seq.*

Dated: May 10, 2020.

Hayley Hughes,

Director, Office of Science Coordination and Policy.

[FR Doc. 2020–10484 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10009–12–Region 4]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; The Chemours Company, FC, LLC, Chemours Titanium Technologies DeLisle Plant, Pass Christian, Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a UIC no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the Land Disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to The Chemours Company for Class I hazardous waste injection wells located at their Pass Christian, Mississippi facility. The company has adequately demonstrated to the satisfaction of the EPA by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by The Chemours Company of the specific restricted hazardous wastes identified in this exemption reissuance request, into Class I hazardous waste injection Wells 2, 3, 4, and 5 until December 31, 2050, unless the EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the EPA Region 4 Ground Water, UIC, and GIS Section. A public notice was issued November 12, 2019 and the public comment period closed on December 31, 2019, and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: EPA approved the action on February 28, 2020.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 4, Water Division, Safe Drinking Water Branch, 61 Forsyth Street Northeast, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Richie Hall, EPA Region 4, Groundwater, UIC, and GIS Section, by mail at the Atlanta street address given above, by telephone at (404) 562–8067, or by email at *hall.richard@epa.gov.*

Dated: May 8, 2020.

Jeaneanne Gettle,

Director, Water Division, Region 4.

[FR Doc. 2020–10398 Filed 5–14–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Temporary Approval by the Board Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary approval of information collection, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has temporarily revised the Reporting Requirements Associated with Emergency Lending Under Section 13(3) (FR A; OMB No. 7100–0373), pursuant to the authority delegated to the Board by the Office of Management and Budget (OMB).

DATES: Comments must be submitted on or before July 14, 2020.

ADDRESSES: You may submit comments, identified by *FR A,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number 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 *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* 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 security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. Pursuant to its delegated authority, the Board may temporarily approve a revision to a collection of information, without providing opportunity for public comment, if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

As discussed below, the Board has made certain temporary revisions to the FR A information collection. The Board's delegated authority requires that the Board, after temporarily approving a collection, publish a notice soliciting public comment. Therefore, the Board is also inviting comment on a proposal to extend the FR A information collection for three years, with these revisions. The **Federal Register** notice related to the FR A that was published March 2, 2020, is superseded by this notice.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Approval Under OMB Delegated Authority of the Temporary Revision of the Following Information Collection:

Report title: Reporting Requirements Associated with Emergency Lending Under Section 13(3).

Agency form number: FR A.

OMB control number: 7100–0373.

Frequency: Event-generated.

Respondents: Entities or persons borrowing under an emergency lending program or facility established pursuant to section 13(3) of the Federal Reserve Act.

Estimated number of respondents: FR A–1: 11,281; FR A–2: 6,449; FR A–3: 13,526.

Estimated average hours per response: FR A–1: 8 hours; FR A–2: 40 hours; FR A–3, Lender certifications: 151 hours; Borrower certifications: 8 hours.

Estimated annual burden hours: 1,032,134.

General description of report: The Board's Regulation A (12 CFR part 201) establishes policies and procedures with respect to emergency lending under section 13(3) of the Federal Reserve Act, as required by sections 1101 and 1103 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These policies and procedures include (1) a certification that a participant in a lending facility is not insolvent;[1] and (2) a certification that a participant in a lending facility is unable to secure adequate credit accommodations from other banking institutions.[2] Currently,

[1] *See* 12 CFR 201.4(d)(5)(iv)(A).

[2] *See* 12 CFR 201.4(d)(8)(ii).

the Board's information collection for Regulation A, the FR A, includes only the former certification; the latter was unintentionally omitted. In addition to the two certifications in Regulation A that apply to all emergency lending authorized under section 13(3), the Board may establish additional certification requirements for an individual emergency lending facility. Depending on the requirements of a particular lending facility, there may be a need to vary the certifications, depending on the facts and circumstances.

The FR A information collection is being revised to contain three parts. The first part of the FR A, the FR A–1, pertains to reporting requirements included in Regulation A, described above. The second part of the FR A, the FR A–2, pertains to reporting requirements associated with individual facilities that are related to requirements of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The third part of the FR A, the FR A–3, pertains to reporting requirements specific to the Main Street Expanded Loan Facility, the Main Street New Loan Facility, and the Main Street Priority Loan Facility (collectively, the ''Main Street Lending Program'').

Legal authorization and confidentiality: The FR A is authorized pursuant to section 13(3) of the Federal Reserve Act, which sets out requirements for emergency lending. The obligation to respond is required to obtain a benefit.

The information collected under FR A may be kept confidential under exemption 4 of the Freedom of Information Act, which protects commercial or financial information obtained from a person that is privileged or confidential.

Current actions: The Board has revised the FR A to reflect reporting requirements under facilities created under section 13(3). The newly-created facilities include the Commercial Paper Funding Facility (CPFF), Main Street Lending Program, Money Market Mutual Fund Liquidity Facility (MMLF), Municipal Liquidity Facility (MLF), Paycheck Protection Program Liquidity Facility (PPPLF), Primary Dealer Credit Facility (PDCF), Primary Market Corporate Credit Facility (PMCCF), Secondary Market Corporate Credit Facility (SMCCF), and Term Asset-Backed Securities Loan Facility (TALF).

The FR A–1 is being revised to include a second certification, which was inadvertently omitted previously and serves as evidence that a person or entity is unable to secure adequate credit accommodations from other banking institutions. The FR A–2 is a new reporting requirement within the FR A collection established through the adoption of the term sheets for the Main Street Lending Program, PMCCF, SMCCF, and TALF. Participants in the facilities must certify that they are eligible to engage in a transaction under the facility, including that the entity is not a covered entity under section 4019 of the CARES Act. The FR A–3 is a new reporting requirement within the FR A collection established through the adoption of the term sheets for the Main Street Lending Program. An eligible lender under MSELF must certify that the methodology used for calculating the eligible borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA), in order to determine the maximum loan size, is the methodology the eligible lender previously used for adjusting EBITDA when originating or amending the eligible loan on or before April 24, 2020. An eligible lender under MSNLF or MSPLF must certify that the methodology used for calculating the eligible borrower's adjusted 2019 EBITDA in order to determine maximum loan size is the methodology it has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020. An eligible borrower must certify that it has a reasonable basis to believe that, as of the date of entering into the relevant transaction and after entering into that transaction, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period. All eligible lenders in the Main Street Lending Program facilities must collect certifications from borrowers.

Board of Governors of the Federal Reserve System, May 12, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–10467 Filed 5–14–20; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2020–04; Docket No. 2020–0002; Sequence No. 12]

Revised Notice of Intent/Revised Project Action and Notice of Availability for Land Ports of Entry (LPOE)

AGENCY: Public Buildings Service (PBS), Pacific Rim Division General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) and the GSA have partnered to develop a program of projects at a number of Land Ports of Entry (LPOEs) so that FMCSA agents can safely and effectively inspect both commercial truck and bus traffic.

DATES: Due to the COVID–19 pandemic and to ensure the safety of the public, a formal, in-person public meeting will not be held to solicit comments and provide information about the Draft EA.

We will consider all comments that we receive on or before June 30, 2020.

ADDRESSES: The Draft EA can be viewed on the GSA website at *http://www.gsa.gov/nepa.* Click on *NEPA Library* then *Public Documents.* In addition, copies may be obtained by calling or writing to the individual listed in this notice under the **FOR FURTHER INFORMATION CONTACT** section.

You may submit comments at the public meeting by either of the following methods:

- *Electronic Mail: osmahn.kadri@gsa.gov.*
- *Postal Mail/Commercial Delivery:* Send your comment to: Tina Sekula, JMT Inc., 1130 Situs Court, Suite 200, Raleigh, NC 27606.

FOR FURTHER INFORMATION CONTACT:

- *Email:* Osmahn Kadri at *osmahn.kadri@gsa.gov*
- *Mail:* Attn: Osmahn Kadri, NEPA Program Manager, 50 United Nations Plaza, 3345, Mailbox #9, San Francisco, CA 94102.
- *Telephone:* (415) 522–3617.
- *NOTE* PLEASE DO NOT MAIL COMMENTS VIA THE U.S. POSTAL SERVICE (USPS) TO THE GSA MAILING ADDRESS AT THIS TIME. USPS MAIL CAN BE SENT TO JMT INC AT THE ADDRESS ABOVE.

SUPPLEMENTARY INFORMATION:

GSA intended to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts from the proposed construction of six (6) inspection facilities at five (5) different LPOEs in both California and Arizona. A Notice of Intent (NOI) was published on May 23, 2019 concerning the EIS and scoping meetings. A revised NOI was published on June 21, 2019 to notify interested parties that dates for the scoping meetings changed for the two (2) Arizona Sites. This publication serves as another revised NOI to inform interested parties of a revised project action.

Based on scoping comments received, GSA has modified the proposed action to develop co-located truck inspection facilities within existing state-operated

inspection facilities to the extent practicable and develop stand-alone Federal facilities for the proposed bus inspection facilities where necessary. As a result of the revised proposed action, GSA has revised the approach to NEPA documentation. GSA has prepared a separate Draft Environmental Assessment (EA) and will prepare a Finding of No Significant Impact (FONSI), if appropriate, to analyze the potential impacts from the proposed construction of the bus inspection facility at the San Ysidro LPOE in California. Two alternatives were analyzed to include: (1) New ''Basic'' Facility Buildout; (2) No Build Action. Regarding the proposed truck inspection facilities and other bus inspection facilities previously identified at the other LPOEs, GSA is negotiating agreements with state operated inspection facilities for possible co-located facilities, which will determine what type of NEPA documentation will be prepared for those proposed actions.

GSA is also advising the public that the Draft EA prepared for the construction of a standalone FMCSA Bus Inspection Facility at the San Ysidro LPOE in San Diego, California is available for public comment.

The Draft EA is being prepared to comply with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S. Code [U.S.C.] 4321), as implemented by Council on Environmental Quality (CEQ) regulations (40 Code of Federal Regulations [CFR] 1500–1508), and policies of the GSA as the lead federal agency. The EA process provides steps and procedures to evaluate the potential social, economic, and environmental impacts for the construction of the proposed FMCSA Bus Inspection Facility at the San Ysidro LPOE while providing an opportunity for local, state, or federal agencies to provide input and/or comment through scoping, public information meetings, and/or a public hearing. The social, economic, and environmental considerations are evaluated and measured, as defined in the CEQ regulations, by their magnitude of impacts.

The bus inspection station allows for FMCSA to conduct proper inspection of buses entering the United States from Mexico. FMCSA is required to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out of service as a result of said inspections. The current bus inspection operations at the San Ysidro LPOE lacks the proper infrastructure for bus inspections and is not adequate to maintain regular inspections. Therefore, the LPOE does not address safety needs for the travelling public nor FMCSA staff, nor capacity needs identified in future traffic projections at the LPOE. The lack of dedicated bus inspection infrastructure exposes FMCSA to safety concerns while conducting inspections and is not in conformance with current FMCSA safety standards. GSA proposes to construct a new FMCSA Bus Inspection facility on a federally owned 1.5-acre parcel located north of the existing LPOE

A public scoping meeting on the project was held on June 18, 2019. Comments received during the meeting were considered by GSA in this Draft EA. The finding, which is based on the Draft EA, reflects the GSA's determination that construction of the proposed facility will not have a significant impact on the quality of the human or natural environment.

Jared Bradley,

Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2020–10426 Filed 5–14–20; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20MZ; Docket No. CDC–2020–0043]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Emerging Infections Program (EIP) Tracking of SARS–CoV–2 Infections among Healthcare Personnel''. Through this project, EIP staff will collect data to: (1) Determine the extent of COVID–19 among HCP working in U.S. healthcare facilities; (2) describe characteristics of HCP exposed to or infected with SARS–CoV–2, including clinical activities and personal protective equipment use; and (3) compare exposures and other characteristics of HCP cases and exposed HCP that do not become cases to identify risk factors or protective factors for COVID–19.

DATES: CDC must receive written comments on or before July 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0043 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, of the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Emerging Infections Program Tracking of SARS–CoV–2 Infections among Healthcare Personnel—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC proposes to conduct tracking and interviews of healthcare personnel (HCP) with COVID–19 (HCP cases) and HCP exposed to COVID–19 patients but who do not become cases (HCP non-cases) to determine the burden of infections and identify factors associated with development of COVID–19 among HCP of healthcare facilities within catchment areas of CDC's Emerging Infection Program's (EIP) sites, a network of 10 state health departments and their local public health and academic partners. The EIP is currently approved under OMB Control No. 0920–0978 (expiration date: 04/30/2022). EIPs assist in local, state, and national efforts to prevent, control, and monitor the public health impact of infectious diseases. The 10 EIP sites are: California, Colorado, Connecticut, Georgia, Maryland, Minnesota, New Mexico, New York, Oregon and Tennessee. Up to 10 EIP sites may participate in this information collection, depending on resource availability during the pandemic.

EIP sites that participate in this project may choose to implement one or both project options below:

- *Option 1:* Tracking of SARS–CoV–2 infections among HCP;
- *Option 2:* Assessing risk factors for infections among HCP exposed to patients with COVID–19 in healthcare facilities.

EIP site staff will identify a convenience sample of healthcare facilities within the EIP catchment areas. Hospitals and nursing homes are prioritized for inclusion, but other types of facilities may participate. Each EIP site will seek to identify three or more facilities to participate.

For option 1, EIP staff will obtain lists of HCP cases and contact information from local or state health department partners or in some cases from a healthcare facility's occupational health department or infection control program. To minimize burden on healthcare facilities, EIP staff will attempt to obtain HCP lists and contact information from health departments whenever possible.

For option 2, EIP staff may need to work directly with a healthcare facility's occupational health department or infection control program to obtain HCP names and contact information because this option requires identification and data collection from HCP non-cases (HCP who are exposed to COVID–19 patients but who do not develop infection).

For both options, EIP staff will collect data from HCP via telephone interviews or a self-administered electronic case report form. There are no costs to respondents other than their time to participate. The total estimated annualized burden hours requested for this collection is 2,300.

Estimated Annualized Burden Hours

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Healthcare Personnel	Assessment of Healthcare Personnel. Exposed to or Infected with SARS–CoV–2.	4,000	1	30/60	2,000
Occupational Health Nurses at Healthcare Facilities.	No form	50	24	15/60	300
Total					2,300

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–10410 Filed 5–14–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20HP]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled National Evaluation of the DP18–1815 Cooperative Agreement Program: Category B, Cardiovascular Disease Prevention and Management to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 5, 2019, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Evaluation of the DP18–1815 Cooperative Agreement Program: Category B, Cardiovascular Disease Prevention and Management—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) plans to conduct a comprehensive evaluation of the recently launched five-year Cooperative Agreement program CDC–RFA–DP18–1815PPHF18: Improving the Health of Americans Through Prevention and Management of Diabetes and Heart Disease and Stroke, hereafter referred to as ''1815''. This cooperative agreement funds all 50 State Health Departments and the Washington, DC health department (hereafter referred to as ''HD recipients'') to support investments in implementing evidence-based strategies to prevent and manage cardiovascular disease (CVD) and diabetes in high-burden populations/communities within each state and the District of Columbia. High burden populations/communities are those affected disproportionately by high blood pressure, high blood cholesterol, diabetes, or prediabetes due to socioeconomic or other characteristics, including access to care, poor quality of care, or low income. The 1815 program is a collaboration between the Division of Diabetes Translation (DDT) and the Division of Heart Disease and Stroke Prevention (DHDSP), and is structured into two program categories aligning with each Division.

This information collection request focuses on activities conducted under Category B, Cardiovascular Disease Prevention and Management. Progress will be assessed for three CVD program areas: (1) Tracking and monitoring clinical quality measures (CQM) shown to improve healthcare quality and identify patients with hypertension; (2) Implementing team-based care and medication therapy management (TBC/MTM) for patients with high blood pressure and high blood cholesterol; and (3) Fostering community-clinical linkages (CCL) for community resources and clinical services that support systematic referrals, self-management, and lifestyle change for patients with high blood pressure and high blood cholesterol.

This cooperative agreement is a substantial investment of federal funds. DDT and DHDSP are responsible for the stewardship of these funds, and they must be able to demonstrate the types of interventions being implemented and what is being accomplished through the use of these funds. Thus, throughout the five-year cooperative agreement period, CDC will work with HD recipients to track the implementation of the cooperative agreement strategies and evaluate program processes and outcomes. In order to collect this information for Category B, CDC has designed three overarching components: (1) Category B case studies, (2) Category B cost study, and (3) Category B recipient-led evaluations. Each component consists of data collection mechanisms and tools that are designed to capture the most relevant information needed to inform the evaluation effort while placing minimum burden on respondents. Respondents will include HD recipients, as well as select HD recipient partner sites, which are organizations that HD recipients are partnering with in the implementation of the 1815 strategies.

The evaluation of cooperative agreement strategies and activities conducted by DHDSP will determine the efficiency, effectiveness, impact and sustainability of 1815-funded strategies in the promotion, prevention, and management of diabetes and heart disease and help identify promising practices that can be replicated and scaled to better improve health outcomes. In addition, evaluation plays a critical role in organizational learning, program planning, decision-making, and measurement of the 1815 strategies. As an action-oriented process, the evaluation will serve to identify programs that have positive outcomes, identify those that may need additional technical assistance support, and highlight the specific activities that make the biggest contribution to improving diabetes and cardiovascular disease prevention and management efforts. Without collection of new evaluative data, CDC will not be able to capture critical information needed to continuously improve programmatic efforts and clearly demonstrate the use of federal funds.

OMB approval is requested for three years. Participation is required for cooperative agreement awardees and voluntary for partner sites. The total estimated annualized burden hours are 743.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Health Department (1815 Recipient)	CQM Health Department Interview Guide	17	1	1.5
	CQM Group Discussion Guide	27	1	2
	TBC Health Department Interview Guide	9	1	1.5

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
	MTM Health Department Interview Guide	8	1	1.5
	TBC Group Discussion Guide	27	1	2
	CCL Health Department Interview Guide	17	1	1.5
	CCL Group Discussion Guide	27	1	2
	Cost Study Resource Use and Cost Study Inventory Tool—Health Department.	8	1	2
	Recipient-Led Evaluation Annual Report Template—Year 3 Effectiveness Brief.	51	1	8
Partner/Site-Level	CQM Partner Site-Level Interview Guide	15	1	1
	TBC Partner Site-Level Interview Guide	8	1	1
	MTM Partner Site-Level Interview Guide	7	1	1
	CCL Partner Site-Level Informant Interview Guide.	15	1	1
	Cost Study Resource Use and Cost Inventory Tool—Partner/Site Level.	17	1	2

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–10409 Filed 5–14–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-20–20NE; Docket No. CDC–2020–0045]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Infant Feeding Practices Study III to understand the current state of mothers' intentions, behaviors, feeding decisions, and practices from pregnancy through their child's first two years of life and how these change.

DATES: CDC must receive written comments on or before July 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0045 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Infant Feeding Practices Study III–New–National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Infant Feeding Practices Study (IFPS) III is a longitudinal study that will follow pregnant women and their new baby for two years. Data will be collected using web-based surveys at multiple time points over two years. This includes (1) a prenatal survey, (2) 14 follow up surveys after the baby is

born, and (3) 2–4 maternal dietary data recalls. The data from IFPS III will be used to: Fill research gaps on how feeding behaviors, patterns, and practices change over the first two years of life and the health-related impacts; inform multiple federal agency efforts targeting maternal and infant and toddler nutrition through work in hospitals, with health care providers, with early care and education providers, and outreach to families and caregivers; and provide context to policy level documents such as the *U.S. Dietary Guidelines for Americans,* which will include pregnant women and children birth to 24 months of age for the first time in *2020–2025.* CDC requests approval of 5,051 annualized burden hours for this collection. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annualized burden hours
Pregnant/Postpartum Women	Study Screener	7,477	1	3/60	125
	Study Consent	4,711	1	5/60	131
	Prenatal Survey	4,239	1	20/60	471
	24-Hour Dietary Recall—Prenatal	2,756	1	24/60	367
	Replicate 24-Hour Dietary Recall—Prenatal.	269	1	24/60	36
	Request for notification of child's birth.	4,239	1	2/60	47
	Birth Screener	4,103	1	2/60	46
	1-Month Survey	3,693	1	20/60	410
	2-Month Survey	3,575	1	15/60	298
	3-Month Survey	3,460	1	15/60	288
	24-Hour Dietary Recall—Month 3	2,249	1	24/60	300
	Replicate 24-Hour Dietary Recall—Month 3.	219	1	24/60	29
	4-Month Survey	3,350	1	15/60	279
	5-Month Survey	3,243	1	15/60	270
	6-Month Survey	3,139	1	15/60	262
	8-Month Survey	3,038	1	15/60	253
	10-Month Survey	2,941	1	20/60	327
	12-Month Survey	2,847	1	15/60	237
	15-Month Survey	2,756	1	15/60	230
	18-Month Survey	2,668	1	15/60	222
	21-Month Survey	2,582	1	15/60	215
	24-Month Survey	2,500	1	15/60	208
Total					5,051

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–10412 Filed 5–14–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0047]

Healthcare Infection Control Practices Advisory Committee (HICPAC); Cancellation of Meeting

Notice is hereby given of a change in the meeting of the Healthcare Infection Control Practices Advisory Committee (HICPAC); [Docket No. CDC–2020–0047]; May 15, 2020, 3:00 p.m. to 4:30 p.m., EDT, which was published in the **Federal Register** on April 30, 2020, Volume 85, Number 84, pages 23965–23966.

This meeting is being canceled in its entirety.

FOR FURTHER INFORMATION CONTACT: Koo-Whang Chung, M.P.H., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE, MS H16–3, Atlanta, Georgia 30329–4027; Telephone: 404–639–4000; Email: *hicpac@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 11, 2020.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–10417 Filed 5–14–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20ND; Docket No. CDC–2020–0044]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *Investigation of SARS–CoV–2 Seroprevalence and Factors Associated with Seropositivity in a Community Setting.* CDC will, at the request of state and local health departments, collect epidemiological data and blood samples from households to determine the extent of COVID–19 infection in communities as determined by overall SARS–CoV–2 seroprevalence.

DATES: CDC must receive written comments on or before July 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0044 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Investigation of SARS–CoV–2 Seroprevalence and Factors Associated with Seropositivity in a Community Setting—New—National Center for Immunization and Respiratory Diseases (NCIRD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for Immunization and Respiratory Diseases (NCRID), Division of Viral Diseases (DVD) requests approval for a new information collection, ''Investigation of SARS–CoV–2 Seroprevalence and Factors Associated with Seropositivity in a Community Setting.'' Coronavirus disease 2019 (COVID–19), caused by the severe acute respiratory syndrome coronavirus 2 (SARS–CoV–2), was first reported in Wuhan, Hubei Province, China in late December 2019. On February 26, 2020, CDC announced that an infection with the novel coronavirus had been confirmed ''in a person who reportedly did not have relevant travel history or exposure to another known patient with COVID–19,'' making this the first suspected United States (U.S.) case of community transmission.

We propose to conduct an investigation to (1) determine the extent of infection in communities as determined by overall SARS–CoV–2 seroprevalence; and (2) determine factors associated with SARS–CoV–2 seropositivity among persons residing in areas with evidence of community transmission. The data collected under this information collection request (ICR) will be used immediately by CDC's emergency COVID–19 response at the national level, and by state and local health departments, to understand the cumulative incidence in a given population within their jurisdiction. A cross-sectional household survey design will be used to measure SARS–CoV–2 seroprevalence at one or more time points in ≥1 U.S. areas with evidence of community transmission of SARS–CoV–2. Areas with existing population-based surveillance platforms with well-defined catchment areas will be preferentially selected. The investigation population will consist of all persons residing in selected households from selected defined geographic areas, according to the sampling framework. CDC and health departments alike will use this seroprevalence data to prioritize the allocation of resources and response efforts.

CDC will collect epidemiological information in the form of a standardized questionnaire which will capture information on household characteristics, age, sex, race, ethnicity, exposures, underlying medical conditions and symptoms consistent with COVID–19 infection that occurred prior to the survey. One respondent in each household (an adult who knows all residents of the household) will provide responses for the household questionnaire. The household questionnaire will capture information on household characteristics and document all household members, whether they are present at the time of the visit or not. Blood samples will be collected by trained phlebotomists from all individuals in the household and tested for antibodies to SARS–CoV–2 using an enzyme-linked immunosorbent assay with confirmatory microneutralization testing as needed. Investigations will be conducted at a total of four sites throughout the clearance period. There are no costs to respondents other than their time to participate. The total estimated annualized burden hours requested for this collection is 2,420.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Household Participants	Individual Questionnaire	4,000	1	20/60	1,333
	Household Questionnaire	1,680	1	15/60	420
	Blood collection (no form)	4,000	1	10/60	667
Total					2,420

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–10411 Filed 5–14–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0051]

Request for Information Concerning Personnel and the Retention of Next Generation Sequencing Data in Clinical and Public Health Laboratories

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with request for comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain public comment on personnel performing bioinformatics activities in clinical and public health laboratories; storage and retention of next generation sequencing (NGS) data files; and maintenance of sequence analysis software. The comments will be used by the Clinical Laboratory Improvement Advisory Committee (CLIAC) for deliberation and possible recommendations about future changes to the Clinical Laboratory Improvement Amendments of 1988 (CLIA) regulations.

DATES: Written comments must be received on or before July 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0051 by any of the following methods. CDC does not accept public comment by email.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Heather Stang, MS, MT, Division of Laboratory Systems, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, GA 30329, Attn: Docket No. CDC–2020–0051.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Heather Stang, MS, MT, Center for Surveillance, Epidemiology and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, Georgia 30329–4018, telephone (800) 232–4636; email: *dlsinquiries@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data about topics related to personnel performing informatics activities, as well as data storage and retention practices related to the use of next generation sequencing (NGS) technology. In addition, CDC invites comments specifically on the following questions:

(1) What are the roles and responsibilities for all personnel performing bioinformatics or pathology/laboratory informatics activities? What training is considered essential for each of the roles? What competencies are considered essential for each of the roles? What minimum educational requirements (degrees or courses) are required for each of the roles?

(2) What are the challenges for recruitment and retention of bioinformatics or pathology/laboratory informatics personnel?

(3) What are examples of how NGS data files are used in addition to generating a clinical test result?

(4) What NGS data files should be retained for quality assurance, repeat analyses, or subsequent analyses? How long should these NGS data files be retained?

(5) What are the challenges and approaches for laboratories to maintain and utilize previous versions of sequence analysis software?

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. Do not submit public comments by email. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign.

Background and Brief Description

Clinical laboratory testing technology has advanced significantly since the CLIA regulations were first implemented approximately 30 years ago. Next generation sequencing (NGS) technologies provide the high-throughput capability to rapidly and cost-effectively sequence large regions and mixed populations of DNA and RNA, when compared to traditional sequencing methods. This technology results in a significant increase in data that requires specialized analysis to derive a clinically meaningful result. NGS has led to improvements in diagnoses and patient care in many areas of medicine that include medical genetics, pediatrics, oncology, and microbiology. In some instances, NGS has led to life-saving diagnoses and treatment pathways, not achievable using other testing modalities. One element that differentiates NGS from most laboratory methodologies is its

significant reliance on informatics to achieve a meaningful and reportable result. As a consequence, clinical laboratories require personnel knowledgeable in bioinformatics or pathology/laboratory informatics to design and manage the bioinformatics analysis.

While CLIA regulations apply to clinical NGS testing, there is a lack of clarity regarding how the general CLIA quality system and personnel requirements should be specifically implemented for the NGS bioinformatics components. In April 2019, CLIAC made eight recommendations regarding CLIA's application to NGS-based technologies. This request for information is soliciting comments from the public for more information on topic areas mentioned in two of the recommendations, specifically, the qualifications of personnel performing bioinformatics activities; storage and retention of NGS data files; and maintenance of sequence analysis software. The April 2019 CLIAC summary is available in the docket under the Supporting Materials tab and at *https://www.cdc.gov/cliac/past-meetings.html.*

The qualifications and responsibilities of personnel performing the informatics component of the testing process are not addressed in the CLIA regulations. For the purpose of this request for information, the informatics component of NGS includes the analysis of NGS machine-generated data and subsequent computational processes. Therefore, CDC is asking the public to describe different responsibilities of personnel providing bioinformatics or pathology/laboratory informatics expertise such as validating and assuring that the informatics pipeline meets documented performance specifications.

CDC is also interested in learning the skills, training, and education of personnel who will fill bioinformatics or pathology/laboratory informatics positions, and how clinical and public health laboratories can recruit and retain personnel with these identified skills.

Lastly, the NGS testing process generates large amounts of data and requires multiple file types. CLIA regulations specify at 42 CFR 493.1105(a)(3) that all analytic systems records must be kept for at least two years, but the regulations do not specify the types of data to be captured or the retention time for a given data type. The regulations do not address the capability to access and reanalyze the data after the test is performed. This capability may require retention of the version of software used in the original analysis. CDC requests comment from the public on this topic.

Dated: May 12, 2020.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2020–10461 Filed 5–14–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–19BHC]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled National Evaluation of the DP18–1815 Cooperative Agreement Program: Category A, Diabetes Management and Type 2 Diabetes Prevention to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 5, 2019, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Evaluation of the DP18–1815 Cooperative Agreement Program: Category A, Diabetes Management and Type 2 Diabetes Prevention—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) Division of Diabetes Translation (DDT) and Division for Heart Disease and Stroke Prevention (DHDSP) are submitting this new information collection request (ICR) for an evaluation of the recently launched five-year Cooperative Agreement program CDC–RFA–DP18–1815PPHF18: Improving the Health of Americans Through Prevention and Management of Diabetes and Heart Disease and Stroke, hereafter referred to as ''1815''. This cooperative agreement funds all 50 State Health Departments and the Washington, DC health department (hereafter referred to as ''HD recipients'') to support investments in implementing evidence-based strategies to prevent and manage cardiovascular disease (CVD) and diabetes in high-burden populations/communities within each state and the District of Columbia. High burden populations/communities are those affected disproportionately by high blood pressure, high blood cholesterol, diabetes, or prediabetes due to socioeconomic or other characteristics, including access to care, poor quality of care, or low income. The 1815 program is a collaboration between DDT and DHDSP and is structured into two program categories aligning with each

Division: Category A focuses on diabetes management and type 2 diabetes prevention; Category B focuses on CVD prevention and management. This information request package focuses on data collection activities for the Category A diabetes assessment.

This cooperative agreement is a substantial investment of federal funds. DDT and DHDSP are responsible for the stewardship of these funds, and they must be able to demonstrate the types of interventions being implemented and what is being accomplished through the use of these funds. Thus, throughout the five-year cooperative agreement period, CDC will work with HD recipients to track the implementation of the cooperative agreement strategies and evaluate program processes and outcomes. In order to collect this information for Category A, CDC has designed two overarching components: (1) Category A rapid evaluation of DSMES and National DPP partner sites and (2) Category A recipient-led evaluations. Each component consists of data collection mechanisms and tools that are designed to capture the most relevant information needed to inform the evaluation effort while placing minimum burden on respondents. Respondents will include HD recipients, as well as select HD recipient partner sites, which are organizations that HD recipients are partnering with in the implementation of the 1815 strategies.

The evaluation of cooperative agreement strategies and activities conducted by DDT will determine the efficiency, effectiveness, impact and sustainability of 1815-funded strategies in the promotion, prevention, and management of diabetes and heart disease and help identify promising practices that can be replicated and scaled to better improve health outcomes. In addition, evaluation plays a critical role in organizational learning, program planning, decision-making, and measurement of the 1815 strategies. As an action-oriented process, the evaluation will serve to identify programs that have positive outcomes, identify those that may need additional technical assistance support, and highlight the specific activities that make the biggest contribution to improving diabetes and cardiovascular disease prevention and management efforts. Without collection of new evaluative data, CDC will not be able to capture critical information needed to continuously improve programmatic efforts and clearly demonstrate the use of federal funds.

OMB approval is requested for three years. Participation is required for cooperative agreement awardees and voluntary for partner sites. The total estimated annualized burden hours are 1,084.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Health Department (1815 Recipient).	Evaluation and Performance Measurement Plan (EPMP)	17	1	8
	Recipient-Led Evaluation Reporting Template	51	1	8
	DSMES Partner Site-Level Rapid Evaluation Rapid Evaluation Form.	17	1	0.5
	National DPP Partner Site-Level Rapid Evaluation Nomination Form.	17	1	0.5
DSMES Partner Site	DSMES Partner Site-Level Rapid Evaluation Survey Questionnaire.	340	1	0.5
	Program Coordinator Interview Guide	14	1	2
	Professional Team Member Interview Guide	28	1	2
	Paraprofessional Team Member Interview Guide	28	1	2
National DPP Partner Site	National DPP Partner Site-Level Rapid Evaluation Survey Questionnaire.	340	1	0.5
	Program Coordinator Interview Guide	14	1	1
	Lifestyle Coach Interview Guide	28	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–10408 Filed 5–14–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meetings

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Head Start Act, notice is hereby given of three 1-day tribal consultation sessions to be held between HHS/ACF OHS leadership and the leadership of tribal governments operating Head Start and Early Head Start programs. The purpose of these consultation sessions is to discuss ways to better meet the needs of American Indian and Alaska Native (AIAN) children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. Three tribal consultations will be held as part of HHS/ACF or ACF Tribal Consultation Sessions. Please note the planned tribal consultation dates may be impacted by COVID–19 travel restrictions. OHS will consider virtual means of facilitating tribal consultations and/or the postponing of tribal consultations should travel restrictions and group meeting limitations remain in effect.

DATES: July 9–10, 2020, 1 to 3 p.m.
July 14–16, 2020, 1 to 3 p.m.
Aug. 3, 2020, 1 to 5 p.m.

ADDRESSES:

- July 9–10, 2020—Glendale, AZ (Location TBD)
- July 14–16, 2020—Denver, CO (Location TBD)
- Aug. 3, 2020—Spokane, WA (Northern Quest Resort)

FOR FURTHER INFORMATION CONTACT: Todd Lertjuntharangool, regional program manager, Region XI/AIAN, Office of Head Start, email

Todd.Lertjuntharangool@acf.hhs.gov, or phone (202) 205–9503. Additional information and online meeting registration will be available at *https://eclkc.ohs.acf.hhs.gov/about-us/article/2020-tribal-consultations.*

SUPPLEMENTARY INFORMATION: In accordance with Section 640(l)(4) of the Head Start Act, 42 U.S.C. 9835(1)(4), ACF announces OHS Tribal Consultation Sessions for leaders of tribal governments operating Head Start and Early Head Start programs. The agenda for the scheduled OHS tribal consultations in Glendale, Arizona; Spokane, Washington; and Denver, Colorado, will be organized around the statutory purposes related to meeting the needs of AIAN children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken, and in progress, to address the issues and concerns raised in the 2019 OHS Tribal Consultations.

The consultation sessions will be conducted with elected or appointed leaders of tribal governments and their designated representatives. Designees must have a letter from the tribal government authorizing them to represent the tribe. Tribal governments must submit the designee letter at least 3 days in advance of the consultation sessions to Todd Lertjuntharangool at *Todd.Lertjuntharangool@acf.hhs.gov.* Other representatives of tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of each tribal consultation session will be prepared and made available within 45 days of the session to all tribal governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Todd Lertjuntharangool at *Todd.Lertjuntharangool@acf.hhs.gov,* prior to each consultation session or within 30 days after each meeting.

OHS will summarize oral testimony and comments from the consultation sessions in each report without attribution, along with topics of concern and recommendations.

Megan E. Steel,

Executive Secretariat Certifying Officer.

[FR Doc. 2020–10440 Filed 5–14–20; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–6085]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; General Administrative Practice and Procedures

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 (PRA).

DATES: Submit written comments (including recommendations) on the collection of information by June 15, 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 OMB control number for this information collection is 0910–0191. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *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.

General Administrative Practice and Procedures

OMB Control Number 0910–0191—Revision

This information collection supports FDA regulations governing its administrative practices and procedures. Although certain information collection pertaining to official administrative actions is not subject to review by OMB under the PRA in accordance with 44 U.S.C. 3518(c)(1)(B) (5 CFR 1320.4(a)(2)), we have reviewed our regulations and are revising this information collection to include provisions that we believe may be subject to OMB review. We are also revising the information collection to consolidate related activities discussed in Agency guidance, as we believe this will improve the efficiency of our operations.

In the **Federal Register** of January 9, 2020 (85 FR 1169), we published a 60-day notice soliciting comment on the proposed collection of information. Although two comments were received, neither was directly responsive to the information collection topics solicited. At the same time, the comments were supportive of FDA information collection activity, and we appreciate this input.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
10.19; request for waiver, suspension, or modification of requirements	1	1	1	1	1
10.30 and 10.31; citizen petitions and petitions related to ANDA,[2] certain NDAs,[3] or certain BLAs [4]	220	1	220	24	5,280
10.33; administrative reconsideration of action	6	1	6	10	60
10.35; administrative stay of action	5	1	5	10	50
10.65; meetings and correspondence	750	1	750	5	3,750
10.85; requests for Advisory opinions	4	1	4	16	64
10.115(f)(3); submitting draft guidance proposals	100	1	100	4	400

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
12.22—Filing objections and requests for a hearing on a regulation or order	5	1	5	20	100
12.45—Notice of participation	5	1	5	3	15
Total			1,096		9,720

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Abbreviated new drug applications.
[3] New drug applications.
[4] Biologic license applications.

Unless a waiver, suspension, or modification submitted under § 10.19 (21 CFR 10.19) is granted by the Commissioner of Food and Drugs (the Commissioner), the regulations in 21 CFR part 10 apply to all petitions, hearings, and other administrative proceedings and activities conducted by FDA. Because we have not received requests under § 10.19, we had not included this provision in the information collection. However, to reflect the attendant burden resulting from submitting such a request, we provide an estimate of 1 response and 1 burden hour annually.

Administrative proceedings may be initiated under § 10.25 (21 CFR 10.25) when a petition is submitted. Section 10.30 (21 CFR 10.30) sets forth procedures by which an interested person may submit a citizen petition requesting the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action. Similarly, § 10.31 (21 CFR 10.31) governs citizen petitions and petitions for stay of action related to abbreviated new drug applications, certain new drug applications, or certain biologics license applications issued under section 701(a) of the Federal, Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(a)). The regulations provide content, format, and procedural requirements applicable to the submission of these petitions. To assist respondents to the information collection, FDA's Center for Drug Evaluation and Research developed an interpretive guidance entitled ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.'' The guidance describes FDA's current thinking on interpreting section 505(q) of the FD&C Act (21 U.S.C. 355(q)), and is currently approved under OMB control number 0910–0679. Based on Agency data, an average of 220 citizen petitions are received annually under §§ 10.30 and 10.31, and we estimate an average of 24 hours is required to prepare such a petition, for a total of 5,280 hours annually.

The regulations also establish a means by which an interested person may request that part or all of a decision by the Commissioner be reconsidered, or that the effective date of an action be stayed or extended. Sections 10.33 and 10.35 (21 CFR 10.33 and 10.35) establish the content, format, and procedural requirements applicable to such requests and explain that they must be submitted no later than 30 days after the decision involved. The regulations provide alternatively that, for good cause, the Commissioner may permit a petition to be filed after 30 days. The regulations also explain that an interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. According to our records, we have received a total of 12 such requests and we assume it takes respondents an average of 10 hours to prepare.

Section 10.65 (21 CFR 10.65) covers Agency meetings and correspondence. Interested persons may hold meetings and exchange correspondence with FDA representatives on matters within its jurisdiction by following the instructions and providing the information described in § 10.65. Because FDA maintains other information collections in its inventory that cover specific types of meeting requests, we did not previously include burden that may result from this section. However, to account for burden associated with meeting requests and correspondence generally, we provide an estimate of 750 submissions annually under this information collection; we assume one respondent per submission; and we assume each submission requires respondents between 1 to 10 hours to prepare, including gathering and reviewing the necessary material. We therefore use an average of 5 hours for this estimate and base this estimate on our experience with similar information collection.

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the FD&C Act, sets forth content, format, and procedural requirements by which an interested person may request an advisory opinion from the Commissioner on a matter of general applicability. The regulation explains that, when making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and a full statement of the facts and legal points relevant to the request. Based on Agency data, we estimate four such requests are received each year, and we assume each request requires 16 hours to prepare, for a total of 64 hours annually.

Section 10.115(f)(3) (21 CFR 10.115(f)(3)) provides for the public submission of draft guidance documents or topics for development to our Dockets Management Staff. To participate in the development and issuance of guidance documents, the public may elect to submit comment through alternative mechanisms as explained in our Good Guidance Practice regulations under § 10.115. Although most submissions and attendant burden associated with recommendations found in Agency guidance is accounted for in individual information collections associated with a particular product area or regulatory topic, here we are accounting for burden associated with general public submissions as described in § 10.115(f)(3). Based on Agency data, we receive an average of 100 such submissions each year; we assume each submission requires an average of 4 hours to prepare and, therefore, calculate a total burden of 400 hours annually.

Regulations in § 12.20 (21 CFR 12.20) include information collection associated with requesting a formal evidentiary public hearing and are issued under section 701(e)(2) of the

FD&C Act. The regulations provide instructions for filing objections and requests for a hearing on a regulation or order under § 12.20(d). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection, for which a hearing has been requested, must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, with some exceptions, supporting the objection. Failure to include this information constitutes a waiver of the right to a hearing on that objection. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under 21 CFR 12.24 and does not limit the evidence that may be presented if a hearing is granted. We estimate five respondents will file a request under the regulation and assume each request requires 20 hours to prepare, for a total of 100 hours annually.

Finally, § 12.45 (21 CFR 12.45), issued under section 701 of the FD&C Act, sets forth content, format, and procedural requirements for any interested person to file a petition to participate in a formal evidentiary hearing, either personally or through a representative. Section 12.45 requires that any person filing a notice of participation state their specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. This section also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in 21 CFR 12.85, or, in the case of a hearing before a Public Board of Inquiry, concerning disclosure of data and information by participants (21 CFR 13.25). In accordance with § 12.45(e), the presiding officer may omit a participant's appearance. Based on our records, we estimate five filings under this regulation and assume it requires 3 hours to prepare, for a total of 15 hours annually.

Respondents to the information collection are those interested persons conducting business with FDA, and thus subject to the applicable administrative regulations.

The burden estimates for this collection of information are based on Agency records and our experience over the past 3 years. By revising the information collection to include additional provisions, we have increased our annual burden estimate by 869 responses and 1,096 hours.

Dated: May 8, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–10384 Filed 5–14–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–0987]

Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency; Immediately in Effect Guidance for Clinical Laboratories, Commercial Manufacturers, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency.'' On February 4, 2020, the Secretary of Health and Human Services (HHS) determined that there is a public health emergency and that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the novel coronavirus (2019-nCoV). Rapid detection of Coronavirus Disease-2019 (COVID–19) cases in the United States requires wide availability of SARS-CoV–2 testing. This guidance was revised on March 16, 2020, May 4, 2020, and May 11, 2020. The guidance describes four policies intended to help facilitate the development and use of SARS-CoV–2 tests during the public health emergency: Two policies for accelerating the development of certain laboratory tests for COVID–19—one leading to an Emergency Use Authorization (EUA) submission to FDA and the other not leading to an EUA submission when the test is developed under the authorities of the State in which the laboratory resides and the State takes responsibility for COVID–19 testing by laboratories in its State; a policy for commercial manufacturers to more rapidly distribute their SARS-CoV–2 diagnostics to laboratories for specimen testing after validation while an EUA submission is being prepared for submission to FDA; and a policy regarding the use of serological testing. In addition, FDA has included a reference to the availability, on FDA's website, of templates for commercial manufacturers and laboratories intended to facilitate EUA submissions for molecular, antigen, and serology tests. The guidance document is immediately in effect, but it remains subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidance is published in the **Federal Register** on May 15, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–0987 for ''Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency.'' Received comments will be placed in the docket

and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see § 10.115(g)(5) (21 CFR 10.115(g)(5))).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Brittany Schuck, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3556, Silver Spring, MD 20993–0002, 301–796–5199.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency.'' On February 4, 2020, the Secretary of HHS determined that there is a public health emergency and that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the novel coronavirus (2019-nCoV).[1] Rapid detection of COVID–19 cases in the United States requires wide availability of SARS-CoV–2 testing. This guidance was originally published on February 29, 2020, to describe a policy regarding laboratories using tests they develop and validate before FDA has issued an EUA for their test in order to achieve more rapid testing capacity in the United States. The guidance was subsequently updated on March 16, 2020, to include a policy enabling States to take responsibility for oversight of laboratory developed tests within their States, a policy for commercial manufacturers to more rapidly distribute their SARS-CoV–2 diagnostic tests to laboratories for specimen testing after validation while an EUA is being prepared for submission to FDA, and a policy regarding the use of serological testing without an EUA. The guidance was then updated on May 4, 2020, to revise the policy regarding SARS-CoV–2 serology tests as it pertains to commercial manufacturers. Among other things, the updated guidance explained that commercial manufacturers should submit an EUA for their distributed serology tests within 10 business days of notification to FDA of validation or publication of the guidance published on May 4, 2020, whichever is later. The current version of the guidance was posted on May 11, 2020.

This guidance does not change the policies in the May 4, 2020, guidance but includes a new section that references the availability, on FDA's website, of templates for commercial manufacturers and laboratories intended to facilitate EUA submissions for molecular, antigen, and serology tests. The templates provide information and recommendations, and FDA plans to update them as appropriate as we learn more about the COVID–19 disease and gain experience with the EUA process for the various types of COVID–19 tests.

In the context of a public health emergency involving pandemic infectious disease, it is critically important that tests are validated because false results can have a broad public health impact beyond that to the individual patient. In this guidance, FDA provides recommendations regarding validation of COVID–19 tests, which remain unchanged from the guidance published on May 4, 2020. FDA encourages test developers to discuss any alternative approaches to validation with FDA.

In light of this public health emergency,[2] FDA has determined that prior public participation for this guidance is not feasible or appropriate and is issuing this guidance without prior public comment (see section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i)) and § 10.115(g)(2)). Although this guidance is immediately in effect, FDA will consider all comments received and revise the guidance document as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on ''Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* and at

[1] *https://www.fda.gov/media/135010/download;.*

[2] Secretary of Health and Human Services Alex M. Azar, Determination that a Public Health Emergency Exists. (January 31, 2020, renewed April 21, 2020), available at *https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx.*

https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders. Persons unable to download an electronic copy of ''Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency; Immediately in Effect Guidance for Clinical Laboratories, Commercial Manufacturers, and Food and Drug Administration Staff '' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 20010–R3 and complete title to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following FDA regulations and guidances have been approved by OMB as listed in the below table. This guidance also contains a new collection of information not approved under a current collection. This new collection of information has been granted a public health emergency (PHE) waiver from the PRA by the Department of HHS on March 19, 2020, under section 319(f) of the Public Health Services Act. Information concerning the PHE PRA waiver can be found on the HHS website at *https://aspe.hhs.gov/public-health-emergency-declaration-pra-waivers.*

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance referenced in COVID–19 guidance	OMB Control No(s).	New collection covered by PHE PRA waiver
Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency.	.....	Emergency Use Authorization of Medical Products and Related Authorities; Guidance for Industry and Other Stakeholders.	0910–0595	
		Administrative Procedures for Clinical Laboratory Improvement Amendments of 1988 Categorization.	0910–0607	
		De Novo Classification Process (Evaluation of Automatic Class III Designation).	0910–0844	
	803		0910–0437	
	807, subparts A through D.		0910–0625	
	807, subpart E		0910–0120	
	820		0910–0073	
				Laboratory voluntary reporting to FDA of testing capacity information.
				Manufacturer voluntary reporting to FDA of testing capacity information and the number of laboratories in the U.S. with the required platforms installed.
				Laboratory voluntary reporting to FDA of validation data, when validating through a bridging study and not pursuing an EUA for the modification.
				State or territory voluntary notification to FDA of decision to authorize laboratories within that State or territory to develop and perform a test for COVID–19 under authority of its own State law.
				Laboratory voluntary notification to FDA that they have started clinical testing and voluntary reporting of testing capacity information, when the laboratory is authorized to develop and perform a test for COVID–19 under authority of a State or territory.

Dated: May 12, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–10492 Filed 5–14–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant Mortality

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's Advisory Committee on Infant Mortality (ACIM) has scheduled a public meeting. Information about ACIM and the agenda for this meeting can be found on the ACIM website at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

DATES: June 17, 2020, 11:00 a.m.–6:00 p.m. Eastern Time (ET) and June 18, 2020, 11:00 a.m.–3:00 p.m. ET.

ADDRESSES: This meeting will be held via webinar.

- The webinar link will be available at ACIM's website 7 calendar days before the meeting: *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*
- The conference call-in number will be available at ACIM's website 7 calendar days before the meeting: *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

FOR FURTHER INFORMATION CONTACT: Juliann DeStefano, RN, MPH, at Maternal and Child Health Bureau (MCHB), HRSA, 5600 Fishers Lane, Room 18N–84, Rockville, Maryland 20857; 301–443–0883; or *SACIM@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The ACIM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed by provisions of Public Law 92–463, as amended, (5 U.S.C. App. 2), which sets forth standards for the formation and use of Advisory Committees.

The ACIM advises the Secretary of HHS on department activities and programs directed at reducing infant mortality and improving the health status of pregnant women and infants. The ACIM represents a public-private partnership at the highest level to provide guidance and focus attention on the policies and resources required to address the reduction of infant mortality and the improvement of the health status of pregnant women and infants. With a focus on life course, the ACIM addresses disparities in maternal health to improve maternal health outcomes, including preventing and reducing maternal mortality and severe maternal morbidity. The ACIM provides advice on how best to coordinate myriad federal, state, local, and private programs and efforts that are designed to deal with the health and social problems impacting infant mortality and maternal health, including implementation of the Healthy Start program and maternal and infant health objectives from the National Health Promotion and Disease Prevention Objectives.

The agenda for the June 17–18, 2020, meeting is being finalized and may include the following: Updates from HRSA and MCHB, discussion of COVID–19 and infant and maternal health, and updates on priority topic areas for ACIM to address (equity, data, access, and quality of care). Agenda items are subject to change as priorities dictate. The final meeting agenda will be available 7 calendar days prior to the meeting on the ACIM website: *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to the ACIM should be sent to Juliann DeStefano, using the contact information above at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Juliann DeStefano at the contact information listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–10447 Filed 5–14–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the EUNICE KENNEDY SHRIVER NATIONAL INSTITUTE OF CHILD HEALTH & HUMAN DEVELOPMENT, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: June 5, 2020.

Time: 10:00 a.m. to 2:45 p.m.

Agenda: A report by the Acting Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research; current organizational structure; to review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 31 Center Drive, Bethesda, MD 20892 (Teleconference).

Contact Person: Mary C. Dasso, Ph.D., Acting Scientific Director, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31A, Room 2A46, Bethesda, MD 20892, (301) 594–5984, *dassom@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/meetings/Pages/index.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: May 11, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10429 Filed 5–14–20; 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: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics B Study Section.
Date: June 8–9, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Emily Foley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, Bethesda, MD 20892, (301) 435–0627, *emily.foley@nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group, Molecular and Cellular Hematology Study Section.
Date: June 11–12, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, (301) 435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroimmunology and Brain Tumors.
Date: June 11, 2020.
Time: 11:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Samuel C. Edwards, Ph.D., Chief, Brain Disorders and Clinical Neuroscience Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.
Date: June 18–19, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Biophysics of Neural Systems Study Section.
Date: June 18–19, 2020.
Time: 8:00 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, (301) 435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR NS20–028: HEAL Initiative: Pain Management Effectiveness Research Network (UG3 Clinical Trials).
Date: June 18, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Tina Tze-Tsang Tang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Suite 3030, Bethesda, MD 20817, (301) 435–4436, *tangt@mail.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Neural Oxidative Metabolism and Death Study Section.
Date: June 18–19, 2020.
Time: 8:00 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.

BILLING CODE 4140–01–P

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Synapses, Cytoskeleton and Trafficking Study Section.
Date: June 18–19, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Christine A. Piggee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, (301) 435–0657, *christine.piggee@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group Social Sciences and Population Studies B Study Section.
Date: June 18–19, 2020.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, (301) 435–2309, *fothergillke@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative and Clinical Endocrinology and Reproduction Study Section.
Date: June 18, 2020.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, (301) 435–1154, *dianne.hardy@nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Lung Injury, Repair, and Remodeling Study Section.
Date: June 18–19, 2020.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, (240) 498–7546, *diramig@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function C Study Section.
Date: June 18–19, 2020.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).
Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726. *greenbergwa@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Immunity and Host Defense Study Section.
Date: June 18–19, 2020.
Time: 9:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 435–1506, *jakesse@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Clinical and Integrative Diabetes and Obesity Study Section.

Date: June 18–19, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1044, *chenhui@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Biology of the Visual System Study Section.

Date: June 18–19, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7840, Bethesda, MD 20892, (301) 435–1175, *berestm@mail.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: May 11, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10386 Filed 5–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of K99/R00 NIH Pathway to Independence Award Applications.

Date: July 14, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12, Bethesda, MD 20892 (Video Meeting).

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, 45 Center Drive, Bethesda, MD 20892, (301) 594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 11, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10389 Filed 5–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NPS in Alzheimer's.

Date: July 15, 2020.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Video Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 480–1266, *neuhuber@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 11, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10387 Filed 5–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel NIH Support for Conferences and Scientific Meetings (R13).

Date: June 9, 2020.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Plaza, 7201 Wisconsin Avenue, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Deborah Ismond, Ph.D. Scientific Review Officer, Division of Scientific Programs, NIMHD, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–1366, *ismonddr@mail.nih.gov.*

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel Methods and Measurement in Research with Sexual and Gender Minority (SGM) Population (R21—Clinical Trial Not Allowed).

Date: June 24–25, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Plaza, 7201 Wisconsin Avenue, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Maryline Laude-Sharp, Ph.D., Scientific Review Officer, Division of Scientific Programs, NIMHD, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Ste. 525, MSC. 9206, Bethesda, MD 20892, (301) 451–9536, *mlaudesharp@mail.nih.gov*.

Dated: May 11, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10390 Filed 5–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK–C Member Conflicts.

Date: July 10, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 11, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10388 Filed 5–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0041]

National Merchant Marine Personnel Advisory Committee; Initial Solicitation for Members

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Request for applications.

SUMMARY: The Coast Guard is requesting applications from persons in interested in membership on the National Merchant Marine Personnel Advisory Committee (''Committee''). This recently established Committee will advise the Secretary of the Department of Homeland Security on matters relating to personnel in the United States merchant marine, including the training, qualifications, certification, documentation, and fitness of mariners. Please read the notice for description of Committee positions we are seeking to fill.

DATES: Your completed application should reach the Coast Guard on or before July 14, 2020.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the National Merchant Marine Personnel Advisory Committee and a resume detailing their experience. We will not accept a biography.

Applications should be submitted: via one of the following methods:

- *By Email: Megan.C.Johns@uscg.mil.* Subject Line: N–MERPAC (preferred).
- *By Fax:* 202–372–4908; ATTN: Megan Johns Henry, Alternate Designated Federal Officer; or
- *By Mail:* Megan Johns Henry, Alternate Designated Federal Officer, Commandant (CG–MMC–2), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Ave. SE, Washington, DC 20593–7509.

FOR FURTHER INFORMATION CONTACT: Megan Johns Henry, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee; Telephone 202–372–2357; or Email at *Megan.C.Johns@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Merchant Marine Personnel Advisory Committee is a Federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act,* 5 U.S.C. Appendix, and the administrative provisions in Section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (specifically, 46 U.S.C. 15109).

The Committee was established on December 4, 2019, by the *Frank LoBiondo Coast Guard Authorization Act of 2018,* which added section 15103, National Merchant Marine Personnel Advisory Committee, to Title 46 of the U.S. Code. The Committee will advise the Secretary of Homeland Security on matters relating to personnel in the United States merchant marine, including the training, qualifications, certification, documentation, and fitness of mariners.

The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee to meet at least twice a year, but it may meet more frequently. The meetings are generally held in cities that have high concentrations of maritime personnel and related marine industry businesses.

All members serve at their own expense and receive no salary or other compensation from the Federal Government. Members may be reimbursed, however, for travel and per diem in accordance with Federal Travel Regulations.

Under provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31 of the third full year after the effective date of your appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4).

In this initial solicitation for Committee members, we will consider applications for all positions, which include:

- United States citizens holding active licenses or certificates issued under 46 U.S.C. chapter 71 or merchant mariner documents issued under 46 U.S.C. chapter 73, including:
  - Three credentialed deck officers who represent merchant marine deck officers, of which: (1) Two shall be endorsed for oceans route of unlimited

tonnage; (2) one with an endorsement for an inland or river route of limited or unlimited tonnage; (3) two deck officers endorsed as Master of Towing Vessels; (4) one with significant tanker experience and; (5) to the extent practicable, one shall represent labor and one shall represent management.

○ Three credentialed engineering officers, of which: (1) Two shall be endorsed as Chief Engineer of unlimited horsepower; (2) one endorsed as either a Chief Engineer of limited horsepower or Designated Duty Engineer; and; (3) to the extent practicable, one shall represent labor and one shall represent management.

○ Two credentialed with ratings: (1) One of which shall be endorsed as able bodied seamen; and (2) one shall be endorsed as a qualified member of the engine department; and

○ One credentialed deck officer endorsed as first class pilot who represents merchant marine pilots;

• Six marine educators, including:

○ Three marine educators who represent the maritime academies, of which: (1) Two represent the State maritime academies (and are jointly recommended by such academies); and (2) one represents either the State or United States Merchant Marine Academy;

○ Three marine educators who represent other maritime training institutions, and of which one may also represent the small vessel industry:

• Two individuals who represent shipping companies employed in ship operation management; and,

• Two individuals who represent the general public.

If you are selected as a member drawn from the general public, you will be appointed and serve as a Special Government Employee as defined in section 18 U.S.C. 202(a). As a candidate for appointment as a Special Government Employee, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450) for new entrants and if appointed as a member must submit Form 450 annually. The Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal Court or as otherwise provided under the Privacy Act (5 U.S.C 552a). Only the Designated U.S. Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics (*www.oge.gov*), or by contacting or emailing the individual listed above in **FOR FURTHER INFORMATION CONTACT** section. Applications for members who will serve to represent the general public must be accompanied by a completed OGE Form 450.

Registered lobbyists are not eligible to serve on Federal Advisory Committees in an individual capacity. See ''*Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions*'' (79 FR 47482, August 13, 2014). Registered lobbyists are ''lobbyists,'' as defined in 2 U.S.C. 1602, who are required by 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House of Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members based on race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment selections.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Megan Johns Henry, Alternate Designated Federal Officer of the National Merchant Marine Personnel Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. If you send your application to us via email, we will send you an email confirming receipt of your application.

Dated: May 7, 2020.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2020–10382 Filed 5–14–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Brokers' Licenses

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

ACTION: Revocation of customs brokers' licenses.

SUMMARY: This document provides notice of the revocation by operation of law of customs brokers' licenses.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Branch Chief, Broker Management, Office of Trade, (202) 325–6986, *melba.hubbard@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), the following customs brokers' licenses were revoked by operation of law, without prejudice, for failure to file a triennial status report. A list of revoked customs brokers' licenses appears below with both the port, which issued the licenses, and the brokers' names within the port of issuance whose licenses were revoked, set forth alphabetically.

Last name	First name	License	Port of issuance
Holstrom	Dennis W	03912	Seattle.
Johnson	Roberta L	22323	Seattle.
Kahng	Patrick	28506	Seattle.
Requa	Jared	28092	Seattle.
Warren	Joni S	14325	Seattle.

This document further provides notice that, pursuant to 19 U.S.C. 1641 and 19 CFR 111.45(a), the following customs brokers' licenses and all associated permits were revoked by operation of law for failure to employ at least one qualifying individual who holds a valid customs broker's license. A list of revoked customs brokers' licenses appears below with both the port, which issued the licenses, and the brokers' names within the port of issuance whose licenses were revoked, set forth alphabetically.

Company name	License	Port of issuance
Franklin Global Strategies	23401	Buffalo.
Anji Logistics USA Inc	33344	Detroit.

Dated: May 7, 2020.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2020–10396 Filed 5–14–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP-Dec. 20–08]

Tuna Tariff-Rate Quota for Calendar Year 2020 for Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)

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

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2020.

SUMMARY: Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS), is calculated as a percentage of the tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the preceding calendar year. This document sets forth the tariff-rate quota for Calendar Year 2020.

DATES: The 2020 tariff-rate quota is applicable to tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the period January 1, 2020 through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Julia Peterson, Chief, Quota and Agricultural Branch, Interagency Collaboration Division, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, Washington, DC 20229–1155, at (202) 384–8905 or by email at *HQQUOTA@cbp.dhs.gov.*

Background

It has been determined that 15,881,292 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during Calendar Year 2020, at the rate of 6.0 percent *ad valorem* under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS). Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem* under subheading 1604.14.30, HTSUS.

Dated: May 8, 2020.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2020–10415 Filed 5–14–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0088]

Agency Information Collection Activities: Passenger and Crew Manifest

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than July 14, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0088 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Passenger and Crew Manifest (Advance Passenger Information System).

OMB Number: 1651–0088.

Form Number: None.

Abstract: The Advance Passenger Information System (APIS) is an automated method in which U.S. Customs and Border Protection (CBP) receives information on passengers and crew onboard inbound rail and bus trips before their arrival in the United States, as well as inbound and outbound international flights before their arrival in, or departure from, the United States. APIS data includes biographical information for passengers arriving in or departing from the United States, allowing the data to be checked against CBP databases.

The information is submitted for both commercial and private aircraft flights, rail carriers and bus carriers. Specific data elements required for each passenger and crew member include: Full name; date of birth; gender; citizenship; document type; passport number; country of issuance and expiration date; and alien registration number where applicable.

APIS is authorized under the Aviation and Transportation Security Act, (Pub. L. 107–71, Stat. 597 (2001)). Under statute, air carriers operating a passenger flight in foreign air transportation to the United States must electronically transmit to CBP a passenger and crew manifest containing specific identifying data elements and any other information that DHS determines is reasonably necessary to ensure aviation safety. The specific passenger and crew identifying information required by statue consists of the following: Full name; date of birth; gender; citizenship; passport number; country of issuance; and U.S. visa number or resident alien card where applicable. See 49 U.S.C. 44909(c). The APIS regulatory requirements are specified in 19 CFR 122.49a, 122.49b, 122.49c, 122.75a, 122.75b, and 122.22. These provisions lists all the required APIS data.

Respondents submit their electronic manifest either through a direct interface with CBP, or using eAPIS which is a web-based system that can be accessed at *https://eapis.cbp.dhs.gov/.*

Current Actions: This submission is being made to revise this collection of information to include bus and rail carriers into this OMB control number.

Proposed Changes: CBP is currently running a pilot with nine respondents in which Bus carriers are currently submitting passenger manifest data voluntarily to assist CBP in writing future regulations that will mandate the submission of this data in advance of passenger arrival into the United States. CBP would like to revise this information collection to include bus and rail respondents, which would allow CBP to expand the pilot beyond the current nine respondent limit.

The collection of passenger manifest data from bus and rail carriers arriving in the U.S. is authorized by section 433(d) and 431(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1433(d) ad 19 U.S.C. 1431(b)). Bus and rail carriers submit their APIS information to CBP via the Land Pre-Arrival System Application (LPAS), embedded in the ROAM application.

In the ROAM application, the collection of passenger information is primarily done through electronic submission. The bus or rail carrier designee submits passenger information by scanning the Machine Readable Zone (MRZ) of each passengers' passport, which automatically is loaded into the application. Should the MRZ not automatically go into the application, the bus carrier will manually input the passengers' passport information. This is the only point at which information is collected from travelers.

The user registers the bus or rail as the mode of travel and is prompted to complete information on the company. Information includes:

- Mode of Travel (Bus/Rail)
- License Country
- Registration Province
- License Number
- Sender ID
- Carrier Code (APIS code from CBP)
- Bus/Rail Company

Each carrier will be required to create a 'Driver Profile' by entering in their documentation using the MRZ or manually. This profile is then saved to be associated with each bus or rail that the driver operates and will have to be selected prior to submitting the trip. The drivers are prompted to information on themselves, including:

- Name
- Date of Birth
- Sex
- Country of Citizenship
- Country of Residence
- Document Type
- Document Number
- Date of Issue
- Date of Expiration
- Country of Issue

This process is then duplicated for passengers boarding the bus or train. Each traveler profile is then saved for the trip but is deleted from the application immediately after the information is submitted to CBP.

Prior to submitting passenger information to CBP, the user must fill in required arrival fields. These fields include:

- Arrival Location in the U.S.
- Estimated Arrival Date
- Estimated Arrival Time
- Arrival Code (Port of Entry)
- Entry State
- Last Country Visited
- Contact Email

Previously, the ROAM application also permitted self-reported submission of information to CBP officers through a face-time feature. This self-reporting feature has been disabled for LPAS and will not be used at any time in conjunction with the Bus APIS pilot or the resulting program that arises from the pilot. The bus carrier, either through the bus driver or another employee, will be the only party submitting responses to the LPAS feature within the ROAM application. The basis for this decision arose out of the necessity to collect traveler information prior to arrival in the land environment as it is done in the air environment. For pre-arrival vetting and targeting to be conducted, officers must be able to collect information on travelers prior to their arrival at the border to promote officer safety and increase security. In air Ports of Entry, officers have access to traveler information 72 hours prior to arrival. However, this standard does not exist in the land environment, as travelers can board a bus just 10 minutes prior to arriving at the border. In the air environment, airline carriers are the users submitting traveler information.

Therefore, in order to closely mirror this successful process, bus and rail carriers will submit traveler data in the land environment. In order to reduce the burden of manual data entry, the LPAS feature includes a technology that reads the MRZ on a passport. As a result, the bus driver can simply scan a passenger's passport in order to populate the required data fields and accurately submit that data to CBP.

Type of Review: Revision.

Affected Public: Businesses, Individuals.

Commercial Airlines

Estimated Number of Respondents: 1,130.

Estimated Number of Total Annual Responses: 1,850,878.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 307,246.

Commercial Airline Passengers (3rd party)

Estimated Number of Respondents: 184,050,663.
Estimated Number of Total Annual Responses: 184,050,663.
Estimated Time per Response: 10 seconds.
Estimated Total Annual Burden Hours: 496,937.

Private Aircraft Pilots

Estimated Number of Respondents: 460,000.
Estimated Number of Total Annual Responses: 460,000.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 115,000.

Commercial Passenger Rail Carrier

Estimated Number of Respondents: 2.
Estimated Number of Total Annual Responses: 9,540.
Estimated Time per Response: 10 seconds.
Estimated Total Annual Burden Hours: 26.

Bus Passenger Carrier

Estimated Number of Respondents: 9.
Estimated Number of Total Annual Responses: 309,294.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 77,324.

Dated: May 12, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–10455 Filed 5–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0015; OMB No. 1660–0110]

Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Preparedness Grants: Nonprofit Security Grant Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Nonprofit Security Grant Program (NSGP). The NSGP provides funding support for security related enhancements to nonprofit organizations that are at high risk of a terrorist attack.

DATES: Comments must be submitted on or before July 14, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0015. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Samrawit Aragie, Program Analyst, FEMA Grant Programs Directorate, Preparedness Grants Program, 202–786–9846, *Samrawit.aragie@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The collection of information for the Nonprofit Security Grant Program is mandated by Sections 2003, 2004, and 2009 of the Homeland Security Act of 2002 (codified as amended at 6 U.S.C. 604, 605, 609a) and various appropriations acts. The information collected (1) is required to assess the need and potential impact of NSGP funding requests from nonprofit organizations; and (2) allows for a fair method to evaluate requests and determine which applications will be selected for funding.

Collection of Information

Title: FEMA Preparedness Grants: Nonprofit Security Grant Program (NSGP).

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0110.

FEMA Forms: FEMA Form 089–24 NSGP Prioritization of Investment Justifications; FEMA Form 089–25 NSGP Investment Justification.

Abstract: The Nonprofit Security Grant Program provides funding support for security related enhancements to nonprofit organizations that are at high risk of a terrorist attack. The program seeks to integrate the preparedness activities of nonprofit organizations that are at high risk of a terrorist attack with broader state and local preparedness efforts.

Affected Public: State or Tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 2,086.

Estimated Number of Responses: 2,086.

Estimated Total Annual Burden Hours: 8,960.

Estimated Total Annual Respondent Cost: $338,766.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $339,751.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Maile Arthur,

Deputy Director, Information Management Division, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–10380 Filed 5–14–20; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Webb County, Texas, and Zapata County, Texas.

DATES: This determination takes effect on May 15, 2020.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, section 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, section 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, section 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS'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''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, section 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, section 564, 121 Stat. 2090 (Dec. 26, 2007). 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 I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol's (Border Patrol) Laredo Sector is an area of high illegal entry. In fiscal year 2019, the Border Patrol apprehended over 38,000 illegal aliens attempting to enter the United States between border crossings in the Laredo Sector. In that same time period, the Border Patrol had over 400 drug-related events between border crossings in the Laredo Sector, through which it seized over 36,000 pounds of marijuana, over 500 pounds of cocaine, over 28 pounds of heroin, and over 500 pounds of methamphetamine.

Owing to the high levels of illegal entry within the Laredo Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Laredo Sector. Therefore, DHS will take immediate action to construct barriers and roads. The area in the vicinity of the border within which such construction will occur is more specifically described in Section 2 below.

Section 2

I determine that the following area in the vicinity of the United States border, located in the State of Texas within the Laredo Sector, is an area of high illegal entry (the ''project area''):

- Starting at the Columbia Solidarity International Bridge and generally following the Rio Grande River south and east to approximately one-half (0.5) of a mile south of the southern boundary of the city limits of San Ignacio, Texas.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:

The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Public Law 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54

U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95, 93 Stat. 721 (Oct. 31, 1979) (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, 74 Stat. 220 (June 27, 1960) as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified at 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121, 48 Stat. 401 (March 10, 1934) (16 U.S.C. 661 *et seq.*)); the National Trails System Act (16 U.S.C. 1241 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); the Rivers and Harbors Act of 1899 (33 U.S.C. 403); the Wild and Scenic Rivers Act (Pub. L. 90–542 (16 U.S.C. 1281 *et seq.*)); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel.

[FR Doc. 2020–10383 Filed 5–14–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7028–N–01; OMB Control No. 2577–0029]

60-Day Notice of Proposed Information Collection: Allocation of Operating Fund Grant Under the Operating Fund Formula: Data Collection

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

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date: July 14, 2020.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dawn Smith, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (Room 3178), Washington, DC 20410; telephone 202–402–6488 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Smith.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Allocation of Operating Funds under the Operating Fund Formula: Data Collection.

OMB Approval Number: 2577–0029.

Type of Request: Extension of currently approved collections.

Form Number: HUD–52722 and HUD–52723.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) use this information in budget submissions which are reviewed and approved by HUD field offices as the basis for obligating the operating fund grant. This information is necessary to calculate the eligibility for the operating fund grant under the Operating Funding Program regulations, as amended. The Operating Fund is designed to provide the amount of operating funds needed for well-managed PHAs. PHAs submit the information electronically with these forms.

The following changes occurred in this submission. The form no longer includes blocks 4. Unit Change Indicator and 5. Rate Reduction Incentive. The form includes adjustments to improve the workflow of the form. Adjustments include changes to formatting and adding Line 19 Total base utilities expense level for respondents to clearly understand where to sum the results of data collected in columns.

HUD collects information for HUD–52723 and HUD–52722 through VBA enhanced Microsoft Excel Tools. In fiscal year 2021, HUD plans to transition to web-based forms HUD–52723 and HUD–52722. HUD planned a phased launch of the web-based collection. Initially the collection by web-based forms is limited to subset PHAs that HUD expands each subsequent year until all PHAs exclusively use the web-based forms. PHAs without access to the web-based forms continue to use the Excel based forms. Web-based forms improves the availability of the forms to PHAs, improves data integrity, and secure transfer of the data from the PHA to HUD.

TOTAL ESTIMATED BURDENS

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–52722	7,000	1	0.75	5,250	5,250	$33.34	$175,035
HUD–52723	7,000	1	0.75	5,250	5,250	33.34	175,035
Total				10,500			350,070

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

The Deputy Assistant Director for the Office of Policy, Programs and Legislative Initiatives, Merrie Nichols-Dixon having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Dated: May 5, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–10452 Filed 5–14–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2020–N062; FXES11140000–201–FF08E00000]

Final Environmental Impact Statement for the Upper Santa Ana River Wash Habitat Conservation Plan; San Bernardino County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final environmental impact statement (EIS) analyzing the impacts of issuance of two incidental take permits (ITPs) under the Endangered Species Act for implementation of the Upper Santa Ana River Wash Habitat Conservation Plan (HCP). Our proposed decision is to issue 30-year ITPs to the San Bernardino Valley Water Conservation District (District) and the San Bernardino County Flood Control District (SBCFCD) covering two federally listed animal species, two federally listed plant species, and one non-listed animal species. The HCP covers activities for water conservation, aggregate mining, recreation, flood control, and other public services in San Bernardino County, California. The final EIS is a joint Environmental Impact Statement/Supplemental Environmental Impact Report (EIS/SEIR). The final SEIR portion of the joint document was prepared by the District in compliance with the California Environmental Quality Act.

DATES: This notice initiates the availability of the final EIS. A record of decision will be signed no sooner than 30 days after the publication of this notice of availability in the **Federal Register**.

ADDRESSES: *Obtaining Documents:* You may obtain the documents by the following methods.

- *Internet: https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html* or *https://sbvwcd.org.*

FOR FURTHER INFORMATION CONTACT: Contact either of the two following individuals for more information:

- Karin Cleary-Rose, USFWS, via email to *karin_cleary-rose@fws.gov,* telephone at 760–322–2070, or U.S. mail at 777 E Tahquitz Canyon Way, Suite 208, Palm Springs, CA 92262; or
- Daniel Cozad, via email to *dcozad@sbvwcd.org.*

TTY users can contact the above individuals by calling 800–877–8339.

SUPPLEMENTARY INFORMATION: The Service received applications submitted by the San Bernardino Valley Water Conservation District (District, applicant), and the San Bernardino County Flood Control District (SBCFCD, applicant) for incidental take permits (ITPs) under section 10 (a)(1)(B) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The final environmental impact statement (EIS) was developed in compliance with the Service's decision-making requirements under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and analyzes three alternatives, including the Upper Santa Ana River Wash Habitat Conservation Plan (HCP) submitted by the applicants. The applicants' proposed HCP covers five species (two federally listed animal species, two federally listed plant species, and one non-listed animal species). The HCP covers activities for water conservation, aggregate mining, recreation, flood control, and other public services in San Bernardino County, California. The EIS is a joint Environmental Impact Statement/Supplemental Environmental Impact Report (EIS/SEIR). The SEIR portion of the joint document was prepared by the District in compliance with the California Environmental Quality Act. The EIS/SEIR evaluates the direct, indirect, and cumulative impacts of several alternatives related to the Service's decision whether to issue ITPs in response to the District's and SBCFCD's applications. The project area lies within San Bernardino County, primarily in the cities of Highland and Redlands, as well as within the unincorporated County area. The plan area encompasses approximately 4,892 acres.

Background

Section 9 of the ESA prohibits the ''take'' of fish and wildlife species federally listed as endangered without special exemption. Federal regulations promulgated under section 4(d) of the ESA may also prohibit take of fish and wildlife species federally listed as threatened. Take of the coastal California gnatcatcher (the only threatened animal species covered by the HCP) is prohibited by regulation.

''Take'' of federally listed fish or wildlife is defined under the ESA as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). Under limited circumstances, we may issue permits to authorize take that is incidental to and not the purpose of otherwise lawful activities.

Habitat Conservation Plan Covered Activities

The Service's proposed action is to issue ITPs to the applicants consistent with the Upper Santa Ana River Wash HCP. The HCP covers two types of activities in the Upper Santa Ana River Wash Plan project area:

- Activities related to the operations and maintenance of existing facilities or land uses already in operation in the Wash, covering an area totaling 166.9 acres; and
- Expansion or enhancement of facilities planned for the Wash area, totaling 634.1 acres.

Habitat Conservation Plan Covered Species

The proposed ITPs would cover five species. Incidental take authorization would be provided under the ITPs for the wildlife species; the plant species are included in recognition of the conservation measures provided under the HCP and to provide No Surprises assurances to the applicants for the covered plants under 50 CFR 17.22(b)(5). The applicant's HCP includes the following species:

Species	Federal listing status
Coastal California gnatcatcher (*Polioptila californica californica*)	Threatened.
San Bernardino kangaroo rat (*Dipodomys merriami parvus*)	Endangered.
Cactus wren (*Campylorhynchus brunneicapillus*)	Not listed.
Santa Ana River woolly-star (*Eriastrum densifolium* ssp. *sanctorum*)	Endangered.
Slender-horned spineflower (*Dodecahema leptoceras*)	Endangered.

The HCP proposes conservation measures considered necessary to minimize and mitigate, to the maximum extent practicable, the impacts of the incidental taking of covered species in the HCP.

National Environmental Policy Act Compliance

The EIS/SEIR addresses the Federal and local actions associated with the proposed issuance of the ITPs and implementation of the HCP and covered activities. We published a notice of intent to prepare a draft EIS/SEIR in the **Federal Register** on March 3, 2015 (80 FR 11463), and we published the notice of availability of the draft EIS/SEIR on December 9, 2019 (84 FR 67292), which included a 45-day public comment period.

The EIS/SEIR analyzes three alternatives: The *No Action Alternative,* the *Proposed Action Alternative,* and *Action Alternative 1.* The Service has identified the *Proposed Action Alternative* as the preferred alternative. We received 13 comment letters on the draft EIS/SEIR and the proposed HCP. A response to each comment received in these letters has been included in the final EIS/SEIR. Minor revisions to the final EIS/SEIR or to the final HCP have been made to address the comments received on the draft documents. The descriptions and analysis of the three alternatives analyzed in the final EIS/SEIR generally remain the same as presented in the draft EIS/SEIR.

EPA's Role in the EIS Process

In addition to this notice, the EPA is publishing a notice in the **Federal Register** announcing this EIS, as required under section 309 of the Clean Air Act. The publication date of EPA's notice of availability is the official beginning of the public comment period. EPA's notices are published on Fridays.

EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. All EISs must be filed with EPA. You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Public Review

Any comments we receive will become part of the decision record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4321 *et seq.*) and NEPA implementing regulations (40 CFR 1506.6).

Michael Fris,

Assistant Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 2020–10120 Filed 5–14–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2020–0034; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Orange County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Lennar Homes (applicant) for an incidental take permit

(ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before June 15, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2020–0034 at *http://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2020–0034.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2020–0034; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at (904) 731–3121 or via email at *erin_gawera@fws.gov.* Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Lennar Homes for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a housing development (project) in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

Project

The applicant requests a 5-year ITP to take sand skinks incidental through the conversion of approximately 3.5 acres of occupied sand skink foraging and sheltering habitat incidental to the construction of a housing development located on a 139.71-acre parcel in Section 18, Township 24 South, Range 27 East, Orange County, Florida, identified by Parcel ID number 07–24–27–0000–00–009. The applicant proposes to mitigate for take of the sand skinks by the purchase of 7 credits from Lake Wales Ridge Conservation Bank or another Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in activities associated with the project on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measures, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 62777D–0 to Lennar Homes.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2020–10438 Filed 5–14–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2020–0037; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Orange County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from VK Avalon Groves LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before June 15, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2020–0037 at *http://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting

comments on Docket No. FWS–R4–ES–2020–0037.

• *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2020–0037; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at (904) 731–3121 or via email at *erin_gawera@fws.gov.* Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from VK Avalon Groves LLC for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a residential subdivision (project) in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests a 5-year ITP to take sand skinks through the conversion of approximately 17 acres (ac) of occupied sand skink foraging and sheltering habitat incidental to the construction of a residential subdivision located on a 110.7-ac parcel in Section 13, Township 24 South, Range 26 East, Orange County, Florida, identified by Parcel ID number 13–24–26–0001–000–00200. The applicant proposes to mitigate for take of the sand skinks by the purchase of 34 credits from Lake Wales Ridge Conservation Bank or another Service-approved Conservation Bank. The Service would require the applicant to purchase the credits prior to engaging in activities associated with the project on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measures, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 62775D–0 to VK Avalon Groves LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2020–10400 Filed 5–14–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2020–0036; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Lake County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Asma & Asma (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before June 15, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2020–0036 at *http://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

• *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2020–0036.

• *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2020–0036; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at (904) 731–3121 or via email at *erin_gawera@fws.gov.* Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Asma & Asma for an incidental take

permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a housing development (project) in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests a 5-year ITP to take sand skinks through the conversion of approximately 1.73 acres (ac) of occupied sand skink foraging and sheltering habitat incidental to the construction of a housing development located on a 110.7-ac parcel in Section 1, 6, and 12, Township 23 South, Range 26 and 27 East, Lake County, Florida, identified by Parcel ID numbers 01–32–26–0004–00600, 12–23–26–0001–00200, 12–23–26–0001–00400, 12–23–26–0001–00500, and 12–23–26–0001–00600. The applicant proposes to mitigate for take of the sand skinks by the purchase of 3.46 credits from Lake Wales Ridge Conservation Bank or another Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in activities associated with the project on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measures, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 62782D–0 to Asma & Asma.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2020–10399 Filed 5–14–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2020–0038; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Lake County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Michael Collard Properties Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before June 15, 2020.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS–R4–ES–2020–0038 at *http://www.regulations.gov*.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2020–0038.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2020–0038; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at (904) 731–3121 or via email at *erin_gawera@fws.gov*. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Michael Collard Properties, Inc. for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a residential subdivision (project) in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests a 10-year ITP to take sand skinks through the conversion of approximately 0.34 acres (ac) of occupied sand skink foraging and

sheltering habitat incidental to the construction of a residential subdivision located on a 13.19-ac parcel in Section 6, Township 20 South, Range 26 East, Lake County, Florida, identified by the Lake County Property Appraiser as Alternate Keys 3022548, 1114501, and 1028698. The applicant proposes to mitigate for take of the sand skinks by the purchase of 0.68 credits from Lake Livingston Conservation Bank or another Service-approved Conservation Bank. The Service would require the applicant to purchase the credits prior to engaging in activities associated with the project on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measures, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 62785D–0 to Michael Collard Properties, Inc.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2020–10397 Filed 5–14–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029958; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Columbus State University, Columbus, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Columbus State University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Columbus State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Columbus State University at the address in this notice by June 15, 2020.

ADDRESSES: Danielle Cook, Columbus State University, 4225 University Avenue, Columbus, GA 31907, telephone (706) 507–8063, email *cook_danielle@columbusstate.edu.*

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Columbus State University, Columbus, GA. The human remains and associated funerary objects were removed from the Abercrombie Site (1RU61), Phenix City, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Columbus State University professional staff in consultation with representatives of the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Kialegee Tribal Town; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians (hereafter referred to as ''The Tribes'').

History and Description of the Remains

Between 1957 and 1983, human remains representing, at minimum, 28 individuals were removed from the Abercrombie site (1RU61) in Phenix City, AL. In the fall of 2016, the collection was loaned to Fort Benning by the Columbus Museum for the purpose of a display to be created by Fort Benning and displayed at the Columbus Museum. While the collection was in the possession of Fort Benning, human remains were identified. In the spring of 2017, Fort Benning, the Columbus Museum, and Columbus State University (CSU) agreed that ownership of the collection should be transferred to Columbus State University. CSU identified 28 individuals and 798 associated funerary objects. The 798 associated funerary objects are five glass beads, 33 whelk

shell beads, 28 shell fragments, one whelk shell gorget, 689 ceramic fragments, 27 pieces of daub, one quartz fragment, two copper fragments, five lithic fragments, one historic metal, two floral fragments, one clay ball, and three complete pottery vessels.

In the 17th century, the area in which site 1RU61 is located was called the Province of Apalachicoli by the Spanish. The area is believed to have been occupied by Hitchiti speakers until the late 17th century, when Muskhogee speakers also known as the Lower Creek—occupied the area. Both the Hitchiti and the Lower Creek are related to The Tribes.

Determinations Made by Columbus State University

Officials of Columbus State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 28 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 798 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Danielle Cook, Columbus State University, 226 Jordan Hall, Columbus, GA 31907, telephone (857) 930–3002. Email *cook_danielle@columbusstate.edu,* by June 15, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

Columbus State University is responsible for notifying The Tribes that this notice has been published.

Dated: February 28, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–10433 Filed 5–14–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029959; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Pueblo Grande Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Pueblo Grande Museum has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Pueblo Grande Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Pueblo Grande Museum at the address in this notice by June 15, 2020.

ADDRESSES: Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85034, telephone (602) 534–1572, email *lindsey.vogel-teeter@phoenix.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Pueblo Grande Museum, Phoenix, AZ. The human remains were removed from Coconino, Yavapai or Gila County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Pueblo Grande Museum professional staff in consultation with representatives of the Fort McDowell Yavapai Nation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and the Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

Sometime prior to 1960, human remains representing, at minimum, six individuals were removed by Fred Eldean from an unidentified site near Brown Springs, which is located about 18 miles from Camp Verde in Yavapai County, AZ. The ownership of the land from which the individuals were removed is unclear. Around 1960, the human remains were transferred to the Pueblo Grande Museum where they have remained. The human remains are partial or fragmentary, and belong to an adult female 50–59 years old, three children between the ages of one and 10 years old, and two perinatal or pre-term infants. No known individuals were identified. The two associated funerary objects are one bone awl and one Deadman's black-on-red dipper.

Sometime prior to 1967, human remains representing, at minimum, one individual were removed by Robert Wright from an unidentified site 30–35 miles south of Flagstaff in Coconino, Yavapai or Gila County, AZ. The ownership of the land from which the individuals were removed is unclear. Around 1967, the human remains were transferred to the Pueblo Grande Museum. The human remains are complete, and belong to a young adult male. No known individuals were identified. No associated funerary objects are present.

The Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'Odham Nation of Arizona comprise one cultural group known as the O'Odham. The material culture found within the Sinagua archeological

cultural area (where the human remains and associated funerary objects listed in this notice were found) demonstrates continuity between the earlier people and the present-day O'Odham.

The Fort McDowell Yavapai Nation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and the Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona) comprise one cultural group known as the Yavapai. They trace their ancestry to bands once living in the Sinagua archeological cultural area.

The Hopi Tribe of Arizona considers all of Arizona to be within traditional Hopi lands or within areas where Hopi clans migrated in the past. Oral traditions and material culture, including pottery traditions, demonstrate continuity between the Sinagua archeological culture and the Hopi people.

The Zuni Tribe of the Zuni Reservation, New Mexico, considers the Verde Valley to be within the migration path of ancestral Zuni people. Archeological evidence, including similarities in ceramic designs, demonstrates continuity between the prehistoric people of the Sinagua archeological cultural area and the people of Zuni.

Determinations Made by the Pueblo Grande Museum

Officials of the Pueblo Grande Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Fort McDowell Yavapai Nation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'Odham Nation of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E. Washington Street, Phoenix, AZ 85034, telephone (602) 534–1572, email *lindsey.vogel-teeter@phoenix.gov,* by June 15, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Pueblo Grande Museum is responsible for notifying The Tribes that this notice has been published.

Dated: February 28, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–10432 Filed 5–14–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–NHAP–NPS0029854; PPWOCRADI0, PCU00RP14.R50000 (200); OMB Control Number 1024–NEW]

Agency Information Collection Activities; National Heritage Areas Program Annual Reporting Forms

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 14, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive Fort Collins, CO 80525; or by email to *phadrea_ponds@nps.gov.* Please reference Office of Management and Budget (OMB) Control Number 1024–NHA in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth Vehmeyer by email at *elizabeth_vehmeyer@nps.gov,* or by telephone at 202–354–2215. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. 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.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: National Heritage Areas (NHAs) are designated by Congress as places of natural, cultural, and historic significance. Authorized by the Historic Sites Act of 1935 (54 U.S.C. Ch. 3201), the NPS NHA Program Office is responsible for tracking the performance and progress of each heritage area in implementing its management plans and goals. The reporting forms in the collection will track performance metrics needed to distribute funds and report on heritage area management and budgetary activities as directed by Congress.

NHAs combine conservation, recreation, and economic development to form a cohesive, nationally important landscape. The NHA program currently includes 49 heritage areas. To track the performance of each NHA and facilitate mandated financial reporting, the NPS is requesting to use the two reporting forms listed below to collect information used to monitor the progress of each heritage area.

- *Annual Program Report—Part I Funding Report:* This form is used to allocate Heritage Partnership Program (HPP) funds and prepare the annual NPS Budget Justification in response to directives from Congress. The information gathered includes required non-federal match sources; organizational sustainability planning; Heritage Area accomplishments and any challenges using the HPP funds.
- *Annual Program Report—Part II Progress Report:* This form tracks progress and informs individual heritage area evaluations.

Title of Collection: National Heritage Areas Program Annual Reporting Forms.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: NHA Coordinating Entities (Not-for-profit entities; Federal Commissions; Institutions of Higher Education; State and local governments).

Total Estimated Number of Annual Respondents: 49.

Total Estimated Number of Annual Responses: 108.

Estimated Completion Time per Response: Part I Funding Report—10 hours and Part II Progress Report—40 hours.

Total Estimated Number of Annual Burden Hours: 2,700 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Acting Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–10482 Filed 5–14–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1199]

Certain Tobacco Heating Articles and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 9, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of RAI Strategic Holdings, Inc. of Winston-Salem, North Carolina, R.J. Reynolds Vapor Company of Winston-Salem, North Carolina, and R.J. Reynolds Tobacco Company of Winston-Salem, North Carolina. A letter supplementing the complaint was filed on April 16, 2020. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tobacco heating articles and components thereof by reason of infringement of certain claims of U.S. Patent No. 9,839,238 (''the '238 patent''); U.S. Patent No. 9,901,123 (''the '123 patent''); and U.S. Patent No. 9,930,915 (''the '915 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised

that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia Proctor, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 11, 2020, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claim 19 of the '238 patent; claims 27–30 of the '123 patent; and claims 1, 2, and 5 of the '915 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''electric tobacco heating device systems and the associated tobacco sticks sold for use with the device systems'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the

statutory public interest factors set forth in 19 U.S.C. l337(d)(l), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

RAI Strategic Holdings, Inc., 401 North Main Street, Winston-Salem, NC 27101

R.J. Reynolds Vapor Company, 401 North Main Street, Winston-Salem, NC 27101

R.J. Reynolds Tobacco Company, 401 North Main Street, Winston-Salem, NC 27101

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Altria Client Services LLC, 6601 W. Broad Street, Richmond, VA 23230

Altria Group, Inc., 6601 W. Broad Street, Richmond, VA 23230

Philip Morris USA, Inc., 6601 W. Broad Street, Richmond, VA 23230

Philip Morris International Inc., 120 Park Avenue, New York, NY 10017

Philip Morris Products S.A., Quai Jeanrenaud 3, 2000 Neuchâtel, Switzerland

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR. 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 11, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–10422 Filed 5–14–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–512 and 731–TA–1248 (Review)]

Carbon Steel Wire Rod From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order and countervailing duty order on carbon steel wire rod from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: March 6, 2020.

FOR FURTHER INFORMATION CONTACT: Hugh Smachlo (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 6, 2020, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 66007, December 2, 2019) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on May 15, 2020, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before May 20, 2020 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by May 20, 2020. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the joint response submitted by Charter Steel, Commercial Metals Company, EVRAZ Rocky Mountain Steel, Liberty Steel USA, Nucor Corporation, and Optimus Steel LLC, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014). The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 12, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–10479 Filed 5–14–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–644 and 731–TA–1494 (Preliminary)]

Non-Refillable Steel Cylinders From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of non-refillable steel cylinders from China, provided for in subheadings 7310.29.00 and 7311.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 27, 2020, Worthington Industries, Columbus, Ohio, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of non-refillable steel cylinders from China. Accordingly, effective March 27, 2020, the Commission instituted countervailing duty investigation No. 701–TA–644 and antidumping duty investigation No. 731–TA–1494 (Preliminary).

Notice of the institution of the Commission's investigations and of a conference through written testimony to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 2, 2020 (85 FR 18587). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written questions, submissions of opening remarks and written testimony, written responses to questions, and postconference briefs. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on May 11, 2020. The views of the Commission are contained in USITC Publication 5057 (May 2020), entitled *Non-Refillable Steel Cylinders from China: Investigation Nos. 701–TA–644 and 731–TA–1494 (Preliminary).*

By order of the Commission.

Issued: May 11, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–10420 Filed 5–14–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1154]

Certain Child Carriers and Components Thereof Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined to review in part, and on review, to affirm, the final initial determination (''FID'') of the administrative law judge (''ALJ'') finding no violation of section 337 of the Tariff Act of 1930, as amended (''section 337''), in connection with the asserted patent. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. 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

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 85 FR 22402 and 85 FR 22407 (April 22, 2020).

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, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 10, 2019, based on a complaint filed by LILLEbaby LLC of Golden, Colorado (''LILLEbaby''). 84 FR 14393–94 (April 10, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, in the sale for importation, or the sale within the United States after importation of certain child carriers and components thereof, by reason of the infringement of certain claims of U.S. Patent Nos. 8,172,116 (''the '116 patent'') and 8,424,732 (''the '732 patent''). *Id.* The notice of investigation names twenty-seven respondents, including The Ergo Baby Carrier Inc. of Los Angeles, CA (''Ergo''); Blue Box OpCo LLC d/b/a Infantino of San Diego, CA (''Infantino''); Baby Tula LLC a/k/a New Baby Tula LLC of San Diego, CA (''Baby Tula''); BabyBjorn AB of Lanna, Sweden and BabyBjorn Inc. of New York, NY; BabySwede LLC of Cleveland, OH; Boba Inc. d/b/a Beco Baby Carrier of Boulder, CO; ByKay BV of Wijchen, The Netherlands (''ByKay''); Artsana USA, Inc. f/k/a Chicco USA Inc. of Lancaster, PA; Cybex GmbH of Bayreuth, Germany; Columbus Trading Partners USA, Inc. of Boston, MA; Jonobaby Babytragen of Potsdam, Germany (''Jonobaby''); Mountain Buggy USA a/k/a Phil & Teds USA Inc. of Fort Collins, CO; Stokke AS of Alesund, Norway and Stokke LLC of Stamford, CT; Quanzhou Mingrui Bags Co. Ltd. of Quanzhou, China (''Mingrui''); Britax Child Safety, Inc. of Fort Mill, SC; and Wuxi Kangarouse Trading Co. Ltd. Enterprises d/b/a Kangarouse of Wuxi, China; Kokadi GmbH & Co. KG of Munich, Germany; Minimonkey BV of Amsterdam, The Netherlands; Soul US Inc. of Bangalore, India; Isara, Deneris Trade SRL of Floresti, Romania; Lenny Lamb Sp. Zo.o. Sp. K of Warsaw, Poland; L'Echarpe Porte Bonheur, Inc. d/b/a Chimparoo of Boucherville, Canada; Tingtao Sunveno Co., Ltd. of Shandong, China; Jing Jiang Dimarco Packaging & Gifts Co. of Jingjiang Jiangsu, China; and Jiangsu Matrix Textile Co., Ltd. of Jingjiang, Jiangsu, China (collectively, ''Defaulting Respondents''). *Id.* The Office of Unfair Import Investigations (''OUII'') is also named as a party. *Id.*

The Commission terminated eleven participating respondents from the investigation based upon settlement or consent order. Order No. 12 (May 30, 2019), *not rev'd,* Notice (June 18, 2019); Order No. 17 (July 18, 2019), *not rev'd,* Notice (Aug. 12, 2019); Order No. 18 (July 18, 2019), *not rev'd,* Notice (Aug. 12, 2019); Order No. 21 (Aug. 13, 2019), *not rev'd,* Notice (Sept. 13, 2019); Order No. 22 (Aug. 23, 2019), *not rev'd,* Notice (Sept. 17, 2019); Order No. 23 (Aug. 29, 2019), *not rev'd,* Notice (Sept. 17, 2019); Order No. 25 (Sept. 6, 2019), *not rev'd,* Notice (Oct. 1, 2019); Order No. 33 (Nov. 9, 2019), *not rev'd,* Notice (Dec. 18, 2019). The Commission found ten non-participating Defaulting Respondents in default. Order No. 38 (Dec. 3, 2019), *not rev'd,* Notice (Dec. 20, 2019). For one non-participating respondent, Mingrui, the ALJ denied LILLEbaby's motion to show cause as to why that respondent should not be held in default due to LILLEbaby's failure to show adequate service. Order No. 29 (Oct. 28, 2019).

On January 30, 2020, LILLEbaby filed a motion to terminate respondents Jonobaby and ByKay on the basis of settlement. The subject FID grants the pending motion. *See* FID. The remaining respondents are Baby Tula, Ergo, Infantino (collectively, ''Active Respondents''), and Mingrui.

The Commission terminated the '732 patent from the investigation as to all respondents based on LILLEbaby's partial withdrawal of the complaint. Order No. 39 (Dec. 4, 2019), *not rev'd,* Notice (Dec. 20, 2019). The Commission also terminated claims 1, 2, 5–7, 9, 11, 14–16, 19, 20, 23, 24, and 25 of the '116 patent as to all respondents based on LILLEbaby's partial withdrawal of the complaint. Order No. 31 (Nov. 12, 2019), *not rev'd,* Notice (Dec. 10, 2019); Order No. 41 (Dec. 18, 2019), *not rev'd,* Notice (Jan. 16, 2020). Claim 18 of the, '116 patent remains at issue.

On November 6, 2019, Active Respondents filed a motion to terminate the investigation for alleged lack of standing by LILLEbaby.

On March 10, 2020, the ALJ issued the subject FID finding no violation of section 337 with respect to the '116 patent. *See* FID. The subject FID denies Active Respondents' motion to terminate for alleged lack of standing. *See id.* at 28. The subject FID also includes the ALJ's recommendations that, if a violation was found, then the Commission should issue a limited exclusion order and cease and desist orders as to Active Respondents.

On March 23, 2020, Active Respondents filed a contingent petition for review of the FID. On March 31, 2020, OUII filed a response to Active Respondents' petition. LILLEbaby did not file a petition for review or a response to Respondents' petition, thus abandoning all issues decided adversely to it. *See* 19 CFR 210.43(b)(4).

Having reviewed the record of this investigation, including the FID and Respondents' contingent petition, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review and, on review, take no position regarding the FID's finding that claim 18 of the '116 patent is not obvious based on the prior art Hibiscus Carrier (RPX–0006) alone or in combination with the prior art Pikkolo Carrier (RPX–0005) or U.S. Patent Publ. No. 2005/0051582 (RX–0368) to Frost. The Commission has also determined to review, and on review, take no position on the FID's findings that claim 18 of the '116 patent is unenforceable for inequitable conduct during prosecution of the patent application. Further, the Commission has determined to review, and on review, take no position on the FID's findings that LILLEbaby has satisfied the economic prong of the domestic industry requirement with respect to the '116 patent under subsections 337(a)(3)(B) and (C) (19 U.S.C. 1337(a)(3)(B), (C)). The Commission has determined not to review the remainder of the FID.

Accordingly, the Commission finds no violation of section 337 based on the FID's findings that Active Respondents do not infringe claim 18 of the '116 patent, and claim 18 of the '116 patent is invalid as anticipated by and obvious in view of U.S. Patent No. 4,986,458 to Linday.

The investigation is terminated.

The Commission vote for these determinations took place on May 11, 2020.

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: May 11, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–10419 Filed 5–14–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–630]

Importer of Controlled Substances Application: Restek Corporation

ACTION: Notice of application.

DATES: Registered bulk manufacturer of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before June 15, 2020. Such persons may also file a written request for a hearing on the application on or before June 15, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 23, 2020, Restek Corporation, 110 Benner Circle, Bellefonte, Pennsylvania 16823, applied to be registered as an importer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols ...	7370	I

The company plans to import the listed controlled substance in bulk for manufacture of analytical reference material which, in its final form, is an exempted product.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–10465 Filed 5–14–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1778]

Physical and Digital Management Software Products Market Survey

AGENCY: National Institute of Justice (NIJ), Office of Justice Programs, Justice.

ACTION: Notice of request for information.

SUMMARY: The National Institute of Justice (NIJ) is soliciting information for use in an upcoming Criminal Justice Testing and Evaluation Consortium (CJTEC) report tentatively titled, ''A Landscape Report of Physical and Digital Management Software Products.'' The report will identify software and web-based technologies that are commercially available to manage physical evidence and/or digital evidence, such as photos or videos. This document will assist law enforcement agencies in making informed decisions for purchasing and implementing software systems to manage and track physical evidence and/or digital evidence.

DATES: Emailed responses must be received (and mailed responses postmarked) by 5:00 p.m. Eastern Time on June 29, 2020.

ADDRESSES: Responses to this request may be submitted electronically by email to Emily Vernon at *evernon.contractor@rti.org* with the subject line ''Physical and Digital Management Software Technologies Federal Register Response.'' Responses may also be sent by mail to the following address: Criminal Justice Testing and Evaluation Consortium (CJTEC), ATTN: Emily Vernon, Physical and Digital Management Software Technologies Federal Register Response, RTI International, P.O. Box 12194, 3040 E Cornwallis Road, Research Triangle Park, NC 27709–2194.

FOR FURTHER INFORMATION CONTACT: For more information on this market survey, please contact Rebecca Shute (CJTEC) by telephone at 724–544–4129 or *rshute@rti.org*. For more information on the NIJ CJTEC, visit *https://nij.ojp.gov/funding/awards/2018-75-cx-k003* and view the description, or contact Steven Schuetz (NIJ) by telephone at 202–514–7663 or at *steven.schuetz@usdoj.gov*. Please note that these are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION:

Information sought: Specific product and company information for software products that help law enforcement manage evidence in their property and evidence rooms and/or digital evidence. An independent response should be submitted for each product that respondents would like CJTEC to consider in their landscape report. NIJ encourages respondents to provide information in common file formats, such as Microsoft Word, pdf, or plain text. Each response should include contact information.

Usage: Information provided in response to this request may be published in a landscape study on physical and digital evidence management software products.

Information categories: Comments are invited with regard to the market survey, including which categories of information are appropriate for comparison, as well as promotional material (*e.g.,* slick sheet) and print-quality photographs of the technology. At a minimum, CJTEC intends to include the following categories of information for each technology that may be of use to law enforcement officials:

1. Vendor Information

a. Full name of company
b. Contact information of technical contact for software products
c. Website URL
d. Years the company has been in business
e. Number and types of customers served (*e.g.,* municipal, county, or state agencies)
f. Picture or photograph of software product(s)
g. Vendor logo
h. Description of product(s) (300 words or less)

2. Product Information

a. Software Offering(s):
  i. Please describe your suite of software products, including but not limited to: PEMS, laboratory information management systems, digital evidence management systems, sexual assault kit tracking, etc.
  ii. Is your PEMS a module of an existing system or a standalone software?
  iii. Do you have a digital evidence management system (DEMS) software offering?
  iv. Is your DEMS software offering a module of an existing system or a standalone system?
b. Technical Specifications of Evidence Management Offering
  i. What are the key differentiators of your software compared to competitors' products?
  ii. How does your software manage evidence disposition? What is the evidence disposition protocol?
  iii. Does your software have a query functionality to search and categorize evidence?
  iv. Does your software have a dashboard function? If so, please describe functionalities.

v. Can your software integrate with other information management systems (*i.e.* integration with Record Management System (RMS) or Laboratory Information Management System (LIMS))? Please list relevant systems and methods of integration (*e.g.,* APIs)
vi. What features are customizable? (Customizability refers to changing the software programming, which may be done by the vendor or an in-house IT professional.)
vii. What features are configurable? (Configurability refers to changing fields within the setup of the system without changing the programming, which is done by the end user.)
viii. What data transfer capabilities does your software offer?
ix. Is there an upper limit to the amount of data (*e.g.,* information about discrete pieces of evidence) that can be stored in this program? If so, please describe these parameters.
x. Setup of system
1. What is the base model and functionalities offered by the company?
2. What additional modules are available for purchase?
xi. What kind of mobile capabilities does your program have (*e.g.,* mobile scanner or uploading capabilities).
xii. What access control measures does your product provide between users of the system?
xiii. What kind of audit trail capabilities does your product offer?

c. Technical Specifications of PEMS Offering
i. What barcode scanners are compatible with your product?
ii. What complementary hardware accessories are available with this software? Please note all available hardware accessories, and whether they come standard or at additional cost.

d. Technical Specifications of DEMS Offering
i. What types of files can be uploaded and stored on the DEMS product or module?
ii. What data and metadata are stored in the DEMS?
iii. What editing or enhancement capabilities does the software have?
iv. Are original files preserved when content is edited (*e.g.,* cropped photos)
v. Does the product ensure authenticity of the content?
vi. Are there photo comparison capabilities offered by the software?
vii. Can users download content to physical hard copies (*e.g.,* external drives)?
viii. Does your software offer digital signature capabilities?

e. Operating Information
i. Operating system required for use
ii. Type of application (*e.g.,* web-based or desktop application)
iii. Does your software have a cloud-based application?
iv. Servers and other IT requirements
v. Technical support offered
vi. Training offered
vii. Frequency of software updates
viii. Last known software release date
ix. Other systems required for use (*e.g.,* hardware requirements or supporting software packages)

f. Financial Information (check all that apply for your software and provide estimate costs if applicable. Please indicate what the cost model—*e.g.,* per user, bulk pricing). Please note that we will not share specific pricing, but allow users to roughly compare across pricing ranges.
i. ☐ Base software cost (_____ USD)
ii. ☐ Up-front license cost (_____ USD)
iii. ☐ Per-user license cost (_____ USD)
iv. ☐ Additional module costs (_____ USD)
v. ☐ Maintenance costs (_____USD)
vi. ☐ IT/Troubleshooting costs (_____USD)
☐ Training costs (_____USD)

3. Use Cases

a. Approximate number of products sold to law enforcement (if available)
b. Names and contact information (phone and email) for end users who have implemented the product in casework (if available)

David B. Muhlhausen,
Director, National Institute of Justice.

[FR Doc. 2020–10416 Filed 5–14–20; 8:45 am]
BILLING CODE 4410–20–P

DEPARTMENT OF LABOR

Notice of Amendment to Procedural Guidelines for the Development and Maintenance of the List of Goods Produced by Child Labor or Forced Labor

AGENCY: Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Notice of amendment to procedural guidelines for the development and maintenance of a list of goods produced by child labor or forced labor in violation of international standards.

SUMMARY: The U.S. Department of Labor's Bureau of International Labor Affairs (''ILAB'') amends a provision of its procedural guidelines (''Guidelines'') for the development and maintenance of a list of goods from countries that ILAB has reason to believe are produced by child labor or forced labor in violation of international standards (''List''). The Guidelines establish the process for the public submission of information and the evaluation and reporting process to be used by the U.S. Department of Labor's (''DOL or Department'') Office of Child Labor, Forced Labor, and Human Trafficking (''Office'') in ILAB in maintaining and updating the List. DOL is required to develop and make available to the public the List pursuant to the Trafficking Victims Protection Reauthorization Act of 2005.

DATES: This notice is effective on May 15, 2020.

FOR FURTHER INFORMATION CONTACT: Director, Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Information Relay Service at 1–877–889–5627.

Information may be submitted by the following methods:

- *Facsimile (fax):* ILAB/Office of Child Labor, Forced Labor, and Human Trafficking at (202) 693–4830.
- *Mail, Express Delivery, Hand Delivery, and Messenger Service:* Austin Pederson at U.S. Department of Labor, ILAB/Office of Child Labor, Forced Labor, and Human Trafficking, 200 Constitution Ave. NW, Room S–5317, Washington, DC 20210.
- *Email: ilab-tvpra@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL is making no substantive changes to the Guidelines; rather, the change is technical in nature. Through this notice, DOL incorporates an amendment to the Department's mandate for the development and maintenance of the List set forth in the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, Public Law 115–425, title I, § 133(a), Jan. 8 2019, 132 State. 5481. This 2018 Act directs that the List include, ''to the extent practicable, goods that are produced with inputs that are produced with forced labor or child labor.''

Section 105(b)(1) of the Trafficking Victims Protection Reauthorization Act of 2005 (''TVPRA of 2005''), Public Law 109–164 (2006), directed the Secretary of Labor, acting through the Bureau of International Labor Affairs, to ''carry out additional activities to monitor and combat forced labor and child labor in foreign countries as described in paragraph (2).'' Section 105(b)(2)(C) of the TVPRA, 22 U.S.C. 7112(b)(2)(C), directed the Department to ''[d]evelop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards.''

The Office carries out the Department's responsibilities in the TVPRA of 2005, as amended. Pursuant to this mandate, DOL published in the **Federal Register** a set of procedural guidelines that ILAB follows in the development and maintenance of the List. 72 FR 73374 (Dec. 27, 2007). The Frederick Douglass Trafficking Victims Prevention and Protection

Reauthorization Act of 2018, Public Law 115–425, title I, § 133(a), Jan. 8 2019, 132 State. 5481, expanded the scope of the Department's mandate for the development and maintenance of the List. Pursuant to this law, the List must also include, ''to the extent practicable, goods that are produced with inputs that are produced with forced labor or child labor.'' Accordingly, the Department is amending the Guidelines to incorporate this new mandate. Though the Guidelines were initially adopted after offering the public an opportunity to submit comments, the Department is not seeking comment on this amendment because it merely incorporates the recent changes to the statute. *Cf Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94 (D.C. Cir. 2012) (notice and comment rulemaking under the Administrative Procedure Act is not necessary when ''the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'''); *Gray Panthers Advocacy Comm.* v. *Sullivan,* 936 F.2d 1284, 1291–92 (D.C. Cir. 1991) (notice and comment rulemaking is not necessary when changes to the regulation merely restate the changes in the enabling legislation).

The Office will evaluate all information received according to the processes outlined in these amended Guidelines. Goods that meet the criteria outlined in these amended Guidelines will be placed on the List, published in the **Federal Register** and on the DOL website.

Sections Revised

This notice makes only one technical revision to the Guidelines. In order to reflect the List's mandate, as revised by the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, a revision to Section A of the Guidelines is necessary. The Department therefore replaces the following sentences: ''Whether a good is placed on the List may depend on which stage of production used child labor or forced labor. For example, if child labor or forced labor was only used in the extraction, harvesting, assembly, or production of raw materials or component articles, and these materials or articles are subsequently used under non-violative conditions in the manufacture or processing of a final good, only the raw materials/component articles and the country/ies where they were extracted, harvested, assembled, or produced, as appropriate, may be placed on the List.'' with ''To the extent practicable, the List will include goods that are produced with inputs that are produced with forced labor or child labor.'' No other revisions have been made.

Final Procedural Guidelines

A. Sources of Information and Factors Considered in the Development and Maintenance of the List

The Office will make use of all relevant information, whether gathered through research, public submissions of information, a public hearing, interagency consultations, or other means, in developing the List. In the interest of maintaining a transparent process, the Office will not accept classified information in developing the List. The Office may request that any such information brought to its attention be declassified. If submissions contain confidential or personal information, the Office may redact such information in accordance with applicable laws and regulations before making the submission available to the public.

In evaluating information, the Office will consider and weigh several factors, including:

1. Nature of information. Whether the information about child labor or forced labor gathered from research, public submissions, hearing testimony, or other sources is relevant and probative, and meets the definitions of child labor or forced labor.

2. Date of information. Whether the information about child labor or forced labor in the production of the good(s) is no more than 7 years old at the time of receipt. More current information will generally be given priority, and information older than 7 years will generally not be considered.

3. Source of information. Whether the information, either from primary or secondary sources, is from a source whose methodology, prior publications, degree of familiarity and experience with international labor standards, and/or reputation for accuracy and objectivity, warrants a determination that it is relevant and probative.

4. Extent of corroboration. The extent to which the information about the use of child labor or forced labor in the production of a good(s) is corroborated by other sources.

5. Significant incidence of child labor or forced labor. Whether the information about the use of child labor or forced labor in the production of a good(s) warrants a determination that the incidence of such practices is significant in the country in question. Information that relates only to a single company or facility; or that indicates an isolated incident of child labor or forced labor, will ordinarily not weigh in favor of a finding that a good is produced in violation of international standards. Information that demonstrates a significant incidence of child labor or forced labor in the production of a particular good(s), although not necessarily representing a pattern or practice in the industry as a whole, will ordinarily weigh in favor of a finding that a good is produced in violation of international standards.

In determining which goods and countries are to be placed on the List, the Office will, as appropriate, take into consideration the stages in the chain of a good's production. To the extent practicable, the List will include goods that are produced with inputs that are produced with forced labor or child labor. If child labor or forced labor was used in both the production or extraction of raw materials/component articles and the manufacture or processing of a final good, then both the raw materials/component articles and the final good, and the country/ies in which such labor was used, may be placed on the List. This is to ensure a direct correspondence between the goods and countries which appear on the List, and the use of child labor or forced labor.

Information on government, industry, or third-party actions and initiatives to combat child labor or forced labor will be taken into consideration, although they are not necessarily sufficient in and of themselves to prevent a good and country from being listed. In evaluating such information, the Office will consider particularly relevant and probative any evidence of government, industry, and third-party actions and initiatives that are effective in significantly reducing if not eliminating child labor and forced labor.

Goods and countries (''entries'') that meet the criteria outlined in these procedural Guidelines will be placed on an initial List, to be published in the **Federal Register** and on the DOL website. This initial List will continue to be updated as additional information becomes available. Before publication of the initial List or subsequent versions of the List, the Office will inform the relevant foreign governments of their presence on the List and request their responses. The Office will review these responses and make a determination as to their relevance. The List, along with a listing of the sources used to identify the goods and countries on it, will be published in the **Federal Register** and on the DOL website. The List will represent DOL's conclusions based on all relevant information available at the time of publication.

For each entry, the List will indicate whether the good is made using child labor, forced labor, or both. As the List continues to be maintained and updated, the List will also indicate the date when each entry was included. The List will not include any company or individual names. DOL's postings on its website of source material used in identifying goods and countries on the List will be redacted to remove company or individual names, and other confidential material, pursuant to applicable laws and regulations.

B. Procedures for the Maintenance of the List

1. Following publication of the initial List, the Office will periodically review and update the List, as appropriate. The Office conducts ongoing research and monitoring of child labor and forced labor, and if relevant information is obtained through such research, the Office may add an entry to, or remove an entry from the List using the process described in Section A of the Guidelines. The Office may also update the List on the basis of public information submissions, as detailed below.

2. Any party may at any time file an information submission with the Office regarding the addition or removal of an entry from the List. Submitters should take note of the criteria and instructions in the ''Information Requested on Child Labor and Forced Labor'' section of this notice, as well as the criteria listed in Section A of the Guidelines.

3. The Office will review any submission of information to determine whether it provides relevant and probative information.

4. The Office may consider a submission less reliable if it determines that: The submission does not clearly indicate the source(s) of the information presented; the submission does not identify the party filing the submission or is not signed and dated; the submission does not provide relevant or probative information; or, the information is not within the scope of the TVPRA and/or does not address child labor or forced labor as defined herein. All submissions received will be made available to the public on the DOL website, consistent with applicable laws or regulations.

5. In evaluating a submission, the Office will conduct further examination of available information relating to the good and country, as necessary, to assist the Office in making a determination concerning the addition or removal of the good from the List. The Office will undertake consultations with relevant U.S. government agencies and foreign governments, and may hold a public hearing for the purpose of receiving relevant information from interested persons.

6. In order for an entry to be removed from the List, any person filing information regarding the entry must provide information that demonstrates that there is no significant incidence of child labor or forced labor in the production of the particular good in the country in question. In evaluating information on government, industry, or third-party actions and initiatives to combat child labor or forced labor, the Office will consider particularly relevant and probative any available evidence of government, industry, and third-party actions that are effective in significantly reducing if not eliminating child labor and forced labor.

7. Where the Office has made a determination concerning the addition, maintenance, or removal of the entry from the List, and where otherwise appropriate, the Office will publish an updated List in the **Federal Register** and on the DOL website.

C. Key Terms Used in the Guidelines

''Child Labor''—''Child labor'' under international standards means all work performed by a person below the age of 15. It also includes all work performed by a person below the age of 18 in the following practices: (A) All forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes; (C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and (D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children. The work referred to in subparagraph (D) is determined by the laws, regulations, or competent authority of the country involved, after consultation with the organizations of employers and workers concerned, and taking into consideration relevant international standards. This definition will not apply to work specifically authorized by national laws, including work done by children in schools for general, vocational or technical education or in other training institutions, where such work is carried out in accordance with international standards under conditions prescribed by the competent authority, and does not prejudice children's attendance in school or their capacity to benefit from the instruction received.

''Countries''—''Countries'' means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands.

''Forced Labor''—''Forced labor'' under international standards means all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily, and includes indentured labor. ''Forced labor'' includes work provided or obtained by force, fraud, or coercion, including: (1) By threats of serious harm to, or physical restraint against any person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process. For purposes of this definition, forced labor does not include work specifically authorized by national laws where such work is carried out in accordance with conditions prescribed by the competent authority, including: any work or service required by compulsory military service laws for work of a purely military character; work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; work or service required in cases of emergency, such as in the event of war or of a calamity or threatened calamity, fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; and minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives have the right to be consulted in regard to the need for such services.

''Goods''— ''Goods'' means goods, wares, articles, materials, items, supplies, and merchandise.

''Indentured Labor''—''Indentured labor'' means all labor undertaken pursuant to a contract entered into by an employee the enforcement of which can be accompanied by process or penalties.

''International Standards''—''International standards'' means generally accepted international standards relating to forced labor and child labor, such as international conventions and treaties. These Guidelines employ definitions of ''child labor'' and ''forced labor'' derived from international standards.

''Produced''—''Produced'' means mined, extracted, harvested, farmed, produced, created, and manufactured.

Authority: 22 U.S.C. 7112(b)(2)(C)

Signed at Washington, DC, this 6th day of May 2020.

Martha Newton,

Deputy Undersecretary for International Affairs.

[FR Doc. 2020–10341 Filed 5–14–20; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: "Museums Empowered: Professional Development Opportunities for Museum Staff"

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before June 13, 2020.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Mark Isaksen, Senior Museum Program Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024. Mr. Isaksen can be reached by telephone: 202–653–4662; email: *misaksen@imls.gov* or by or by *teletype* (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: To administer a special initiative in the Museums for America (MFA) grant program titled Museums Empowered: Professional Development Opportunities for Museum Staff.

Museums Empowered: Professional Development Opportunities for Museum Staff is a special initiative of the Museums for America grant program with the goal of strengthening the ability of an individual museum to serve its public through professional development activities that cross-cut various departments to generate systemic change within the museum.

Museums need to be dynamic to respond to fast-evolving technological advances and changing demographics. Museums also need to generate and share results that document the effectiveness of their work in addressing community problems. In addition, they need to develop sustainable organizational structures and flexible strategies for long-term stability. Professional development is critical for museums to deliver on these areas of need.

IMLS encourages applicants to invest in the professional development of museum staff, leadership, and volunteers to enhance their skills and ensure the highest standards in all aspects of museum operations. Potential projects should involve multiple levels of staff and generate organizational change.

Your project should align with one of the following four categories: (1) Digital Technology, (2) Diversity and Inclusion, (3) Evaluation, and (4) Organizational Management.

This action is to seek renewal clearance of the ''Museums Empowered: Professional Development Opportunities for Museum Staff.'' The 60-day was published in the **Federal Register** on November 14, 2019 (FR vol. 84, No. 220, pgs. 61942–61943). There were no public comments.

Agency: Institute of Museum and Library Services.

Title: ''Museums Empowered: Professional Development Opportunities for Museum Staff.''

OMB Number: 3137–0107.

Agency Number: 3137.

Frequency: Annually.

Affected Public: Museums that meet the IMLS Museums for America institutional eligibility criteria.

Number of Respondents: 100.

Estimated Time per Respondent: 40 hours.

Total Burden Hours: 4,000.

Total Annualized Cost to Respondents: $112,480.00.

Total Annualized Capital/Startup Costs: 0.

Total Annualized Cost to Federal Government: $14,471.88.

Dated: May 12, 2020.

Kim Miller,

Senior Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2020–10470 Filed 5–14–20; 8:45 am]

BILLING CODE 7036–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Upcoming Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Federal Prevailing Rate Advisory Committee is issuing this notice to cancel the May 21, 2020, public meeting scheduled to be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW, Washington, DC. The original **Federal Register** notice announcing this meeting was published Monday, December 23, 2019.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, 202–606–2858, or email *pay-leave-policy@opm.gov.*

Office of Personnel Management.

Stephen Hickman,

Deputy Executive Secretary.

[FR Doc. 2020–10457 Filed 5–14–20; 8:45 am]

BILLING CODE 6325–49–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–131 and CP2020–138]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 19, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–131 and CP2020–138; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 69 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 11, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 19, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–10472 Filed 5–14–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket No. MT2020–1; Order No. 5504]

Market Test of Experimental Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service proposal to conduct a market test of an experimental product called Commercial PO Box Redirect Service. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 21, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Background
III. Compliance With Legal Requirements
IV. Data Collection
V. Notice of Commission Action
VI. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3641 and 39 CFR part 3045, the Postal Service filed notice of its intent to conduct a market test of an experimental product called Commercial PO Box Redirect Service.[1] Commercial PO Box Redirect Service will redirect automated letters during mail processing from the

[1] United States Postal Service Notice of Market Test of Experimental Product—Commercial PO Box Redirect Service, May 8, 2020 (Notice).

Commercial PO Box indicated on the mailpiece to a second Commercial PO Box. Notice at 2. The Postal Service intends for the market test to run for two full years beginning on June 8, 2020. *Id.* at 3.

II. Background

On May 8, 2020, the Postal Service filed the Notice proposing the Commercial PO Box Redirect Service market test. The Postal Service asserts that Commercial PO Box Redirect Service will provide an efficient solution for remittance mail processors, who receive and process payments enclosed in Courtesy Reply Mail or Business Reply Mail mailpieces on behalf of other businesses. *Id.* at 1. The Postal Service states that, if remittance mail processors need to consolidate or close the facilities associated with the address on the mailpiece, they must currently use their own couriers to move the pieces, use an existing postal bulk forwarding service, or employ private carriers. *Id.* at 1–2. The Commercial PO Box Redirect Service will redirect the mailpieces to the forwarding address at the first opportunity during mail processing. *Id.* at 2.

The Postal Service states that Commercial PO Box Redirect Service will only be available to customers who use Caller Service with the PO Box to which the mailpieces will be redirected. *Id.* The service will only redirect automation First-Class Mail letter mailpieces. *Id.*

The Postal Service plans to offer two price points for Commercial PO Box Redirect Service: $0.06 and $0.07. *Id.* The $0.06 price will be available to customers who certify that the service is essential to respond to a contingency, such as the COVID–19 pandemic, with all other eligible customers receiving the $0.07 price. *Id.*

III. Compliance With Legal Requirements

The Postal Service asserts that the proposed market test meets the requirements in 39 U.S.C. 3641 and 39 CFR part 3045. First, the Postal Service explains that Commercial PO Box Redirect Service is ''significantly different from all products offered by the Postal Service within the last two years'' as required by 39 U.S.C. 3641(b)(1). Notice at 3. The Postal Service states that Commercial PO Box Redirect Service is ''critically different'' from the Premium Forwarding Service Commercial option because those mailpieces are delivered and then repackaged and dispatched as Priority Mail Express or Priority Mail shipments for delivery to the forwarding address in bulk. *Id.* at 4. The Postal Service asserts that Commercial PO Box Redirect Service differs from temporary and permanent Change of Address orders because the new service is indefinite and uses ''different operational processes to forward the pieces.'' *Id.*

Second, the Postal Service asserts that Commercial PO Box Redirect Service ''will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer'' as required by 39 U.S.C. 3641(b)(2). *Id.* at 5. The Postal Service states that Commercial PO Box Redirect Service ''retools the market dominant letter processing network to create operational efficiencies prior to delivery, a domain in which the Postal Service does not compete with other carriers.'' *Id.* The Postal Service avers that, even if Commercial PO Box Redirect Service competes with existing after-delivery services, ''the Postal Service cannot reasonably be said to compete *unfairly* with these services unless the objective of section 3641(b)(2) is to discourage efficiency gains in the Postal Service's market dominant network.'' *Id.*

Third, the Postal Service states that Commercial PO Box Redirect Service is properly categorized as market dominant as required by 39 U.S.C. 3641(b)(3). *Id.* at 6.

IV. Data Collection

To better understand the results of the market test, the Postal Service asserts that it will collect the following data on a quarterly basis: Number of customers, volume of pieces redirected, and revenues. *Id.* The Postal Service also states that it will collect data on the attributable costs of Commercial PO Box Redirect Service, including administrative costs. *Id.*

V. Notice of Commission Action

The Commission establishes Docket No. MT2020–1 to consider matters raised by the Notice. The Commission invites comments on whether the Postal Service's filing is consistent with the requirements of 39 U.S.C. 3641 and 39 CFR part 3045. Comments are due no later than May 21, 2020. The filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Richard A. Oliver to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

VI. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MT2020–1 to consider the matters raised by the Notice.

2. Pursuant to 39 U.S.C. 505, Richard A. Oliver is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than May 21, 2020.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–10385 Filed 5–14–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Privacy Act: Modified System of Records

AGENCY: Postal Service™.

SUMMARY: The United States Postal Service™ (USPS™) is proposing to revise four General Privacy Act Systems of Records (SOR). These changes are being made to support the administration of the USPS fleet card program.

DATES: These revisions will become effective without further notice on June 15, 2020, unless, in response to comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Privacy and Records Management Office, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P830, Washington, DC 20260–1101. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records.

The Postal Service has determined that USPS General Privacy Act Systems of Records (SORs), 100.100 Recruiting, Examining, and Placement Records, 100.400, Personnel Compensation and Payroll Records, 100.500, Personnel

Resource Management Records, and 500.100, Carrier and Vehicle Operator Records should be revised to support the administration of the USPS fleet card program that is used to purchase commercial fuel and oil, maintenance repair, polishing and washing, servicing, shuttling, and towing services.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect these amended systems of records to have any adverse effect on individual privacy rights.

The notices for USPS SORs 100.100 Recruiting, Examining, and Placement Records, 100.400, Personnel Compensation and Payroll Records, 100.500, Personnel Resource Management Records, and 500.100, Carrier and Vehicle Operator Records, provided below in their entirety, are as follows:

SYSTEM NAME AND NUMBER:

USPS 100.100 Recruiting, Examining, and Placement Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Pre-employment investigation records are located at USPS Human Resources (HR) offices and contractor locations, except for drug screening and medical examination records, which are maintained in USPS medical facilities and designee offices.

Recruiting, examining, and placement records are located at USPS HR offices, Headquarters, Human Resources Shared Services Center, Integrated Business Solutions Services Centers, the Bolger Center for Leadership Development, the National Center for Employee Development, and contractor locations.

SYSTEM MANAGER(S):

Vice President, Employee Resource Management, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 410, 1001, 1005, and 1206.

PURPOSE(S) OF THE SYSTEM:

1. To determine suitability for employment.

2. To provide managers, HR personnel, and medical officers with information for recruiting and recommending appointment of qualified individuals.

3. To administer the USPS fleet card program used to purchase commercial fuel and oil, maintenance repair, polishing and washing, servicing, shuttling, and towing.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees, applicants for employment, and potential applicants with candidate profiles.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Applicant, potential applicants with candidate profiles, and employee information: Name(s), Social Security Number(s), Candidate Identification Number, Employee Identification Number, date(s) of birth, postal assignment or vacancy/job posting history information, work contact information, home address(es) and phone number(s), personal email address, finance number(s), duty location, pay location, and Fuel Purchase Fleet Card Personal Identification Number (PIN).

2. Pre-employment investigation information: Records compiled by USPS, including criminal, employment, military, and driving records; drug screening and medical assessment results. Also includes Special Agency Check with Inquiries (SACI) and National Agency Check with Inquiry (NACI): Investigative records requested by USPS and compiled by the Office of Personnel Management (OPM) for newly hired employees, including postal inspectors' investigative reports.

3. Recruiting, examining, and placement information: Records related to candidate profiles, applications, test results, interview documentation, and suitability screening.

RECORD SOURCE CATEGORIES:

Applicants; potential applicants with candidate profiles; OPM; police, driving, and military records; former employers and named references; medical service providers; school officials; other federal agencies; and state divisions of vocational rehabilitation counselors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, digital files, and paper files.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

By applicant or employee name, Social Security Number, Candidate Identification Number, Employee Identification Number, duty or pay location, or posting/vacancy to which application was made, and Fleet Card Personal Identification Number (PIN).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Pre-employment investigation records are retained 10 years from the date the individual is initially found suitable for employment, or 10 years from the date action was taken to deny or terminate employment.

2. Candidate information and Candidate Identification Number are retained for a minimum of 2 years. Vacancy files, including applicant/employee name, identification number, posting/vacancy number, and information supplied by applicant/employee in response to the vacancy posting, are retained 5 years. Employment registers are retained 10 years. Certain forms related to a successful applicant are filed in the electronic Official Personnel Folder as permanent records.

3. Paper examining answer sheets are retained 6 months; and computer media copies are retained 10 years. Scanned Maintenance Selection System forms are retained 10 years, and related hiring lists are retained 5 years.

4. Records pertaining to the USPS fuel fleet card purchase program are retained for 10 years.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls,

terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Individuals wanting to know if information about them is maintained in this system must address inquiries to Human Resources Shared Services Center, P.O. Box 970400, Greensboro, NC 27497–0400. Inquiries must include full name, Candidate Identification Number (as provided during the application process) or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment or date of application.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

February 25, 2019, 84 FR 6022; July 19, 2013, 78 FR 43247; June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

SYSTEM NAME AND NUMBER:

USPS 100.400 Personnel Compensation and Payroll Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Area and District Human Resources offices, the Human Resources Shared Services Center, Integrated Business Solutions Services Centers, Computer Operations Services Centers, Accounting Services Centers, other area and district facilities, Headquarters, contractor sites, and all organizational units.

SYSTEM MANAGER(S):

Chief Human Resource Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Employee Resource Management, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Controller, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 409, 410, 1001, 1003, 1004, 1005, and 1206; and 29 U.S.C. 2601 *et seq.*

PURPOSE(S) OF THE SYSTEM:

1. To support all necessary compensation and payroll activities and related management functions.
2. To generate lists of employee information for home mailings, dues membership, and other personnel support functions.
3. To generate retirement eligibility information and analysis of employees in various salary ranges.
4. To administer the purchase of uniforms.
5. To administer monetary awards programs and employee contests.
6. To detect improper payment related to injury compensation claims.
7. To adjudicate employee claims for loss or damage to their personal property in connection with or incident to their postal duties.
8. To process garnishment of employee wages.
9. To support statistical research and reporting.
10. To generate W–2 and 1095–C information for use with external third party tax preparation services at the request of the individual employee.
11. To administer the USPS fleet card program used to purchase commercial fuel and oil, maintenance repair, polishing and washing, servicing, shuttling, and towing.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current and former USPS employees and postmaster relief/leave replacement employees.
2. Current and former employees' family members, beneficiaries, and former spouses who apply and qualify for benefits.
3. An agent or survivor of an employee who makes a claim for loss or damage to personal property.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Employee and family member information: Name(s), Social Security Number(s), Employee Identification Number, ACE ID, date(s) of birth, postal assignment information, work contact information, home address(es) and phone number(s), finance number(s), occupation code, occupation title, duty location, and pay location, and Fuel Purchase Fleet Card Personal Identification Number (PIN).

2. Compensation and payroll information: Records related to payroll, annual salary, hourly rate, Rate Schedule Code (RSC) or pay type, payments, deductions, compensation, and benefits; uniform items purchased; proposals and decisions under monetary awards; suggestion programs and contests; injury compensation; monetary claims for personal property loss or damage; and garnishment of wages.

RECORD SOURCE CATEGORIES:

Employees; employees' supervisor or manager; other systems of records; claimants or their survivors or agents who make monetary claims; witnesses; investigative sources; courts; and insurance companies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

a. Records pertaining to financial institutions and to nonfederal insurance carriers and benefits providers elected by an employee may be disclosed for the purposes of salary payment or allotments, eligibility determination, claims, and payment of benefits.

b. Records pertaining to supervisors and postmasters may be disclosed to supervisory and other managerial organizations recognized by USPS.

c. Records pertaining to recipients of monetary awards may be disclosed to the news media when the information is of news interest and consistent with the public's right to know.

d. Disclosure of records about current or former Postal Service employees may be made to requesting states under an approved computer matching program to determine employee participation in, and eligibility under, unemployment insurance programs administered by the states (and by those states to local governments), to improve program integrity, and to collect debts and overpayments owed to those governments and their components.

e. Disclosure of records about current or former Postal Service employees may be made to requesting federal agencies or nonfederal entities under approved computer matching programs to make a determination of employee participation in, and eligibility under, particular benefit programs administered by those agencies or entities or by USPS; to improve program integrity; to collect debts and overpayments owed under those programs and to provide employees with due process rights prior to initiating any salary offset; and to identify those employees who are absent parents owing child support obligations and to collect debts owed as a result.

f. Disclosure of records about current or former Postal Service employees may

be made, upon request, to the Department of Defense (DoD) under approved computer matching programs to identify Postal Service employees who are ready reservists for the purposes of updating DoD's listings of ready reservists and to report reserve status information to USPS and the Congress; and to identify retired military employees who are subject to restrictions under the Dual Compensation Act and to take subsequent actions to reduce military retired pay or collect debts and overpayments.

g. Disclosure of records may be made to the Internal Revenue Service under approved computer matching programs to identify current or former Postal Service employees who owe delinquent federal taxes or returns and to collect the unpaid taxes by levy on the salary of those individuals pursuant to Internal Revenue Code; and to make a determination as to the proper reporting of income tax purposes of an employee's wages, expenses, compensation, reimbursement, and taxes withheld and to take corrective action as warranted.

h. Disclosure of the records about current or recently terminated Postal Service employees may be made to the Department of Transportation (DOT) under an approved computer matching program to identify individuals who appear in DOT's National Driver Register Problem Driver Pointer System. The matching results are used only to determine as a general matter whether commercial license suspension information within the pointer system would be beneficial in making selections of USPS motor vehicle and tractor-trailer operator personnel and will not be used for actual selection decisions.

i. Disclosure of records about current or former Postal Service employees may be made to the Department of Health and Human Services under an approved computer matching program for further release to state child support enforcement agencies when needed to locate noncustodial parents, to establish and/or enforce child support obligations, and to locate parents who may be involved in parental kidnapping or child custody cases.

j. Disclosure of records about current or former Postal Service employees may be made to the Department of the Treasury under Treasury Offset Program computer matching to establish the identity of the employee as an individual owing a delinquent debt to another federal agency and to offset the salary of the employee to repay that debt.

k. Disclosure of employment and wage data records about current Postal Service employees may be made to the Bureau of Labor Statistics for use in their Occupational Employment Statistics program for the purpose of developing estimates of the number of jobs in certain occupations, and estimates of the wages paid to them.

l. Disclosure of W–2 and 1095–C tax information records to external third party tax preparation services.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, digital files, and paper files.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

By employee name, Social Security Number, Employee Identification Number, Fuel Purchase Fleet Card Personal Identification Number (PIN), or duty or pay location.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Leave application and unauthorized overtime records are retained 3 years. Time and attendance records (other than payroll) and local payroll records are retained 3 years. Automated payroll records are retained 10 years.

2. Uniform allowance case files are retained 3 years; and automated records are retained 6 years.

3. Records of monetary awards with a status that they have been processed, failed processing, cancelled, or reported (Service Award Pins, Retirement Service Awards, Posthumous Service Awards) are retained 7 years, as payroll records would have been affected/processed. Records of award submissions with the status approved, deleted, or as a draft are retained 31 days, as payroll records would not have been affected/processed.

4. Records of employee-submitted ideas are maintained for 90 days after being closed.

5. Injury compensation records are retained 5 years. Records resulting in affirmative identifications become part of a research case file, which if research determines applicability, become either part of an investigative case record or a remuneration case record that is retained 2 years beyond the determination.

6. Monetary claims records are retained 3 years.

7. Automated records of garnishment cases are retained 6 months. Records located at a Post Office are retained 3 years.

8. Overtime administrative records are retained for 7 years.

9. Tax preparation records are limited to an employee's previous year's wages, tax documentation, and health insurance coverage as required by the Affordable Care Act.

10. Records pertaining to the USPS fuel fleet card purchase program are retained for 10 years.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Individuals wanting to know if information about them is maintained in this system must address inquiries to the facility head where currently or last employed. Headquarters employees must submit inquiries to Corporate Personnel Management, 475 L'Enfant Plaza SW, Washington, DC 20260. Inquiries must include full name, Social Security Number or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Records in this system relating to injury compensation that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access as permitted by 5 U.S.C. 552a(d)(5). The USPS has also claimed exemption from certain provisions of the Act for several of its other systems of records at 39 CFR 266.9. To the extent that copies of exempted records from those other systems are incorporated into this system, the exemptions applicable to the original primary system continue to apply to the incorporated records.

HISTORY:

February 25, 2019, 84 FR 6022; February 23, 2017, 82 FR 11489; June 17, 2011, 76 FR 35483; March 2, 2015, 80 FR 11241

SYSTEM NAME AND NUMBER:

USPS 100.500 Personnel Resource Management Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Post Offices; area and district facilities; Human Resources and Operations, Headquarters; and Computer Operations Service Centers.

SYSTEM MANAGER(S):

Vice President, Employee Resource Management, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Logistics, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404, 1001, 1003, and 1005; and 29 U.S.C. 2601 *et seq.*

PURPOSE(S) OF THE SYSTEM:

1. To administer leave, attendance, and attendance- related awards; and to identify potential attendance problems.

2. To provide operations management with information about employee work schedules, mail volume, and productivity.

3. To administer the USPS fleet card program used to purchase commercial fuel and oil, maintenance repair, polishing and washing, servicing, shuttling, and towing.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Employee information: Name, home address, Social Security Number, employee identification number(s), postal assignment information, work contact information, finance number(s), duty location, and pay location, and Fleet Purchase Fleet Card Personal Identification Number (PIN).

2. Employee resource management information: Records related to workload, productivity, scheduling, availability, and absences, including family medical leave absences.

RECORD SOURCE CATEGORIES:

Employees; employees' supervisor or manager; and other systems of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, digital files, and paper files.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

By employee name, Social Security Number, employee identification number(s), route number, duty or pay location, pay period or Fuel Purchase Fleet Card Personal Identification Number (PIN).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Resource management records related to leave application, time and attendance, and light duty status are retained 3 years. Family and Medical Leave Records are retained 5 years. Other categories of resource management records are retained 1 year. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice. Records pertaining to the USPS fuel fleet card purchase program are retained for 10 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Restricted medical information is maintained in a separate locked cabinet under control of the FMLA Coordinator. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Individuals wanting to know if information about them is maintained in this system must address inquiries to the facility head where currently or last employed. Headquarters employees must submit inquiries to Corporate Personnel Management, 475 L'Enfant Plaza SW, Washington, DC 20260. Inquiries must include full name, Social Security Number or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

June 17, 2011, 76 FR 35483, June 27, 2012, 77 FR 38342.

SYSTEM NAME AND NUMBER:

USPS 500.100 Carrier and Vehicle Operator Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Headquarters; area and district facilities; processing and distribution centers; bulk mail centers; vehicle maintenance facilities; Post Offices; Integrated Business Solutions Services Centers; Accounting Service Centers; contractor or licensee locations; and facilities employing persons under a highway vehicle contract.

SYSTEM MANAGER(S):

Vice President, Delivery and Retail Operations, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404, and 1206.

PURPOSE(S) OF THE SYSTEM:

1. To reimburse carriers who use privately owned vehicles to transport the mail pursuant to a contractual agreement.
2. To evaluate delivery and collection operations and to administer these functions.
3. To provide local Post Office managers, supervisors, and transportation managers with information to assign routes and vehicles, and to adjust workload, schedules, and type of equipment operated.
4. To determine contract vehicle operator suitability for assignments requiring access to mail.
5. To serve as a basis for vehicle operator corrective action and presentation of safe driving awards.
6. To administer the USPS fleet card program used to purchase commercial fuel and oil, maintenance repair, polishing and washing, servicing, shuttling, and towing.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. ~~City~~ Letter carriers.
2. Current and former USPS employees who operate or maintain USPS-owned or leased vehicles.
3. Contract highway vehicle operators.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Carrier information: Records related to letter carriers, including carrier's name, home address, Social Security Number, Employee Identification Number, postal assignment information, work contact information, finance number(s), duty location, pay location, route number and work schedule, and effective date of agreement for use of a privately owned vehicle to transport the mail, if applicable.

2. Vehicle operator information: Records of employees' operation or maintenance of USPS-owned or leased vehicles, including employee name, home address, Social Security Number, Employee Identification Number, age, postal assignment information, work contact information, finance number(s), duty location, pay location, work schedule, Fuel Purchase Fleet Card Personal Identification Number (PIN), and other records of vehicle operation and maintenance.

3. Highway vehicle contract employee information: Records related to contract employee name, Social Security Number, address and employment history, driver's license number, and contract assignment information.

RECORD SOURCE CATEGORIES:

Employees; contractors; carrier supervisors; route inspectors; and state motor vehicle departments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

By name, Social Security Number, Employee Identification Number, pay location, Postal Service facility name, route number, vehicle number, or Fuel Purchase Fleet Card Personal Identification Number (PIN).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Route inspection records and minor adjustment worksheets are retained 2 years where inspections or minor adjustments are made annually or more frequently. Where inspections are made less than annually, records are retained until a new inspection or minor adjustment, and an additional 2 years thereafter.
2. Statistical engineering records are retained 5 years, and may be retained further on a year-to-year basis.
3. Agreements for use of a privately owned vehicle are retained 2 years. Post office copies of payment authorizations are retained 90 days. Vehicle records are maintain for the life of the vehicle.
4. Records of employees who operate or maintain USPS vehicles are retained 4 years.
5. Records of highway vehicle contract employees are retained 1 year after contract expiration or contract employee termination.
6. Records pertaining to the USPS fuel fleet card purchase program are retained for 10 years.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Current and former employees, and highway vehicle contract employees, wanting to know if information about them is maintained in this system of records must address inquiries to the facility head where currently or last employed. Requests must include full name, Social Security Number or Employee Identification Number, and, where applicable, the route number and dates of any related agreements or contracts.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

June 27, 2012, 77 FR 38342.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–10462 Filed 5–14–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88850; File No. SR–MIAX–2020–09]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 11, 2020.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] notice is hereby given that on April 29, 2020, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the list of MIAX Select Symbols[3] contained in the Priority Customer Rebate Program (the ''Program'')[4] of the Exchange's Fee Schedule to delete the Select Symbol ''S,'' associated with the Sprint Corporation (''Sprint''), from the Select Symbols list.

The Exchange initially created the list of MIAX Select Symbols on March 1, 2014,[5] and has added and removed option classes from that list since that time.[6] Select Symbols are rebated slightly higher in certain Program tiers than non-Select Symbols. The Exchange notes that on April 1, 2020, Sprint and T-Mobile US, Inc. (''T-Mobile'') announced the completion of a merger of the two companies, with T-Mobile continuing as the surviving company and Sprint shares converting into the right to receive T-Mobile shares.[7] Further, the combined company will continue to trade under the symbol for T-Mobile, ''TMUS.'' Options on Sprint were authorized to be listed for trading on the Exchange pursuant to Rule 402, but are no longer listed for trading since Sprint is no longer the registered stock symbol for the merged company and as such, Sprint shares are no longer listed for trading on equity trading venues under the symbol ''S.'' The Exchange has also determined not to add the merged company, T-Mobile, to the MIAX Select Symbols list for business and competitive reasons.

Accordingly, the Exchange is amending its Fee Schedule to delete the symbol ''S'' from the list of MIAX Select Symbols contained in the Program. This amendment is intended to eliminate any potential confusion and to make it clear to market participants that ''S'' will not be a MIAX Select Symbol contained in the Program as ''S'' options are no longer listed on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

In particular, the proposal to delete the symbol ''S'' from the list of MIAX Select Symbols contained in the Program is consistent with Section 6(b)(4) of the Act because the proposed changes will allow for continued benefit to investors by providing them an updated list of MIAX Select Symbols contained in the Program on the Exchange's Fee Schedule.

The Exchange believes that the proposal to amend an option class that qualifies for the credit for transactions in MIAX Select Symbols is fair, equitable and not unreasonably discriminatory. The Exchange believes that the Program itself is reasonably designed because it incentivizes providers of Priority Customer[11] order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Program, which provides increased incentives in certain tiers in high volume select symbols, is also reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives to higher volume symbols.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will apply equally to all Priority Customer orders in MIAX Select Symbols in the Program. All similarly situated Priority Customer orders in MIAX Select Symbols are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

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[2] 17 CFR 240.19b–4.

[3] The term ''MIAX Select Symbols'' means options overlying AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, INTC, IWM, JCP, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, S, SPY, T, TSLA, USO, VALE, WBA, WFC, WMB, X, XHB, XLE, XLF, XLP, XOM and XOP.

[4] *See* section 1(a)(iii) of the Fee Schedule for a complete description of the Program.

[5] *See* Securities Exchange Act Release No. 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13).

[6] *See* Securities Exchange Act Release Nos. 87964 (January 14, 2020), 85 FR 3435 (January 21, 2020) (SR–MIAX–2020–01); 87790 (December 18, 2019), 84 FR 71037 (December 26, 2019) (SR–MIAX–2019–49); 85314 (March 14, 2019), 84 FR 10359 (March 20, 2019) (SR–MIAX–2019–07); 81998 (November 2, 2017), 82 FR 51897 (November 8, 2017) (SR–MIAX–2017–45); 81019 (June 26, 2017), 82 FR 29962 (June 30, 2017) (SR–MIAX–2017–29); 79301 (November 14, 2016), 81 FR 81854 (November 18, 2016) (SR–MIAX–2016–42); 74291 (February 18, 2015), 80 FR 9841 (February 24, 2015) (SR–MIAX–2015–09); 74288 (February 18, 2015), 80 FR 9837 (February 24, 2015) (SR–MIAX–2015–08); 73328 (October 9, 2014), 79 FR 62230 (October 16, 2014) (SR–MIAX–2014–50); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR–MIAX–2014–34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR–MIAX–2014–26); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13).

[7] *See* T-Mobile Completes Merger with Sprint to Create the New T-Mobile (April 1, 2020), available at *https://newsroom.sprint.com/tmobile-completes-merger-with-sprint.htm.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(1) and (b)(5).

[11] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is a not a competitive filing but rather is designed to update the list of MIAX Select Symbols contained in the Program in order to avoid potential confusion on the part of market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[12] and Rule 19b–4(f)(2)[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2020–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–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 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–MIAX–2020–09 and should be submitted on or before June 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10392 Filed 5–14–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88852; File No. SR–NASDAQ–2020–022]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Internal Cross-References in General 5, Discipline

May 11, 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 28, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend certain internal cross-references within General 5, Discipline.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2019, Nasdaq relocated its rules into a new Rulebook shell.[3] As a result, several rules referenced within the 8000 and 9000 Series Rules contained in General 5 Discipline have been relocated under a new rule number. At this time, Nasdaq proposes to update certain internal cross-references within General 5, Discipline. Specifically, Nasdaq proposes to update internal cross-references within Rules 8120 (Definitions), 9110 (Application), 9268 (Decision of Hearing Panel or Extended Hearing Panel), 9269 (Default Decisions), 9270 (Settlement Procedure), 9311 (Appeal by Any Party; Cross-Appeal), 9312 (Review Proceeding Initiated By the Nasdaq Review

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–98).

Council), 9351 (Discretionary Review by Nasdaq Board), 9360 (Effectiveness of Sanctions), 9524 (Nasdaq Review Council Consideration), 9552 (Failure to Provide Information or Keep Information Current), 9553 (Failure to Pay Nasdaq Dues, Fees and Other Charges), 9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution), 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services), 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders), 9557 (Procedures for Regulating Activities Under Rules 4110A and 4120A Regarding a Member Experiencing Financial or Operational Difficulties), 9558 (Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Act), 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), and 9810 (Initiation of Proceeding).

The Exchange proposes to update internal cross-references within these rules as follows:

- Rule 0120 to General 1(b);
- Rule 1160 to General 2, Section 11;
- Rule 2010A to General 9, Section 1(a);
- Rule 2140 to General 9, Section 1(h);
- Rule 2160 to General 2, Section 14;
- Rule 4110A to General 9, Section 40; and
- Rule 4120A to General 9, Section 41.

The Exchange also proposes to replace references to General 5, Section 2 with the Rule 9600 Series within Nasdaq Rules 8211 (Automated Submission of Trading Data), 9120(r) (Definitions) and 9610 (Application). These amendments correct references to General 5, Section 2, which were erroneously made as that reference does not exist in the Rulebook. The Exchange is reverting the text back to the original citations.

The Exchange proposes other minor technical amendments to correct grammar and punctuation. These amendments are non-substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by correcting internal cross-references to its current rules, which were relocated. These corrections to update rule references within the Nasdaq Disciplinary Rules will make the rules accurate and reflect the correct cross-referenced rules. These amendments are non-substantive.

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. These corrections to update rule references within the Nasdaq Disciplinary Rules will make the rules accurate and reflect the correct cross-referenced rules. These amendments are non-substantive.

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[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[8] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[9] 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 immediately update the identified rule references within the Nasdaq disciplinary rules, which the Exchange states will make the rules accurate and reflect the correct cross-referenced rules. For this reason, and to avoid any investor confusion that may result from inaccurate references within Nasdaq's disciplinary rules, 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.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2020–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–022. 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

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 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.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 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).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–022 and should be submitted on or before June 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10393 Filed 5–14–20; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 799X)]

CSX Transportation, Inc.—Abandonment Exemption—in Dickenson County, Va.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 13.65-mile rail line on its Florence Division, Kingsport Subdivision, Fremont Branch extending between milepost ZF 0.0 and milepost ZF 13.65, in Dickenson County, Va. (the Line). The Line traverses U.S. Postal Zip Codes 24226, 24228, and 24230.

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7 and 1105.8 (notice of environmental and historic report), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Any employee of CSXT adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] the exemption will be effective on June 14, 2020, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by May 22, 2020.[2] Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 26, 2020.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 4, 2020, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSXT has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by May 22, 2020. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by May 15, 2021, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: May 11, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–10391 Filed 5–14–20; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35742 (Sub-No. 1)]

Clarkdale Arizona Central Railroad, L.C.—Trackage Rights Exemption—Drake Cement, LLC

Clarkdale Arizona Central Railroad, L.C. (CACR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to renew and modify a previous trackage rights agreement [1] between CACR and Drake Cement, LLC (Drake), also a Class III carrier, permitting CACR to operate over Drake's Track Nos. 3924, 3907, 3921, and 3904, located between milepost 0 + 15 feet and milepost 0 + 3000 feet in Drake, Ariz., a distance of approximately 2,985 feet. The Agreement also grants CACR the right to operate over Drake's Track

[1] CACR states that the previous agreement expired on December 31, 2015, although CACR has continued to operate. A redacted version of the renewed agreement (Agreement) was filed with CACR's verified notice of exemption. CACR simultaneously filed a motion for a protective order to protect the confidential and commercially sensitive information in the unredacted version of the Agreement, which CACR submitted under seal. That motion will be addressed in a separate decision.

Nos. 3922 and 3923 to provide switching operations for Drake.

The verified notice states that the proposed transaction will afford CACR the ability to continue to conduct common carrier operations in interchange with BNSF Railway Company.

The transaction may be consummated on or after May 30, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by May 22, 2020 (at least seven days before the exemption becomes effective).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

All pleadings, referring to Docket No. FD 35742 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on CACR's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

According to CACR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c), and from historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: May 12, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2020–10473 Filed 5–14–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36402]

Fortress Investment Group LLC—Exemption for Intra-Corporate Family Transaction—Ohio River Partners Shareholder LLC & Katahdin Railcar Services LLC

Fortress Investment Group LLC (Fortress), for the benefit of Fortress Transportation and Infrastructure Investors LLC (FTAI), Ohio River Partners Shareholder LLC (ORPS), a Class III carrier, and Katahdin Railcar Services LLC (KRS), a noncarrier (collectively, the Parties),[1] filed a verified notice of exemption for an intra-corporate family transaction under 49 CFR 1180.2(d)(3), which exempts from the prior approval requirements of 49 U.S.C. 11323 ''[t]ransactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.'' 49 CFR 1180.2(d)(3).

Under the proposed transaction, KRS will lease from ORPS a 12.2-mile rail line between milepost 60.5 at or near Powhatan Point, Ohio, and milepost 72.7 at or near Hannibal, Ohio (the Omal Line), thereby becoming a Class III rail carrier.[2]

The notice states that ORPS satisfies its common carrier obligation by engaging Central Maine & Quebec Railway US, Inc. (CMQR), to operate the Omal Line on a contract basis. The Parties state that ORPS affiliate KRS will operate the Omal Line upon the June 30, 2020 termination of the contract between OPRS and CMQR.[3] According to the Parties, the transaction will facilitate an orderly transition of rail operations and provide for uninterrupted rail service to customers located on and along the Omal Line. The notice states that KRS intends to offer employment to the same CMQR crews that currently operate trains over the Omal Line. Upon consummation of the transaction, KRS will acquire the right and common carrier obligation to operate the Omal Line pursuant to the lease between ORPS and KRS.

Unless stayed, the exemption will be effective on May 30, 2020 (30 days after the verified notice was filed). The Parties state that they intend to consummate the proposed transaction as soon as practicable after that date.

The Parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(3).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III rail carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 22, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36402, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street, SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on the Parties' representative, Terence M. Hynes, Sidley Austin LLP, 1501 K St NW, Washington, DC 20005.

According to the Parties, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: May 11, 2020.

[1] The verified notice states that FTAI, which is managed by an affiliate of Fortress, indirectly owns a majority equity interest in ORPS and also indirectly owns KRS. FTAI, ORPS, and KRS all are Delaware limited liability companies.

[2] In 2016, Ohio River Partners LLC (ORP) obtained an exemption to acquire and operate the Omal Line. *See Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC,* FD 35984 (STB served Apr. 1, 2016). In 2017, ORP was authorized to be merged into its corporate parent, ORPS. *See Ohio River Partners Shareholders LLC—Exemption for Intra-Corporate Family Transaction—Ohio River Partners, LLC,* FD 36152 (STB served Dec. 22, 2017).

[3] The notice states that FTAI sold CMQR to Soo Line Corporation, an indirect wholly owned subsidiary of Canadian Pacific Railway Company (CP), and that CMQR is no longer an affiliate of ORPS. CP's control of CMQR was authorized in *Soo Line Corp.—Control—Central Maine & Quebec Railway US,* FD 36368 (STB served May 4, 2020).

By the Board, Allison C. Davis, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–10428 Filed 5–14–20; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Extensions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusion extensions.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $34 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated the exclusion process in July 2018 and, to date, has granted 10 sets of exclusions under the $34 billion action. The fourth set of exclusions was published in May 2019 and will expire in May 2020. On March 12, 2020, the U.S. Trade Representative established a process for the public to comment on whether to extend particular exclusions granted in May 2019 for up to 12 months. This notice announces the U.S. Trade Representative's determination to extend certain exclusions until December 31, 2020.

DATES: The product exclusion extensions announced in this notice will apply as of May 14, 2020, and extend until December 31, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Benjamin Allen, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 32181 (July 11, 2018), 83 FR 67463 (December 28, 2018), 84 FR 11152 (March 25, 2019), 84 FR 16310 (April 18, 2019), 84 FR 21389 (May 14, 2019), 84 FR 25895 (June 4, 2019), 84 FR 32821 (July 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49564 (September 20, 2019), 84 FR 52567 (October 2, 2019), 84 FR 58427 (October 31, 2019), 84 FR 70616 (December 23, 2019), 84 FR 72102 (December 30, 2019), 85 FR 6687 (February 5, 2020), 85 FR 12373 (March 2, 2020), 85 FR 16181 (March 20, 2020), and 85 FR 24081 (April 30, 2020).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $34 billion. *See* 83 FR 28710 (the $34 billion action). The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $34 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

In May 2019, the U.S. Trade Representative granted a set of exclusion requests, which expire on May 14, 2020. *See* 84 FR 21389 (the May 14 notice). On March 2, 2020, the U.S. Trade Representative invited the public to comment on whether to extend by up to 12 months, particular exclusions granted in the May 14 notice. *See* 85 FR 12373 (the March 2 notice).

Under the March 2 notice, commenters were asked to address whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries; any changes in the global supply chain since July 2018 with respect to the particular product, or any other relevant industry developments; and efforts, if any, importers or U.S. purchasers have undertaken since July 2018 to source the product from the United States or third countries.

In addition, commenters who were importers and/or purchasers of the products covered by an exclusion were asked to provide information regarding their efforts since July 2018 to source the product from the United States or third countries; the value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018, the first half of 2018, and the first half of 2019, and whether these purchases are from a related company; whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties; the value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018, the first half of 2018 and the first half of 2019; the commenter's gross revenue for 2018, the first half of 2018, and the first half of 2019; whether the Chinese-origin product of concern is sold as a final product or as an input; whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests; and any additional information in support or in opposition of the extending the exclusion.

The March 2 notice required the submission of comments no later than April 12, 2020.

B. Determination To Extend Certain Exclusions

Based on evaluation of the factors set out in the July 11 notice and March 2 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to extend certain product exclusions covered by the May 14 notice, as set out in the Annex to this notice.

The March 2 notice provided that the U.S. Trade Representative would consider extensions of up to 12 months. In light of the cumulative effect of current and possible future exclusions or extensions of exclusions on the effectiveness of the action taken in this investigation, the U.S. Trade Representative has determined to extend the exclusions in the Annex to this notice for less than 12 months—until December 31, 2020. To date, the U.S. Trade Representative has granted more than 6,200 exclusion requests, has extended some of these exclusions, and may consider further extensions of exclusions. Furthermore, more than 8,600 requests are pending on the products covered by the action taken on August 20, 2019. The U.S. Trade Representative will take account of the cumulative effect of exclusions in considering the possible further extension of the exclusions covered by this notice, as well as possible extensions of exclusions of other

products covered by the action in this investigation. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments concerning extension of the pertinent exclusion.

In accordance with the July 11 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the 10-digit HTSUS headings and product descriptions in the Annex to this notice, and not by the product descriptions set out in any particular request for exclusion.

As set out in the Annex, the U.S. Trade Representative has determined to extend, until December 31, 2020, the following exclusions granted under the May 14, 2019 notice under heading 9903.88.08 and under U.S. note 20(k) to subchapter III of chapter 99 of the HTSUS: (4), (5), (8), (11), (18), (19), (21), (22), (23), (24), (25), (38), and (39).

Annex

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, and before December 31, 2020, the additional duties provided for in heading 9903.88.01 shall not apply to products which are provided for in heading 9903.88.08 and U.S. notes 20(k)(4), 20(k)(5), 20(k)(8), 20(k)(11), 20(k)(18), 20(k)(19), 20(k)(21), 20(k)(22), 20(k)(23), 20(k)(24), 20(k)(25), 20(k)(38) and 20(k)(39) to subchapter III of chapter 99 of the HTSUS, as follows:

(4) 8481.10.0090

(5) 8483.50.9040

(8) Filtering or purifying machinery or apparatus of a kind used for waste water treatment (described in statistical reporting number 8421.21.0000)

(11) Air purification equipment, electrically powered, weighing less than 36 kg (described in statistical reporting number 8421.39.8015)

(18) Armatures designed for use in hydraulic solenoid valves (described in statistical reporting number 8481.90.9040)

(19) C-poles, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)

(21) Metering spools, of aluminum, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)

(22) Metering spools, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)

(23) Poles, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)

(24) Push pins, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)

(25) Retainers, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)

(38) Stereoscopic microscopes, not provided with a means for photographing the image, valued not over $500 per unit (described in statistical reporting number 9011.10.8000)

(39) Adapter rings, tubes and extension sleeves, stands and arm assemblies, stages and gliding tables, eyeguards and focusing racks, all the foregoing designed for use with compound optical microscopes (described in statistical reporting number 9011.90.0000)

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–10456 Filed 5–14–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Rhode Island

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final pursuant to the statute. The actions relate to a proposed highway project, Reconstruction of the Pell Bridge Approaches in the City of Newport in the State of Rhode Island.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 13, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Carlos E. Padilla-Fresse, MSCE, Program Delivery Supervisor, Federal Highway Administration Rhode Island Division, 380 Westminster Mall, Suite 601, Providence, Rhode Island 02903: telephone: (401) 528–4577; email: *Carlos.Padilla@dot.gov;* or Ms. Lori Fisette, Acting Administrator of Project Management, Rhode Island Department of Transportation, Two Capitol Hill, Providence, Rhode Island 02903–1124, telephone: (401) 563–4401, email: *lori.fisette@dot.ri.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions by issuing a Finding of No Significant Impact (FONSI) for the following highway project in the State of Rhode Island: Reconstruction of the Pell Bridge Approaches in the City of Newport. The proposed action includes realignment of the Pell Bridge ramps and associated approach roads to improve traffic circulation, reduce queuing and improve safety; reconnect neighborhoods including improved vehicle, pedestrian and bicycle connectivity; and support economic development by maximizing land area available for redevelopment.

The actions by FHWA, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on November 21, 2019, and a Finding of No Significant Impact (FONSI) issued on April 20, 2020, and in other documents in the project records. The EA, FONSI, and other project records are available by contacting FHWA or the Rhode Island Department of Transportation at the addresses provided above. The EA and FONSI can be viewed and downloaded from the project website at: *www.pellbridge-ea.com.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321, *et seq.*]; Federal-Aid Highway Act [Title 23] and associated regulations [CFR part 23].

2. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)]; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).

3. *Air:* Clean Air Act, [42 U.S.C. 7401–7671(q)] (transportation conformity)

4. *Noise:* 23 U.S.C. 109(i) .

5. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(e)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Plant Protection Act [7 U.S.C. 7701 *et seq.*].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, [54 U.S.C. 306108]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(mm)]; Archeological and

Historic Preservation Act [16 U.S.C. 469–469 c–2]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

7. *Land:* Section 4(f) of The Department of Transportation Act: [49 U.S.C. 303; 23 U.S.C. 138] Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1387]; Flood Disaster Protection Act [42 U.S.C. 4012a 4106].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11988 Floodplain Management; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(1)(1))

Issued on: May 7, 2020.

Carlos C. Machado,

FHWA Rhode Island Division Administrator, Providence, Rhode Island.

[FR Doc. 2020–10204 Filed 5–14–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0003; PD–37(R)]

Hazardous Materials: New York City Permit Requirements for Transportation of Certain Hazardous Materials

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Decision on petition for reconsideration of an administrative determination of preemption.

SUMMARY: On July 6, 2017, PHMSA published in the **Federal Register** an administrative determination that Federal hazardous material transportation law preempts, in part, FDNY's permit, inspection, and fee requirements. FDNY has petitioned for reconsideration of that determination. FDNY's petition for reconsideration is granted in part, and denied in part, as follows:

1. Permit and Inspection Requirement—PHMSA affirms its determination that the HMTA preempts FDNY's permit and inspection requirements, FC 2707.4 and 105.6, with respect to vehicles based outside the inspecting jurisdiction, and its determination that the HMTA does not preempt these requirements with respect to vehicles that are based within the inspecting jurisdiction. PHMSA's determination is based on its conclusion that FDNY's permit and inspection requirements create an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous material on vehicles based outside the inspecting jurisdiction.

2. Permit Fee—Based on new information supplied by FDNY, PHMSA reverses its determination that FDNY is not using the revenue it collects from its permit fee for authorized purposes. However, PHMSA affirms its determination that the permit fee is not ''fair,'' as required by 49 U.S.C. 5125(f)(1), and therefore affirms its determination that the permit fee is preempted.

FOR FURTHER INFORMATION CONTACT: Vincent Lopez, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone No. 202–366–4400; Facsimile No. 202–366–7041.

SUPPLEMENTARY INFORMATION:

I. Background

A. Preemption Determination

The American Trucking Associations, Inc. (ATA) applied to PHMSA for a determination of whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* preempts the City of New York (FDNY)'s requirement that those wishing to transport hazardous materials by motor vehicle must, in certain circumstances, obtain a permit. The relevant provisions of the FC and the FDNY rules regarding FDNY's hazardous materials inspection and permitting program, and related fees, include:

- FC 2707—sets forth the requirements for the transportation of hazardous materials;
- FC 2707.3—prohibits the transportation of hazardous materials in quantities requiring a permit without such permit;
- FC 2707.4 and 105.6—sets forth permit requirement and exclusions;
- FDNY Rule 2707–02—sets forth routing, timing, escort, and other requirements for the transportation of hazardous materials; provides that permit holders need not conform to these requirements; and
- FC Appendix A, Section A03.1(39) and (67)—specifies the permit (inspection and re-inspection) fees.

The following parties submitted comments in the proceeding: ATA, FDNY, Nouveau, Inc., and the American Coatings Association. On July 6, 2017, PHMSA published in the **Federal Register** its determination with respect to ATA's application, in accordance with 49 U.S.C. 5125(d) and 49 CFR 107.203. Preemption Determination 37–R (PD–37(R)), 82 FR 31390. PHMSA found that Federal hazardous material transportation law preempts the FDNY requirements as follows:

1. Permit and Inspection Requirement—FDNY's permit and inspection requirements, FC 2707.4 and 105.6 (transportation of hazardous materials), create an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous material on vehicles based outside the inspecting jurisdiction. Accordingly, we determined that the HMTA preempts FDNY's permit and inspection requirements with respect to vehicles based outside the inspecting jurisdiction, but that the HMTA does not preempt those requirements with respect to motor vehicles that are based within the inspecting jurisdiction. PD 37(R), 82 FR at 31393–31395.

2. Permit Fee—The permit fee is preempted because we determined that FDNY had not shown that the fee it imposes with respect to its permit and inspection requirements is ''fair'' and ''used for a purpose related to transporting hazardous material,'' as required by 49 U.S.C. 5125(f)(1). PD 37(R), 82 FR at 31395–31396

PHMSA, in Part I of PD–37(R), discussed the standards for making determinations of preemption under the Federal hazardous material transportation law. *Id.* at 31392–3. As we explained, unless there is specific authority in another Federal law or DOT grants a waiver, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

Petitioner: The Fire Department of the City of New York (FDNY).

Local Law Affected: New York City Fire Code (FC) 2707.4 and 105.6.

Applicable Federal Requirements: Federal hazardous material transportation law (HMTA), 49 U.S.C. 5101 *et seq.,* and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Mode Affected: Highway.

—It is not possible to comply with both the State, local, or tribal requirement and a requirement in the Federal hazardous material transportation law or regulations;
—The State, local, or tribal requirement, as applied or enforced, is an ''obstacle'' to accomplishing and carrying out the Federal hazardous material transportation law or regulations; or
—The State, local, or tribal requirement concerns any of five specific subjects and is not ''substantively the same as'' a provision in the Federal hazardous material transportation law or regulations. *Id.* (citing 49 U.S.C. 5125(a)–(b)).

In addition, a State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material ''only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.'' *Id.* at 31393 (citing 49 U.S.C. 5215(f)(1)).

These preemption provisions stem from congressional findings that State, local, or tribal requirements that vary from Federal hazardous material transportation law and regulations can create ''the potential for unreasonable hazards in other jurisdictions and confound[ ] shippers and carriers which attempt to comply with multiple and conflicting . . . regulatory requirements,'' and that safety is advanced by ''consistency in laws and regulations governing the transportation of hazardous materials[.]'' Public Law 101–615 sections 2(3) and 2(4), 104 Stat. 3244 (Nov. 16, 1990). In PD–37(R), PHMSA also explained that its

> [p]reemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(f)(1).

PD–37(R), 82 FR at 31393.

B. Petition for Reconsideration

FDNY contacted PHMSA, within the 20-day time period provided in 49 CFR 107.211(a), and requested a 60-day extension of time in which to file a petition for reconsideration. We granted FDNY's request, and set a new filing deadline. FDNY timely filed its petition for reconsideration on September 25, 2017. FDNY sent a copy of its petition to each person who had previously submitted comments in the proceeding. Thereafter, we received a request from ATA for a 22-day extension of time to file its comments to FDNY's petition. We granted ATA's request, and instructed ATA to file its comments on or before November 6, 2017. ATA timely submitted its comments.

FDNY, in its petition, challenges PHMSA's findings that its inspection and permit requirements, and the associated permit fee, are preempted. FDNY presents four arguments for why it believes the agency should reconsider and reverse its decision:

- The permit and inspection program is valid because it addresses an issue of foremost local concern, *i.e.,* the public safety of FDNY residents;
- The inspection requirement is not an obstacle because it does not cause unnecessary delay;
- The fee is fair and used for appropriate purposes; and
- PHMSA's decision in this proceeding is inconsistent with the ruling by the agency's predecessor in a prior waiver of preemption proceeding.

II. Discussion

A. Inspection and Permit Requirement

In PD–37(R), PHMSA explained that although State or local governments may generally conduct inspections of motor carriers to assure compliance with Federal requirements for the transportation of hazardous materials, such inspections must not conflict with the Federal requirement that:

> All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

PD–37(R), 82 FR at 31394 (citing 49 CFR 177.800(d)). PHMSA explained that its prior decisions have established several key principles in this area.

First, while ''travel and wait times associated with an inspection are not generally considered unnecessary delays . . .[,] a delay of hours or days . . . is unnecessary, because it substantially increases the time hazardous materials are in transportation, increasing exposure to the risks of the hazardous materials without corresponding benefit.'' *Id.*

Second, ''a State's annual inspection requirement applied to vehicles that operate solely within the State is presumptively valid,'' as a ''carrier whose vehicles are based within the inspecting jurisdiction should be able to schedule an inspection at a time that does not disrupt or unnecessarily delay deliveries.'' *Id.*

Third, ''when applied to vehicles based outside of the inspecting jurisdiction, a State or local periodic inspection requirement has an inherent potential to cause unnecessary delays because the call and demand nature of common carriage makes it impossible to predict in advance which vehicles may be needed for a pick-up or delivery within a particular jurisdiction and impractical to have all vehicles inspected every year.'' *Id.*

Fourth, ''a State or local government may apply an annual inspection requirement to trucks based outside its jurisdictional boundaries only if [it] can actually conduct the equivalent of a 'spot' inspection upon the truck's arrival within the local jurisdiction,'' and ''may not require a permit or inspection for trucks that are not based within the local jurisdiction if the truck must interrupt its transportation of hazardous materials for several hours or longer in order for an inspection to be conducted and a permit to be issued.'' *Id.* (alterations omitted).

In setting forth these principles, PHMSA discussed three prior determinations: (1) A determination that a town's permit requirement was preempted with respect to vehicles based outside the town, PD–28(R), Town of Smithtown, New York Ordinance of Transportation of Liquefied Petroleum Gas, 67 FR 15276 (Mar. 29, 2002); (2) a determination that a county's permit requirement was preempted with respect to vehicles based outside the county, but not with respect to vehicles based within the county, PD–13(R), Nassau County, New York, Ordinance on Transportation of Liquefied Petroleum Gases, 63 FR 45283 (Aug. 25, 1998), on reconsideration, 65 FR 60238 (Oct. 10, 2000); and (3) a determination that a State's inspection requirement was preempted, PD–4(R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48933 (Sept. 20, 1993), on reconsideration, 60 FR 8800 (Feb. 15, 1995).

Consistent with these principles, PHMSA determined that FDNY's permit and inspection requirements are not preempted with respect to vehicles based within New York City, but are preempted with respect to vehicles based outside New York City. PD–37(R), 82 FR at 31394–95. With respect to the latter category, PHMSA noted (among other things) that the single facility at which the FDNY performs inspections is only open weekdays until 3:00 p.m., and that ''an unpermitted motor carrier based outside FDNY's jurisdiction would have no recourse when it arrives to pick up or deliver hazardous

materials in the City ([which] requires a permit) and discovers that the [facility] is closed.'' *Id.* at 31394. PHMSA noted, moreover, that there was no evidence that FDNY can perform ''spot'' inspections at the roadside, and that ''fleet inspections at a motor carrier's own facility appear to be impractical where the facility is located outside the City's jurisdiction.'' *Id.* Thus, PHMSA concluded that ''FDNY's permit and inspection requirements create an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous materials on vehicles based outside of the inspecting jurisdiction.'' *Id.* at 31395.

1. Program Validity Based on Unique Local Conditions

FDNY argues that the decision disregards the ''presumption against preemption'' that it says must be applied to its program based on its unique and important purpose of protecting public safety. FDNY relies on prior Supreme Court decisions, DOT and federal case law, and executive branch orders and guidance on preemption, to justify its program. According to FDNY, the ''presumption against preemption'' is a rule developed by the courts to limit federal preemption of local requirements, and in particular, environmental health and safety regulations that are generally recognized as an area of traditional local control. Moreover, FDNY argues that since its program is limited in scope, *i.e.,* permit not required for through traffic,[1] it is subject to a ''strong presumption of validity.'' In its argument, FDNY appears to rely heavily on the City's unique local conditions. According to FDNY, the City's unique local conditions such as ''its high density; its narrow, congested streets; and its unique security concerns'' justify special local safety rules, and should not be preempted. Thus, FDNY contends that PHMSA failed to properly acknowledge and apply the presumption against preemption of local safety regulations; failed to accord proper weight to the fact that its program is narrowly limited in scope to only vehicles making local deliveries or pickups; and failed to properly consider the unique circumstances of the City with respect to hazardous materials transportation.

We find FDNY's arguments unpersuasive for the following reasons. First, FDNY ignores the fact that Congress has expressly provided that state and local laws are preempted if they create an obstacle to carrying out a provision of the HMRs. When a ''statute contains an express pre-emption clause, [courts] do not invoke any presumption against pre-emption but instead focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.'' *Puerto Rico* v. *Franklin California Tax-Free Trust,* 136 S. Ct. 1938, 1946 (2016) (quotations omitted). And even if a presumption against preemption did apply here, it would easily be rebutted by the express command of Congress.

Second, although FDNY relies heavily on *Massachusetts* v. *DOT,* 93 F.3d 890 (D.C. Cir. 1996), that case demonstrates the appropriateness of PHMSA's analysis here. There, the D.C. Circuit rejected a determination by PHMSA's predecessor that 49 U.S.C. 5125(a)(2)—the same provision at issue here—preempted a state law that created an obstacle to accomplishing the HMTA's ''general goal of uniform waste regulation.'' *Id.* at 894. The Court did so based on its conclusion that the ''clear intent'' of Section 5125(a)(2) is to preempt ''state rules that . . . pose an obstacle to fulfilling explicit provisions, not general policies, of HMTA.'' *Id.* at 895. Although the Court noted a ''presumption against extending a preemption statute to matters not clearly addressed in the statute in areas of traditional state control,'' *Id.* at 896, such a presumption is irrelevant when a matter *is* ''clearly addressed in the statute''—*i.e.,* if a state rule ''pose[s] an obstacle to fulfilling explicit provisions'' of the HMTA or its implementing regulations. And that is exactly what PHMSA has determined here: The FDNY requirements pose an obstacle to fulfilling an ''explicit provision'' of the HMTA regulations, the prohibition on ''unnecessary delay'' contained in 49 CFR 177.800(d).

Third, contrary to FDNY's contentions, PHMSA's determination was in no way inconsistent with Executive Order (E.O.) No. 13132, entitled ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), or the President's May 20, 2009 memorandum on ''Preemption'' (74 FR 24693 (May 22, 2009)). As an initial matter, each of those documents states that it does not ''create any right or benefit, substantive or procedural, enforceable'' against the government. In any event, we specifically stated in our decision that our analysis was guided by the principles and policies set forth in these documents. PD–37(R) at 31393. We explained that the President's memorandum sets forth the policy ''that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with sufficient legal basis for preemption.'' *Id.* Furthermore, we acknowledged that E.O. 13132 authorizes preemption of State law only when a statute contains an express preemption provision. More importantly, we noted that the HMTA contains express preemption provisions, which we have implemented through regulations. As such, PHMSA's legal authority to make preemption determinations is expressly authorized through statute by Congress, and PHMSA's preemption determination is therefore consistent with both E.O. 13132 and the 2009 memorandum.

Next, like its position in IR–22, it appears FDNY misunderstands the scope of the analysis required in making preemption determinations. As we pointed out in the IR–22 decision on appeal, consideration of local safety concerns is properly conducted during a waiver of preemption proceeding, not a preemption determination proceeding. 54 FR at 26704. The correct analysis in a preemption determination proceeding is whether a state or local requirement stands as an obstacle to compliance with the federal regulations, not whether local safety concerns justify a waiver of preemption. *Id.* Virtually all state and local hazardous materials requirements are prompted by safety concerns, but the focus of preemption analysis is whether state or local requirements are inconsistent with nationally-applicable requirements, not whether local safety concerns should be weighed against national concerns. 54 FR at 26704. Therefore, FDNY's safety concerns would be appropriate in a waiver of preemption proceeding but not relevant in this proceeding.[2]

[1] Vehicles in continuous transit through the City without pickup or delivery are not required to have a permit, but are still subject to routing, time, escort, and other requirements. See FDNY Rule 2707–02.

[2] The authorities relied on by FDNY are not to the contrary. In *City of New York* v. *Ritter Transp., Inc.,* 515 F. Supp. 663 (S.D.N.Y. 1981) and *Nat'l Tank Truck Carriers, Inc.* v. *City of New York,* 677 F.2d 270 (2d Cir. 1982), the courts addressed New York's routing requirements for hazardous materials, which necessarily are based on local conditions and which are expressly permitted by the HMTA, *see* 49 U.S.C. 5112. Those cases do not suggest that New York can rely on local concerns to impose a permit and inspection requirement that poses an obstacle to federal law. And while the agency did note that a Boston regulation allowing the Fire Commissioner to impose certain permit requirements ''may legitimately assist the Fire Commissioner in dealing with unusual local conditions and emergencies,'' it found that it could not determine that regulation's consistency with the HMTA without information about the specific permit requirements imposed. IR–3, City of Boston Rules Governing Transportation of Certain

Continued

Last, regarding the jurisdiction's local conditions, as we discussed in PD–37(R), we previously addressed a preemption challenge to FDNY's permit program in Inconsistency Ruling (IR)–22, City of New York Regulations Governing Transportation of Hazardous Materials, 52 FR 46574 (December 8, 1987), Decision on Appeal, 54 FR 26698 (June 23, 1989), where we determined that FDNY's permitting system was preempted, which was affirmed on appeal. In IR–22, FDNY essentially asserted the same public safety argument, *i.e.,* that its regulations are ''reasonable safety measures justified by its unique combination of conditions that create exceptional hazards to the transportation of hazmat and high risks of catastrophic consequences in the event of an accident.'' 52 FR at 46577. In that proceeding, we rejected this argument, because we determined that it does not provide an adequate basis on which to find FDNY's requirements were consistent with the HMTA and HMR. The reasons we gave for rejecting this ''unique local concerns'' argument in IR–22 are just as relevant to FDNY's argument today. For instance, in IR–22 we said, ''virtually every urban and suburban jurisdiction in the United States has a population density which is a matter of concern in planning for, and regulating hazmat transportation.'' Moreover, ''consideration of any unique population density of New York City must be accompanied by consideration of the City's unique location as a crossroad for a large percentage of hazardous materials transportation between both New England and Long Island and the rest of the Nation; delays and diversions of such transportation are of great concern.'' 52 FR at 46583.

Finally, it is important to recognize there are other administrative options available to FDNY to address its concerns. For example, if it believes the HMR are inadequate, it may file a petition for rulemaking with the agency, or otherwise participate in other PHMSA rulemakings related to these issues. Or if the FDNY believes its alleged unique circumstances require a different regulatory approach, it may request a waiver of preemption. 52 FR at 46583; 49 CFR 107.215.

B. Unnecessary Delay

FDNY asserts that PHMSA ignored federal case law and misapplied its own precedent in making its determination that FDNY's inspection and permit requirements create an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous materials with respect to trucks based outside the inspecting jurisdiction. FDNY contends that federal judicial precedent recognizes that some delay is both necessary and acceptable.

1. FDNY's Allegations That PHMSA's Decision Contradicts Federal Case Law

FDNY argues that our decision contradicts federal case law. FDNY relies on cases from the First Circuit to emphasize the apparent inconsistency of our decision with federal judicial precedent, which recognizes that some delay is both necessary and acceptable. *See N.H. Motor Transport Ass'n* v. *Flynn,* 751 F.2d 43 (1st Cir. 1984) (state license fees required for hazardous materials and waste transporters not preempted by the HMTA and did not violate the commerce clause); *see also N.H. Motor Transport Ass'n* v. *Town of Plaistow,* 67 F.3d 326 (1st Cir. 1995) (town's zoning ordinance was not preempted by the HMTA or other statutes, and did not violate the commerce clause). We do not find these cases persuasive for the following reasons.

The *Flynn* court conceded that PHMSA's preemption determinations have better developed administrative records and are thus more informed by the agency's expertise, and it left open the possibility that ''a different record, created before DOT'' may have led to ''different conclusions.'' *Id.* at 50, 52 (Notwithstanding the Court's recognition of the agency's expertise in this area, it ultimately chose to proceed because it favored judicial efficiency over prolonged delay in the proceeding that would likely result from consultation with DOT. *Id.* at 51.). Thus, even if FDNY's regulations were identical to the regulations at issue in *Flynn* (which they are not), PHMSA might very well reach a different result than the First Circuit. Indeed, the principal basis for the Court's decision—that a license requirement for hazardous materials transporters creates no more delay than a requirement that drivers be licensed—is not persuasive: Drivers are not licensed in each state into which they travel, and a driver entering a state will therefore experience no delay related to obtaining a driver's license. *See, e.g.,* 49 U.S.C. 31302 (''An individual operating a commercial motor vehicle may have only one driver's license at any time.'').

Additionally, the *Flynn* court framed the legal question from the perspective of the shipper, *i.e.,* looking at the possibility of delay that arises when a shipper must choose a licensed truck when transporting hazardous materials at night or on weekends. 751 F.2d at 51. However, as we stated in PD–37(R), as well as prior agency precedent developed since the *Flynn* decision, an inquiry into whether non-federal permit and inspection requirements interfere with the HMR prohibition against unnecessary delay must necessarily focus on the delay that may result when a loaded vehicle arrives unannounced in the inspecting jurisdiction.

The *Flynn* court also misinterpreted two Inconsistency Rulings issued by the Research and Special Programs Administration (RSPA),[3] which the Court cited for the proposition that ''a 'bare' permit requirement or license requirement is consistent with HMTA.'' 751 F.2d at 51–52. In the first ruling, RSPA explained that while a ''bare'' permit requirement ''is not inconsistent with Federal requirements,'' ''a permit itself is inextricably tied to what is required in order to get it,'' and therefore determined that the state permit requirement at issue *did* create unnecessary delay. IR–2, State of Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas Intended To Be Used by a Public Utility, 44 FR 75566, 75570–71 (December 20, 1979). In the second ruling, RSPA merely determined that it could not determine whether a permit requirement created delay. IR–3, City of Boston Rules Governing Transportation of Certain Hazardous Materials by Highway Within the City, 46 FR 18918, 18923 (March 26, 1981).

In any event, PHMSA disagrees with FDNY's claim that its program is even less likely to cause delays than the program upheld by the *Flynn* court. The state permits at issue in *Flynn* were apparently available at multiple ''border stations,'' *see* 751 F.2d at 51, meaning that many drivers could likely obtain permits without diverting from their intended routes. This type of arrangement may be considered a

Hazardous Materials By Highway Within the City, 46 FR 18918 (Mar. 26, 1981). Similarly here, while New York may certainly rely on local conditions in issuing regulations, those regulations are preempted if they create an obstacle to compliance with federal law.

[3] Effective February 20, 2005, PHMSA was created to further the ''highest degree of safety in pipeline transportation and hazardous materials transportation,'' and the Secretary of Transportation redelegated hazardous materials safety functions from the Research and Special Programs Administration (RSPA) to PHMSA's Administrator. 49 U.S.C. 108, as amended by the Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108–426, 2, 118 Stat. 2423 (Nov. 30, 2004)); and 49 CFR 1.96(b), as amended at 77 FR 49987 (Aug. 17, 2012). For consistency, the terms ''PHMSA,'' ''the agency,'' and ''we'' are used in this decision, regardless of whether an action was taken by RSPA before February 20, 2005, or by PHMSA after that date.

functionally equivalent option to a spot or roadside inspection. FDNY's program, in contrast, requires drivers without permits to travel to a single inspection facility, diverting from their intended routes by potentially significant amounts.

FDNY also relies on *Nat'l Tank Truck Carriers, Inc.* v. *City of New York,* 677 F.2d 270 (2d Cir. 1982) and *City of New York* v. *Ritter Transp., Inc.,* 515 F. Supp. 663 (S.D.N.Y. 1981) to support its argument that due to the City's unique safety considerations, enforcement of certain city regulations promote safety and as such, any associated transportation delays are not unnecessary. However, as we noted earlier, these cases involve routing requirements, which are specifically allowed by the HMTA, and do not suggest that the City can rely on local concerns to impose a permit and inspection requirement that poses an obstacle to federal law. *Supra* at 12 n.2.

2. FDNY's Allegations That PHMSA's Decision Is Inconsistent With Agency Precedent

FDNY claims that our decision is inconsistent with agency precedent as it relates to what is considered an unnecessary delay. According to FDNY, it estimates that on average, its program only adds about 2 hours of additional travel and inspection time for unscheduled inspections at its Hazardous Cargo Unit (HCU). As such, FDNY asserts that a 2-hour delay falls within the range that DOT previously determined to be reasonable and presumptively valid.

Also, FDNY alleges that PHMSA downplayed the program's flexibility regarding on-site fleet inspections and drop-in inspections during the HCU's business hours, which FDNY says it is extending to 7 days a week, starting November 1, 2017.[4] Finally, FDNY contends that spot or roadside inspections are not feasible, would raise significant safety concerns, and are not required because its program is the functional equivalent of a roadside inspection. Here, the main premise of FDNY's argument is the proposition that any additional travel and inspection time associated with its program is a reasonable and necessary delay.

Although FDNY is correct that in prior proceedings we have considered the length of time involved with a delay, we disagree with its interpretation of the agency's findings in these proceedings regarding unnecessary delay. In PD–37(R), we discussed our prior precedent, and acknowledged that vehicle and container inspections are an integral part of a program to assure the safe transportation of hazardous materials in compliance with the HMR. Furthermore, we outlined the agency's position regarding these types of inspections by highlighting relevant agency precedent developed through prior Inconsistency Rulings and Preemption Determinations. But we also said that a local inspection of a vehicle or container used to transport hazardous material must not conflict with the HMR's prohibition against unnecessary delays. In the analysis of the issue in PD–37(R), we then identified several principles related to unnecessary delay based on agency precedent, including travel and wait times; intrastate and interstate considerations; and program flexibility. PD–37(R) at 31393–4. We applied these principles to our analysis of FDNY's program.

A state or local periodic inspection requirement has an inherent potential to cause unnecessary delays in the transportation of hazardous materials when that requirement is applied to vehicles based outside of the inspecting jurisdiction. PD–28(R) at 15279; *see also* PD–4(R); PD–13(R). The inherent potential for unnecessary delay is not eliminated by a flexible scheduling policy. *Id.* It is the impracticability of scheduling an inspection that creates unnecessary delay. It is the delay in deviating from an intended route to travel to an inspection facility, and/or waiting with a loaded vehicle for the arrival of an inspector from another location, that creates unnecessary delay, rather than the time waiting in line or the inspection time. *Id.* Contrary to FDNY's characterization, our precedent does not say that *any* delay of 1.5 to 2 hours is ''reasonable and presumptively valid,'' it says that a delay of that length ''*during which a State inspection is actually conducted*'' is ''reasonable and presumptively valid.'' PD–13(R) at 60243. As such, we said in our decision here, and as we have consistently stated in prior proceedings, that unnecessary delay would be eliminated if FDNY performed the equivalent of a spot or roadside inspection upon the unannounced arrival of a truck carrying hazardous materials. PD–37(R) at 31395; *supra.* If such an inspection took one or two hours, such delay could perhaps be characterized as ''necessary.'' But the same is not true for the delay caused by FDNY's requirement that vehicles drive to the HCU in Brooklyn to be inspected, even if doing so would amount to a significant re-routing (for example, if a truck wished to cross the George Washington Bridge and make a delivery in Upper Manhattan).

Here, FDNY contends that spot or roadside inspections are not feasible and would raise significant safety concerns. But we have repeatedly held that States or localities may sometimes impose requirements, without creating unnecessary delay, if they offer the equivalent of spot or roadside inspections, and have never said that actual spot or roadside inspections are required. FDNY argues that its program offers the equivalent of a spot or roadside inspection because it offers flexible scheduling and because its HCU is now open 7 days a week and offers ''on demand'' inspections. Since we issued our decision in this proceeding, we have confirmed that the HCU is now open on the weekends. However, we note that it remains the sole inspection facility within the jurisdiction and it still closes at 3 p.m. each day.

According to FDNY, these operational changes amount to the functional equivalent of a spot or roadside inspection. We disagree. The underlying principle of a spot inspection is the elimination of delay caused by travelling to an inspection facility or waiting for an inspector to arrive. Previously we have indicated that options that may be considered ''functional equivalents'' may include conducting inspections at points of entry into the inspecting jurisdiction; other roadside inspection locations; and terminals. PD–4(R) at 48941. These options all have the common effect of eliminating unnecessary delays by bringing the inspection site closer to a vehicle loaded with hazardous materials as it enters the inspecting jurisdiction. FDNY's primary solution to delays caused by its program amounts to nothing more than keeping its single inspection facility open for a few hours on the weekends. On balance, we do not believe these changes rise to the level of a functional equivalent of a spot or roadside inspection.

For the reasons stated above, we believe FDNY misunderstands the prohibition against unnecessary delays because its arguments here focus on trying to justify the length of time of a delay that may be caused by its inspection program, rather than implementing changes to its program that would eliminate unnecessary delays. Here, FDNY estimates that such a delay would only be about 2 hours, which it asserts is considered reasonable and necessary. However, as we explained above, under the unnecessary delay requirement, 49 CFR 177.800(d), the determinative factor is

[4] In its petition, the FDNY stated that in the future, under a ''pilot program,'' the HCU will be open for drop-in inspections on weekends.

not the amount of time of delay caused by an inspection program, or whether the delay is of a reasonable length. But rather, whether the delay is unnecessary. Here, FDNY's single inspection facility with limited operating hours revealed an inflexible program that creates delays in the transportation of hazardous materials. Therefore, we are unpersuaded by FDNY's arguments and affirm our finding that, with respect to vehicles based outside the inspection jurisdiction, its program is an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous materials.

C. Permit Fee

In PD–37(R), PHMSA addressed ATA's contention that FDNY's permit fee violates 49 U.S.C. 5125(f)(1), which provides in relevant part that a ''political subdivision of a State . . . may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to hazardous material.'' PHMSA concluded that FDNY's fee was neither ''fair'' nor ''used for a purpose related to hazardous material.'' PD 37(R), 82 FR at 31395–96. FDNY challenges both findings.

1. Fairness of the Fee

In PD–37(R), PHMSA noted that it had previously determined that it should determine whether a fee is ''fair'' by using the test articulated by the Supreme Court in *Evansville-Vanderburgh Airport Auth.* v. *Delta Airlines, Inc.,* 405 U.S. 707 (1972). PD37(R), 82 FR at 31395. PHMSA stated that this test, as further clarified by the Court, provides that a fee is reasonable if it ''(1) is based on some fair approximation of the use of the facilities; (2) is not excessive in relation to the benefits conferred; and (3) does not discriminate against interstate commerce.'' *Id.* (citing *Northwest Airlines, Inc.* v. *Kent,* 510 U.S. 355, 367–68 (1994)). PHMSA discussed two prior instances in which it had found that flat fees were not ''fair'' when there was no evidence that they were based on a fair approximation of the use of the roads or other facilities within a state. *Id.* PHMSA concluded that FDNY's fee was not fair and discriminated against interstate commerce, because ''there is no evidence showing that FDNY's flat fee is apportioned to a motor carrier based on some approximation of benefit conferred to the permit holders,'' and ''there is no evidence that a more finely graduated fee would pose genuine administrative burdens to the City.''

FDNY asserts that the program's inspection fee, $105 per inspection, is not excessive. Furthermore, FDNY states that the costs of conducting the inspections ''exceeds or approximates'' revenue from fee collection and that the FDNY spends more money than it collects from the program on hazardous materials transport emergencies, including training and equipment for emergency response. Therefore, FDNY contends that its inspection fee is a reasonable flat fee since each regulated vehicle costs the same amount to inspect, regardless of how many times it uses local roads, and for that reason, ''a graduated fee that reflects road usage is not appropriate.''

In support of its arguments here, FDNY submitted expense sheets for FY 2015–2017. In addition, FDNY contends that PHMSA ''ignores *Evansville's* recognition that a jurisdiction 'may impose a flat fee for the privilege of using its roads, without regard to the actual use by particular vehicles, so long as the fee is not excessive.' '' FDNY relies on the First Circuit Court of Appeals' interpretation of this statement in *Evansville,* in *N.H. Motor Transport Ass'n* v. *Flynn,* 751 F.2d 43 (1st Cir. 1984) (state license fees required for hazardous materials and waste transporters did not violate the commerce clause). The *Flynn* Court, in validating the annual license fee, said that the ''burden of proving 'excessiveness' falls upon the truckers, not the state[,]'' and found persuasive ''the unrefuted plausibility of significant state expense[.]'' *Flynn* at 48.

The materials FDNY submitted with its petition, which provided additional detail about the emergency and other services provided and their associated costs would, under the logic of *Flynn,* appear to support FDNY's assertion that its annual inspection and permitting program typically costs more than the revenue from the fees collected. However, as ATA noted in its comments on the petition, and as we acknowledged in PD–22(R), FDNY fails to recognize that the Court subsequently limited its holding in *Evansville* to situations where a flat tax is the '' 'only practicable means of collecting revenues from users and the use of a more finely gradated user-fee schedule would pose genuine administrative burdens.' '' PD–22(R) at 59403 (quoting *Am. Trucking Assoc., Inc.* v. *Scheiner,* 483 U.S. 296, 266, 107 S. Ct. 2829 (1987)). More importantly, in *Scheiner,* the Court recognized the discriminatory consequences for out-of-state vehicles that are associated with an unapportioned flat tax, such as FDNY's fee, and rejected the proposition that every flat tax for the privilege of using a State's highways must be upheld even if it has a clearly discriminatory effect on commerce. Accordingly, ''imposition of the flat taxes for a privilege that is several times more valuable to a local business than to its out-of-state competitors is unquestionably discriminatory and thus offends the Commerce Clause.'' *Id.* at 296; *see also, Am. Trucking Assoc., Inc.* v. *Secretary of State,* 595 A.2d 1014, 1017 (Me. 1991).

Furthermore, even if the fee collected does not cover the cost of the program and an apportioned program is not appropriate, as alleged here by FDNY, ''in-state trucking concerns will be favored more than their interstate competitors.'' *Id.* Consequently, the burden is on the states to establish that collection of more finely calibrated user charges is impracticable. *Id.* FDNY did not meet this burden. As noted above, apart from its showing that its annual inspection and permitting program typically costs more than the revenue from the fees collected, it failed to adequately address whether apportionment of its fee was impracticable.

2. Fee Used for Appropriate Purposes

We now turn to FDNY's challenge to our finding that it is not using the fees it collects under its program in accordance with the statutory mandate. FDNY's argument here is that because the cost to administer the FDNY program generally exceeds the revenues collected from the fee, FDNY believes it has demonstrated that the fee satisfies the ''used for'' test. However, before we address the merits of FDNY's argument, it is important to note that under the HMTA, FDNY has an affirmative obligation to submit a biennial report to DOT on fees that it levies in connection with the transportation of hazardous materials. The report must include information about the basis on which the fee is levied; the purposes for which the revenues from the fees are used; the annual total amount of the revenues collected from the fee; and such other matters requested by DOT. See 49 U.S.C. 5125(f)(2). According to our records, FDNY has consistently failed to comply with this statutory mandate. Consequently, since FDNY is the only party with the information and data related to its use of the fees, it has the burden to sufficiently demonstrate it is using the fees appropriately.

Notwithstanding FDNY's failure to file the required report, upon review of the information available to us, we find that the supplemental information provided by FDNY in its petition

regarding its use of the fee revenue appears to show that FDNY is spending the revenue on purposes permitted by the law. Therefore, we are reversing decision with respect to the ''used for'' test. Nevertheless, as discussed above, we are affirming our finding that the fee is not fair.

D. Prior Administrative Proceedings

FDNY argues that in a prior ruling, the agency already indicated that FDNY's inspection and permit requirements were not preempted. That is patently erroneous. In PD–37 we extensively discussed these proceedings. Furthermore, we explained that these prior proceedings did not involve a direct challenge to FDNY's program, or attempt to answer any of the arguments that ATA presented in this proceeding. For example, whether the City's inspection and permitting program requirements, and related fees, should be preempted because the program causes unnecessary delay and unreasonable cost; whether its fees are fair; and whether FDNY is using the revenue generated from the fees for authorized purposes. For these reasons, we do not believe further discussion on our related prior administrative proceedings is necessary.

III. Ruling

For the reasons set forth above, FDNY's petition for reconsideration is granted in part, and denied in part, as follows:

PHMSA affirms its determination that the HMTA preempts FDNY's permit and inspection requirements, FC 2707.4 and 105.6, with respect to vehicles based outside the inspecting jurisdiction, and its determination that the HMTA does not preempt these requirements with respect to vehicles that are based within the inspecting jurisdiction. PHMSA's determination is based on its conclusion that FDNY's permit and inspection requirements create an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous material on vehicles based outside the inspecting jurisdiction.

Permit Fee—Based on new information supplied by FDNY, PHMSA reverses its determination that FDNY is not using the revenue it collects from its permit fee for authorized purposes. However, PHMSA affirms its determination that the permit fee is not ''fair,'' as required by 49 U.S.C. 5125(f)(1), and therefore affirms its determination that the permit fee is preempted.

IV. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes the final agency action by PHMSA on ATA's application for a determination of preemption as to the FDNY's requirement that those wishing to transport hazardous materials by motor vehicle must, in certain circumstances, obtain a permit. This decision becomes final on the date of publication in the **Federal Register**. A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

Issued in Washington, DC, on May 12, 2020.

Paul J. Roberti,

Chief Counsel.

[FR Doc. 2020–10489 Filed 5–14–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0149; PD–40(R)]

Hazardous Materials: The State of Washington Crude Oil by Rail Volatility Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Administrative Determination of Preemption.

Applicants: The State of North Dakota and the State of Montana (Applicants).

Local Law Affected: Revised Code of Washington (RCW), Title 90, Chapter 90.56, Section 90.56.565 (2015), as amended; Section 90.56.580 (2019).

Applicable Federal Requirements: Federal Hazardous Material Transportation Law (HMTA), 49 U.S.C. 5101 *et seq.,* and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Mode Affected: Rail.

SUMMARY: PHMSA finds that the HMTA preempts Washington State's vapor pressure limit for crude oil loaded or unloaded from rail tank cars, for three reasons. First, the vapor pressure requirement constitutes a scheme for classifying a hazardous material that is not substantively the same as the HMR. Second, the vapor pressure requirement imposes requirements on the handling of a hazardous material that are not substantively the same as the requirements of the HMR. Third, PHMSA has determined that the vapor pressure requirement is an obstacle to accomplishing and carrying out the HMTA.

In addition, PHMSA finds that the administrative record regarding Washington State's Advance Notice of Transfer (ANT) requirement is insufficient to make a determination whether the requirement is preempted under the HMTA.

FOR FURTHER INFORMATION CONTACT: Vincent Lopez, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone No. 202–366–4400; Facsimile No. 202–366–7041.

SUPPLEMENTARY INFORMATION:

I. Application

The Applicants have applied to PHMSA for a determination as to whether the HMTA, 49 U.S.C. 5101 *et seq.,* preempts the State of Washington's requirements for crude oil vapor pressure and advance notice of transfer for facilities that receive crude oil from a railroad car (hereinafter referred to as Washington's vapor pressure law or VPL). Specifically, the Applicants allege the law, which purports to regulate the volatility of crude oil loaded or unloaded from rail cars in Washington State, amounts to a *de facto* ban on Bakken [1] crude.

The Applicants present several arguments for why they believe Washington's law should be preempted. First, the Applicants contend that the law's prohibition on the loading or unloading of crude oil registering a vapor pressure greater than 9 pounds per square inch (psi) poses obstacles to the HMTA because compliance with the law can only be accomplished by (1) pretreating the crude oil prior to loading the tank car; (2) selecting an alternate mode of transportation; or (3) redirecting the crude oil to facilities outside of Washington State. Accordingly, North Dakota and Montana say these avenues for complying with the law impose obstacles to accomplishing the purposes of the HMTA. Similarly, they contend that the law's advance notice of transfer requirement is an additional obstacle.

[1] According to the Applicants, North Dakota and Montana are home to the Bakken Shale Formation, a subsurface formation within the Williston Basin. It is one of the top oil-producing regions in the country and one of the largest oil producers in the world.

Lastly, North Dakota and Montana contend that Washington State's law is preempted because aspects of the law are not substantively the same as the Federal requirements for the classification and handling of this type of hazardous material.

In summary, the Applicants contend the State of Washington's vapor pressure law should be preempted because:

- It is an obstacle to the Federal hazardous material transportation legal and regulatory regime; and
- It is not substantively the same as the Federal regulations governing the classification and handling of crude oil in transportation.

PHMSA published notice of the application in the **Federal Register** on July 24, 2019. 84 FR 35707. Interested parties were invited to comment on the application. We granted a request by the State of Washington to extend the original 30-day comment period. The initial comment period closed on September 23, 2019, followed by a rebuttal comment period that remained open until October 23, 2019. PHMSA received 4,118 comments during the initial comment period, and another 279 comments were submitted during the rebuttal comment period. Generally, the comments fall into six categories representing a broad array of stakeholders, including refineries and oil producers, industry groups, governmental entities, environmental groups, Members of Congress, and other interested members of the public. The comments are summarized in Part V below.

II. Preemption Under Federal Hazardous Material Transportation Law

Preemption Standards

The HMTA has strong preemption provisions that allow the Secretary of Transportation (Secretary), upon request, to make a preemption determination as to a non-Federal requirement. 49 U.S.C. 5125 contains express preemption provisions relevant to Washington State's vapor pressure law. Subsection (a) provides that a requirement of a State, political subdivision of a State, or Indian tribe is preempted—unless the non-Federal requirement is authorized by another Federal law or the Department of Transportation (Department or DOT) grants a waiver of preemption under 5125(e)—if:

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.[2]

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same'' as a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Department of Homeland Security:

(A) The designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident.

(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.[3]

The preemption provisions in 49 U.S.C. 5125 reflect Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. Some forty years ago, when considering the Hazardous Materials Transportation Act, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1192, 93rd Cong. 2nd Sess. 37 (1974). A United States Court of Appeals has found uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials.[4]

Administrative Determination of Preemption

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or Indian tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption.[5] Alternatively, a person may seek a decision on preemption from a court of competent jurisdiction instead of applying to PHMSA. However, once an application is filed with the agency, an applicant may not seek judicial relief with respect to the same, or substantially the same issue, until the agency has taken final action on the application or 180 days after filing the application.[6]

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register**. Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register**.[7] A short period of time is allowed for filing of petitions for reconsideration.[8] A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final.[9]

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the

[2] These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978). PHMSA's predecessor agency, the Research and Special Programs Administration, applied these criteria in issuing inconsistency rulings under the original preemption provisions in Section 112(a) of the Hazardous Materials Transportation Act, Public Law 93–633, 88 Stat. 2161 (Jan. 3, 1975).

[3] To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d).

[4] *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

[5] 49 CFR 1.97(b).

[6] 49 U.S.C. 5125(d); 49 CFR 107.203(d).

[7] 49 CFR 107.209(c).

[8] 49 CFR 107.211.

[9] 49 U.S.C. 5127(a).

Federal hazardous material transportation law, unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(f)(1). A State, local or Indian tribal requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute.[10] In addition, PHMSA does not generally consider issues regarding the proper application or interpretation of a non-Federal regulation, but rather how such requirements are actually ''applied or enforced.'' Thus, ''isolated instances of improper enforcement (*e.g.,* misinterpretation of regulations) do not render such provisions inconsistent'' with the Federal hazardous material transportation law, but are more appropriately addressed in the appropriate State or local forum.[11]

III. The Washington State Requirements

For our purposes here, the relevant language of the law includes a new section added to RCW, Chapter 90.56 to read:

(1)(a) A facility constructed or permitted after January 1, 2019, may not load or unload crude oil into or from a rail tank car unless the oil has a vapor pressure of less than nine pounds per square inch.

(b) A facility may not load or unload crude oil into or from a rail tank car unless the oil has a vapor pressure of less than nine pounds per square inch beginning two years after the volume of crude oil transported by rail to the facility for a calendar year as reported under RCW 90.56.565 has increased more than ten percent above the volume reported for calendar year 2018.

(2) The director may impose a penalty of up to twenty-five hundred dollars per day per rail tank car or the equivalent volume of oil for violations of this section. Any penalty recovered pursuant to this section must be credited to the coastal protection fund created in RCW 90.48.390.

(3) This section does not: (a) Prohibit a railroad car carrying crude oil from entering Washington; (b) require a railroad car carrying crude oil to stop before entering Washington; or (c) require a railroad car carrying crude oil to be checked for vapor pressure before entering Washington.

RCW 90.56.580 (as amended).

In addition, RCW 90.56.565 was amended to read, in part:

(1)(a) A facility that receives crude oil from a railroad car must provide advance notice to the department that the facility will receive crude oil from a railroad car, as provided in this section. The advance notice must include the route taken to the facility within the state, if known, and the scheduled time, location, volume, region per bill of lading, *type, vapor pressure,* and gravity as measured by standards developed by the American petroleum institute, of crude oil received. Each week, a facility that provides advance notice under this section must provide the required information regarding the scheduled arrival of railroad cars carrying crude oil to be received by the facility in the succeeding seven-day period. A facility is not required to provide advance notice when there is no receipt of crude oil from a railroad car scheduled for a seven-day period.

* * * * *

(4) *To further strengthen rail safety and the transportation of crude oil, the department must provide to the utilities and transportation commission data reported by facilities on the characteristics, volatility, vapor pressure, and volume of crude oil transported by rail, as required under subsection (1)(a) of this section. . . .*

RCW 90.56.565 (as amended) (emphasis added).

IV. Background Information

A. Vapor Pressure

No Federal Vapor Pressure Standard

The HMR requirements for the classification of unrefined petroleum-based products include the proper classification, determination of an appropriate packing group, and selection of a proper shipping name and description of the material. The HMR contain detailed rules that guide an offeror through each of these steps in the classification process. *See generally,* 49 CFR 172.101 (The Hazardous Materials Table), 173.2–173.41; 173.120, 173.121, 173.150, 173.242, 173. 243, and Part 174 (Railroads). However, as explained further below, there is not a Federal vapor pressure standard for the classification process for unrefined petroleum-based products, such as crude oil.

North Dakota Industrial Commission Order

In December 2014, the North Dakota Industrial Commission adopted new conditioning standards for the transport of Bakken crude oil, stating safety as its rationale. The NDIC Order (Order) sets forth operating standards guiding the use of conditioning equipment to separate production fluids into gas and liquid components. The new standard requires North Dakota operators to condition Bakken crude oil to a vapor pressure of no more than 13.7 psi. The Order requires the operators to separate light hydrocarbons from all Bakken crude oil to be transported and prohibits the blending of light hydrocarbons back into oil supplies prior to shipment. The NDIC, in setting the State of North Dakota's vapor pressure limit at 13.7 psi, noted that standards-setting organizations set crude oil stability at a vapor pressure of 14.7 psi.[12]

DOT's High-Hazard Flammable Train Rule

On May 8, 2015, PHMSA, in coordination with FRA, published the HHFT final rule to codify requirements to reduce the consequences and probability of accidents involving trains transporting large quantities of Class 3 flammable liquids.[13] PHMSA, in the Notice of Proposed Rulemaking (NPRM), indicated that the properties of unrefined petroleum-based products, including crude oil, are variable based on time, method, and location of extraction. As such, organic materials from oil and gas production represent a unique challenge regarding classification. At that time, the agency also sought public comments on the role of vapor pressure in classifying flammable liquids and selecting packaging, and asked whether vapor pressure thresholds should be established.[14] In the final rule, PHMSA took a system-wide comprehensive approach to rail safety commensurate with the risks associated with HHFTs. For example, the final rule adopted several operational requirements relating to speed restrictions, braking systems, and routing. It also adopted safety improvements in tank car design standards and notification requirements. And, to ensure the proper classification of unrefined petroleum products, a new regulatory requirement for a sampling and testing program was added to the HMR.

Under the HMR, it is the responsibility of the offeror to ensure hazardous materials are properly

[10] *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

[11] Preemption Determination (PD)–14(R), Houston, Texas, Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials, 63 FR 67506, 67510 n.4 (Dec. 7, 1998), decision on petition for reconsideration, 64 FR 33949 (June 24, 1999), quoting from IR–31, Louisiana Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572, 25584 (June 21, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992), and PD–4(R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48940 (Sept. 20, 1993), decision on reconsideration, 60 FR 8800 (Feb. 15, 1995).

[12] Commenters have suggested that since we are addressing the State of Washington's ability to set its own vapor pressure limit, we must also address the State of North Dakota's vapor pressure limit. However, the NDIC conditioning standard is not the vapor pressure requirement that is the subject of this preemption matter. Therefore, it is beyond the scope of this proceeding.

[13] Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains, 80 FR 26643 (May 8, 2015).

[14] Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains, 79 FR 45015 (August 1, 2014).

classified.[15] PHMSA, in the HHFT final rule, stressed the offeror's responsibility to classify and describe properly a hazardous material when the agency decided to impose a regulation requiring a sampling and testing program for unrefined petroleum-based products.[16] However, PHMSA did not adopt any other changes related to vapor pressure. For example, the agency did not mandate specific sampling and testing for measuring vapor pressure; it chose not to set a Federal vapor pressure standard; and lastly, it decided against requiring pre-treatment or conditioning of crude oil to meet a vapor pressure standard before the material is offered for transportation. Notwithstanding the fact that PHMSA did not adopt any specific requirements related to vapor pressure, the agency indicated its willingness to continue examining the role of vapor pressure in the proper classification of crude oils and other flammable liquids, but cautioned that any specific regulatory changes related to vapor pressure would be informed by current and future research, as well as rulemaking procedures to the extent regulatory action is deemed necessary.

New York State Office of the Attorney General Petition and ANPRM

Subsequent to the publication of the HHFT final rule, and despite the operational and safety improvements codified in the rule, the New York State Office of the Attorney General (NYSOAG) petitioned PHMSA to establish a Federal vapor pressure limit for crude oil transported by rail. According to NYSOAG, the rule did not address the primary cause of the large explosions and uncontrollable fires from a series of train accidents involving Bakken crude oil—the volatility of crude oil itself—due to the abundance of combustible gases within the petroleum products. PHMSA received NYSOAG's petition on December 1, 2015. The rulemaking petition requested that PHMSA establish a vapor pressure limit of less than 9 psi for crude oil transported by rail. The petition was based on the premise that limiting the material's vapor pressure would reduce the risk of death or damage from fire or explosion in the event of an accident.

On January 18, 2017, PHMSA issued an ANPRM[17] to help the agency assess the merits of prescribing vapor pressure limits for crude oil. PHMSA, in the ANPRM, asked a series of questions seeking input as to whether there should be national vapor pressure thresholds for petroleum products. The comment period for the ANPRM closed on May 19, 2017.

Crude Oil Characteristics Research (Sandia Study)

In 2014, the Department, the U.S. Department of Energy (DOE), and Transport Canada (TC) commissioned a review of the chemical and physical properties of tight[18] crude oils in order to understand whether these properties could contribute to an increased potential for accidental combustion. Vapor pressure was one of the specific properties the two Federal agencies targeted for research and analysis. Sandia National Laboratories (Sandia) was commissioned to conduct an extensive review and analysis, focusing specifically on crude oil's potential for ignition, combustion, and explosion. The review encompassed a wide-ranging examination of domestic crude oil samples varying by type, location, sampling method, and analytical method. DOT, DOE, and TC authorized additional research and undertook a multi-phase deliberative approach for examining the characteristics of various crude oils from around the country. The final plan was authorized and provided for a four-phase study entitled, the Sampling, Analysis, and Experiment (SAE) plan.

The SAE plan consisted of a set of tasks intended to further evaluate sampling methods; identify and evaluate crude oil chemical and physical properties; and engage in data collection and analysis. Tasks 1, 2, and 3 of the plan have been completed: Task 1 consisted of a review and evaluation of new and emerging crude oil characterization data; Task 2 entailed an evaluation of oil sampling methods; Task 3 included combustion experiments and modeling to assess combustion hazards associated with tight and conventional crude oils.

Sandia published its report of the results of Task 3 on August 24, 2019.[19] The report described the pool fire and fireball experiments Sandia conducted on three different North American crude oil samples (including a sample from the Bakken region) to study the physical, chemical, and combustion characteristics of the samples, and how these characteristics associate with thermal hazard distances that may be realized in the event of a transportation accident involving a crude oil fire. In short, the primary conclusion reached from the study was as follows:

> The similarity of pool fire and fireball burn characteristics pertinent to thermal hazard outcomes of the three oils studied indicate that vapor pressure is not a statistically significant factor in affecting these outcomes. Thus, the results from this work do not support creating a distinction for crude oils based on vapor pressure with regards to these combustion events.

In light of this conclusion, the Department, DOE, and TC agreed that additional data collection, the key focus of Task 4 of the SAE Plan, would not be necessary since the Task 3 results provided a scientific and evidentiary basis for evaluating the effects of vapor pressure as it relates to the safe transportation of crude oil by rail. As such, the sponsoring agencies officially deemed the publication of the Task 3 Report as the final stage of the SAE plan, thereby completing the Sandia Study. DOE submitted a Report to Congress in April 2020.[20]

ANPRM Withdrawal

PHMSA, after closely examining the results and conclusions of the Sandia Study, and in consideration of the public comments to the ANPRM from industry, stakeholders, and other interested parties, determined that issuing any regulation setting a vapor pressure limit for unrefined petroleum-based products is not justified, reasoning that such a regulation would not lessen risks associated with transporting crude oil by rail.

Furthermore, the agency determined that establishing a vapor pressure limit would unnecessarily impede transportation without providing justifiable benefits. Therefore, on May 11, 2020, the agency withdrew the January 18, 2017 ANPRM because it determined that the current classification provisions of the HMR adequately address the known hazards of Class 3 flammable liquids, including unrefined petroleum-based products, such as crude oil. Furthermore, the agency found that a regulation setting a national vapor pressure limit for these materials is neither necessary nor appropriate.[21]

[15] 49 CFR 173.22.

[16] 49 CFR 173.41.

[17] Hazardous Materials: Volatility of Unrefined Petroleum Products and Class 3 Materials, 82 FR 5499 (January 18, 2017).

[18] Tight oil is oil produced from petroleum-bearing formations with low permeability such as the Eagle Ford, the Bakken, and other formations that must be hydraulically fractured to produce oil at commercial rates. Shale is a subset of tight oil. U.S. Energy Information Administration, *https://www.eia.gov/tools/glossary/?id=t* (last visited February 11, 2020).

[19] *https://www.osti.gov/biblio/1557808-pool-fire-fireball-experiments-support-us-doe-dot-tc-crude-oil-characterization-research-study.*

[20] *www.energy.gov/fe/report-congress-crude-oil-characterization-research-study.*

[21] PHMSA has submitted a Notice of the ANPRM Withdrawal to the Office of the Federal Register for official publication. However, there may be a delay in the publication of the Notice in the **Federal**

In light of the above summary of the regulatory and research activities concerning vapor pressure, PHMSA, with its withdrawal of the ANPRM, has now concluded that there is no scientific or evidentiary basis for regulating the vapor pressure of unrefined petroleum-based products, including crude oil. And although many of the commenters in this proceeding have referred to the State of North Dakota's vapor pressure standard as the ''*de facto national*'' standard, this characterization is entirely misplaced given that NDIC's vapor pressure regulation is a State-adopted standard that could also be subject to a preemption challenge.

B. Advanced Notification of Transportation

The HMTA and HMR prescribe the information and documentation requirements for the safe transportation of hazardous materials. This includes the preparation, execution, and use of shipping documents. Under the HMR, offerors of a hazardous material for transportation are required to prepare a shipping paper (to accompany the material while it is in transportation) with information describing the material, including the proper shipping name, hazard class or division number, and packing group, as determined by the regulations. Emergency response information is also required. Historically, in general, with the exception of radioactive materials, the Federal rules do not require additional information, documentation, or advance notification for the transportation of hazardous materials.

On May 7, 2014, the Department issued an Emergency Order requiring that each railroad carrier provide the State Emergency Response Commission (SERC) for each State in which it operates trains transporting one million gallons or more of Bakken crude oil, including information regarding the expected movement of such trains through the counties in the State. The notification must provide information regarding the estimated volumes and frequencies of train traffic. The notification must also provide a reasonable estimate of the number of trains that are expected to travel, per week, through each county, and the expected transportation routes; a description of the petroleum crude oil and all emergency response information, each in accordance with the requirements in the HMR; and contact information for at least one point of contact at the railroad. The railroad must update the notifications when there is a material change (any increase or decrease of twenty-five percent or more) in the volume of those trains.

PHMSA, in the NPRM for the HHFT rulemaking, proposed to codify and clarify the requirements in the Emergency Order. However, based on the comments received on the proposed notification requirement, the agency did not codify the notification requirements from the Emergency Order. Rather, it elected to amend the existing planning requirements for transportation by rail to include HHFT trains. The agency reasoned that relying on the existing route analysis and consultation requirements of section 172.820 would provide for consistency of notification requirements for rail carriers transporting crude oil by seamlessly integrating HHFT trains within the existing hazardous materials regulatory scheme.

Thereafter, Congress enacted the FAST Act [22] which included a mandate for the Department to promulgate regulations requiring advance notification consistent with the notification requirements of the May 7, 2014, Emergency Order. As such, PHMSA proposed, and ultimately codified those requirements in the Oil Spill Response Plan (OSPR) rulemaking.[23] The new provision, Section 174.312, specifies that HHFT information sharing notification must include: (1) A reasonable estimate of the number of HHFTs that the railroad expects to operate each week, through each county within the State or through each tribal jurisdiction; the routes over which the HHFTs will operate; (2) a description of the hazardous material being transported and all applicable emergency response information required by subparts C and G of part 172; (3) at least one point of contact at the railroad with knowledge of the railroad's transportation of affected trains; and (4) if the route is subject to oil spill response plan requirements, the notification must include a description of the response zones and contact information for the qualified individual and alternate. Railroads are required to update the notifications for changes in volume greater than twenty-five percent.

In the final rule, the agency stated that adding these new HHFT information sharing requirements build upon the information sharing framework for HHFTs that were initiated at the same time as the HHFT rulemaking amendments. The agency noted that together, these requirements will enable the railroads to work with State officials to ensure that safety and security planning is occurring. The notification requirements adopted in the HHFT and OSRP final rules are important components of the Department's overall comprehensive approach to ensuring the safe transportation of energy products.

V. Summary and Discussion of the Public Comments

PHMSA received 4,118 comments during the initial comment period, and another 279 comments were submitted during the rebuttal comment period. Generally, there are six categories of commenters representing a broad array of stakeholders, including refineries and oil producers, industry groups, governmental entities, environmental groups, Members of Congress, and other interested members of the public. Of the substantive comments received, the majority came from industry groups.[24] Several refineries and oil producers also submitted comments.[25]

State and local governments also submitted comments, both in favor of and against preemption of the Washington State law. The North Dakota Department of Agriculture and the Governor of North Dakota each

Register. Therefore, PHMSA has issued the Notice on the PHMSA website and posted it to the docket on the *Regulations.gov* website (*https://www.regulations.gov/docket?D=PHMSA-2016-0077*). Although PHMSA has taken steps to ensure the accuracy of the version of the Notice posted on the PHMSA website and in the docket, it is not the official version. Please refer to the official version in a forthcoming **Federal Register** publication, which will appear on the websites of each of the **Federal Register** (*https://www.federalregister.gov/*) and the Government Printing Office (*www.govinfo.gov*). After publication in the **Federal Register**, the unofficial Notice will be removed from PHMSA's website and replaced with a link to the official version published in the **Federal Register**. PHMSA will also post the official version in docket no. PHMSA–2016–0077.

[22] Public Law 114–94, 129 Stat. 1312, (December 4, 2015) Effective Date: October 1, 2015.

[23] Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains (FAST Act), HM–251B, NPRM 81 FR 50068 (July 29, 2016); FR 84 FR 6910 (February 28, 2019).

[24] 11 industry groups submitted individual comments, including: American Chemistry Council; American Fuel & Petrochemical Manufacturers; American Petroleum Institute; the Chlorine Institute; Dangerous Goods Advisory Council; International Liquid Terminals Association; North Dakota Petroleum Council; Railway Supply Institute; Western Independent Refiners Association; and Western States Petroleum Association. In addition, the Association of American Railroads, the American Short Line & Regional Railroad Association, and BNSF Railway Company submitted a joint comment.

[25] Of the five refineries located in Washington State, four of the refinery operators submitted comments: BP America; Hess Corporation; Marathon Petroleum Corporation; and Phillips 66 Company. Also, two oil producers submitted comments: Continental Resources and Crestwood Midstream Partners LP.

submitted a comment in favor of preemption. Also, the Attorneys General of Oklahoma, Arkansas, Indiana, Louisiana, Nebraska, Ohio, South Dakota, Utah, West Virginia, and Wyoming (AG Alliance for Preemption) wrote a joint comment in favor of preemption.[26] The Attorney General (AG) of Washington and the Spokane City Council each submitted a comment arguing against preemption.

A joint comment was submitted by eight environmental and public interest groups, led by Earthjustice.[27] There were many comments submitted by individuals; the vast majority of which were variations of the same form letter.[28] In addition, 32 Members of Congress wrote to the Secretary and the PHMSA Administrator urging preemption.

Five substantive rebuttal comments were submitted during the rebuttal comment period. The AG of Washington submitted a rebuttal comment against a finding of preemption. A joint rebuttal comment was also submitted against preemption from the Attorneys General of New York, California, Maryland, and New Jersey (AG Alliance against Preemption).

Three rebuttal comments were in favor of preemption. The API and the AFPM each submitted a rebuttal comment. The Applicants also submitted rebuttal comments.

The substantive comments are organized by topic and discussed in the following sections.

A. Comments Supporting Preemption

Goal and Purpose of the HMTA

Many of the commenters express concern about the precedent Washington State's law could set by undermining the HMTA's national scheme of uniform regulation. For example, Hess Corporation (Hess) points out that the original intent of the HMTA was to preclude a multiplicity of State and local regulations, and the potential for varying as well as conflicting regulations. Hess argues that while some States might believe their particular rules would be safer than those set forth by the HMTA or the HMR, Congress specifically rejected a State-by-State regulatory scheme in light of its determination that national uniformity ensures better safety than a patchwork of State and local laws of varying scope and degree.

Many of the commenters agree that uniformity is the cornerstone of Federal hazardous materials policy, rules, and regulation, because it fosters stability and ensures hazardous materials are transported efficiently and without unnecessary delay. The commenters on this topic all agree that the State of Washington's law violates the nation's scheme of uniform regulation for the transportation of hazardous materials.

Furthermore, most of the commenters agree that a piecemeal, or patchwork of State-by-State regulations is untenable. Crestwood Midstream Partners LP (Crestwood) envisions a system of regulatory arbitrage where without uniform standards, hazmat (hazardous materials) carriers will be forced to choose routes that avoid jurisdictions with expensive or burdensome compliance requirements. The Railway Supply Institute's Committee on Tank Cars (RSI–CTC) imagines a scenario where all fifty States require different equipment for transporting hazardous materials to and from their States, or imposing different classification restrictions on crude oil, ethanol, and other critical commodities.

Thus, the commenters overwhelmingly express concern that the law, if allowed to stand, would encourage other States to impose their own restrictions and requirements, creating a patchwork of requirements applicable to crude oil transport and handling, an outcome that undermines the uniform, comprehensive Federal regulatory framework that Congress sought to advance under the HMTA.

Marathon Petroleum Corporation (Marathon) asserts that the law undermines the validity of the unified Federal regime governing hazmat transportation, and upends the justified reliance on this regime by companies, like itself, that have invested heavily in their operations to ensure a stable, diverse, safe, and high-quality supply of crude oil with which to serve the Pacific Northwest. Marathon notes that the interstate rail system is particularly vulnerable in the affected Northwest region because it and every shipper that utilizes the nation's rail system depends on a single national standard to govern rail transportation.

The Oklahoma AG, the North Dakota Department of Agriculture, Montana Petroleum Association, and the North Dakota Petroleum Council (NDPC), express concern that this type of law permits States with port cities, or points of access to particular transportation routes or hubs, to dictate national and foreign energy policy by imposing similar restrictions that ultimately impede another State's ability to move its natural resources to available markets. The Oklahoma AG notes the threat to landlocked States was of heightened concern since other States that may decide to employ the same rationale to deter the shipment of other fuels, such as natural gas from Oklahoma, or ethanol from Nebraska, would cause similar or greater injury than Washington State's vapor pressure law.

De Facto Ban

Several commenters assert that the Washington State law amounts to a *de facto* ban on Bakken crude oil shipments because crude oil from the Bakken region typically has a vapor pressure in excess of 9 psi. To bolster this claim, other commenters point out that the law's legislative history clearly shows the legislature's intent to target Bakken crude by its frequent references to ''Bakken'' crude—and not any other types of crude—in its findings and justifications in earlier drafts of the law. Crestwood says the law is a blatant effort by the legislature to cripple the crude-by-rail trade between the Bakken region and oil refineries located in Washington State under the guise of improving safety.

Furthermore, commenters assert that Washington State, in setting a vapor pressure limit of 9 psi, has created a separate regulatory regime that distinguishes between crude oil with a vapor pressure at or below 9 psi, and that with a vapor pressure above 9 psi, which essentially reclassifies crude oil with a vapor pressure above 9 psi as a material ''forbidden'' from transportation under the HMR. The Western States Petroleum Association (WSPA) agrees with this assessment of the law and adds that a separate regulatory regime will likely foster confusion and frustrate Congress's goal of developing a uniform, national scheme of regulation.

Moreover, the Association of American Railroads, the American Short Line and Regional Railroad Association, and BNSF Railway Co. (collectively AAR) and WSPA indicate that nothing can be done post-delivery to comply

[26] On December 16, 2019, The AG of Texas sent a letter to PHMSA's Chief Counsel endorsing the views expressed in the comments previously filed in the proceeding by the Attorneys General of Oklahoma, Arkansas, Indiana, Louisiana, Nebraska, Ohio, South Dakota, Utah, West Virginia, and Wyoming. The letter, and PHMSA's response, have been uploaded to the proceeding's docket.

[27] The environmental and public interest groups, included Earthjustice, the Washington Environmental Council, Columbia Riverkeeper, Friends of the Earth, the Lands Council, Friends of the San Juans, Friends of the Columbia Gorge, and Oregon Physicians for Social Responsibility.

[28] During the initial comment period, there were 3,737 form letters from 2,963 discrete commenters. There were also 59 comments from private citizens that were not form letters. During the rebuttal comment period, there were 268 form letters from 264 discrete commenters, as well as one comment from a private citizen that was not a form letter. After the rebuttal period closed, another 6 form letters were submitted from 5 discrete commenters.

with the vapor pressure requirement. Therefore, the Washington State law effectively bans any transportation of high vapor pressure crude oil by rail within the State of Washington, as there would be no lawful means under the State law for unloading the material upon its arrival at Washington State refineries.

AFPM believes the law is not designed to reduce the number of combustion events within the State and increase safety, as Washington State claims, but is instead a backdoor attempt to prohibit Bakken crude from being refined within the State. According to AFPM, prohibiting the unloading of crude oil with a vapor pressure above 9 psi will not prevent derailments of crude oil trains or mitigate the damage that such derailments cause. Serious large-scale impacts related to the transportation of hazmat by rail typically does not occur during the loading or unloading phases of the material's journey. Since the law only regulates unloading and technically exempts transportation of high-vapor pressure crude through its jurisdiction, AFPM suggests the true motivation of this law is to prohibit the delivery of Bakken crude to Washington State refineries.

AFPM further hypothesizes that vapor pressure is a red herring here because Washington State is singling out Bakken crude while at the same time ignoring other Class 3 liquids with lower vapor pressures (ethanol, certain isomers of pentane, iso-octane, benzene, toluene, and the xylene isomers), which according to AFPM, have similar ignition risks because as flammable liquids, they can also burn under comparable circumstances.

AAR declares that even if the transportation risks to Washington State's citizens were legitimate, the State cannot export those risks to other States by limiting transportation of a disfavored product into its own State at the expense of forcing the transport presumably through another State.

The Description, Classification, and Handling of Hazardous Materials

Hess, AFPM, AAR, and other commenters assert that the Washington State law attempts to regulate the packaging, handling, and documentation of crude oil with rules that plainly differ from existing Federal regulations. The commenters note that these areas are covered subjects under the HMTA; and therefore, remark that any non-Federal requirement concerning these subjects must be substantively the same as the Federal requirements, or otherwise they must be preempted. According to the commenters, preemption is appropriate because Washington State's law conflicts with the comprehensive and technical classifications in the HMR and intrudes on the exclusive Federal role in classifying hazardous materials.

Description

The Dangerous Goods Advisory Council (DGAC) asserts that the definition of a flammable liquid imposed by Washington State is not substantively the same as the definition of the material under the HMR. Specifically, DGAC notes that the HMR does not impose a vapor pressure limit on flammable liquids.

Classification

NDPC and Continental Resources, Inc. (CLR) express their support for national uniformity and believe that allowing State specific laws to deviate from the HMTA's requirements directly undercuts its purpose of assuring a nationally uniform set of regulations applicable to the transportation of hazardous materials in commerce. Further, they note the HMR are not minimum requirements that other jurisdictions may exceed if local conditions warrant. Rather, the HMR are national standards and must be uniformly applied across jurisdictional lines. Here, they contend the Washington State law differs in material respects from the Federal requirements by classifying and regulating the handling of crude oil based on an arbitrary and unscientifically determined vapor pressure limit of no greater than 9 psi.

The Western Independent Refineries Association (WIRA), the AG of Oklahoma, WSPA, RSI–CTC, AFPM, AAR, and API seemingly agree with this assessment of the law, as they all assert that Washington State's vapor pressure requirement designates a new class of crude oil based on vapor pressure. The commenters reason that the law divides the single classification for crude oil, as defined in the HMR, into two groups: Crude oil with vapor pressure below 9 psi; and crude oil with vapor pressure equal to or exceeding 9 psi. According to the commenters, the law effectively reclassifies crude oil with a vapor pressure greater than 9 psi, which they argue essentially designates the material as ''forbidden'' for transportation because it imposes new classification and handling requirements whereas the Federal law does not. Others characterize the law as an outright ban of Bakken crude oil transport by rail.

Handling

WIRA, API, and others believe the law's handling provisions that restrict the loading and unloading of crude oil from rail cars based on vapor pressure limits are not substantively the same as the Federal requirements. Moreover, although the commenters acknowledge that the HMTA does not preempt non-Federal requirements that purport to only regulate loading and unloading operations at facilities after the material is no longer in transportation, they insist the Washington State law's scope is much broader because it regulates all loading and unloading at Washington State facilities, regardless of who performs the operations.

API says it is clear that the law regulates the handling of a hazardous material in a manner that is not substantively the same as the HMTA. Specifically, API says the law prohibits or limits (via caps on volume) the loading and unloading of crude oil from rail cars based on vapor pressure, whereas the HMR does not.

The Three Avenues of Compliance

Generally, the commenters on this topic agree with the Applicants' notion that there are only three ways to comply with Washington State's vapor pressure limit for crude-by-rail. As outlined in their application, North Dakota and Montana identified the three avenues of compliance as (1) pretreating the crude oil prior to loading the tank car; (2) selecting an alternate mode of transportation; or (3) redirecting the crude oil to facilities outside Washington State. RSI–CTC, WSPA, Crestwood, API, and others agree that requiring compliance with the law through pretreating, alternate modes of transportation, or rerouting outside Washington State would pose significant obstacles to the safety and national uniformity goals of the HMTA. For instance, RSI–CTC states that each of these methods would likely increase the risk of incident or exposure by unnecessarily extending the distance and time in transit. Crestwood points out that hazardous materials are inherently dangerous and thus must be transported without unnecessary delay. And API contends there are no commercially and logistically practical means to adapt to the limitations imposed by the law. Also, API says it can confirm that the Applicants' description concerning the unavailability, undesirability, and impracticality of the potential alternatives, is correct.

Pretreating

According to the commenters, the primary issue with pretreating the crude oil to meet Washington State's 9 psi vapor pressure limit is the lack of the necessary infrastructure and equipment needed to pretreat the crude adequately. NDPC and CLR allege the North Dakota oil and gas industry does not have adequate infrastructure in place to pretreat crude oil produced in the Williston Basin [29] to the specifications required by the Washington State law. NDPC estimates multiple stages of costly separation equipment and tankage would need to be installed. API further explains that currently, oil conditioning is done at the wellsite to comply with the North Dakota Industrial Commission's order,[30] but the wellsite equipment cannot be used to reduce consistently the vapor pressure of Bakken crude to meet Washington State's 9 psi limit. Therefore, API asserts this would require the processing of the oil in a ''fractionator,'' equipment that it says is not economical to install at every wellsite. Instead, producers would have to redirect the crude oil to newly constructed facilities for processing. According to API, these facilities would essentially be small scale refineries that would need to be located at several points throughout the producing basin. This of course, as noted by the commenters here, will also result in increased handling, and additional transit time and miles traveled, collectively amounting to increased safety risks.

In light of the infrastructure, equipment, and other logistical issues, the commenters have concluded that pretreating is economically infeasible or unrealistic. According to the Governor of North Dakota, the infrastructure necessary to comply with the vapor pressure law would add hundreds of millions of dollars to the cost of conditioning and transporting. CLR, Crestwood, Hess, AFPM, API, and others all agree the various costs that producers would likely incur in order to comply with the Washington State vapor pressure limit make pretreating cost-prohibitive and simply not feasible.

Another significant issue the commenters raise is the fact that pretreating will result in a surplus of light-end materials separated during the pretreatment process. These higher vapor pressure hazardous materials, such as butane, ethane, and other natural gases, are deemed essential and valuable components of Bakken crude, or as standalone commodities. As such, the commenters explain that these components will likely still need to be transported to Washington State via rail or other available modes. For example, Crestwood predicts an unintended consequence of the law whereby trains departing North Dakota for Washington State will likely include more tank cars filled with a greater variety of hazardous materials due to pretreating. API echoes this sentiment, adding that more shipments will increase the total time in transit and quantity of miles traveled, all of which translates to an increased risk of a transportation incident.

Ultimately, the commenters agree that the additional pretreating requirements would create vast complexities and additional operational requirements that would greatly increase costs, lower efficiency, harm the environment, increase transportation, and reduce safety.

Alternate Modes of Transportation; Rerouting

WIRA, NDPC, and AFPM claim that alternatives to transporting North Dakota crude-by-rail, including transportation via pipeline, truck, or waterway, are simply not feasible. CLR states that utilizing alternate modes, or rerouting and potentially avoiding Washington State altogether, will run afoul of the purpose and thrust of the HMTA. WIRA also notes that using other modes or rerouting [31] will likely impact neighboring jurisdictions.

Several commenters point out that all modes of transporting crude oil are not equal. API commented that the oil industry chose rail transport, and developed the infrastructure to support it, because it is the most efficient and cost effective means to transport Bakken crude oil safely from North Dakota and Montana to refineries in Washington State. Other modes are commercially infeasible and would increase complexity and safety concerns. For example, API and RSI-CTC estimate that diverting rail shipments to highway would result in a staggering number of trucks having to replace the current capacity of crude oil transported via rail. According to RSI-CTC, it would take three motor vehicle cargo tanks to transport the same amount of product from one rail tank car. In turn, this will necessarily increase the amount of hazmat shipments on the highway and create a greater potential for harm to persons, property, and the environment. According to API, switching to marine vessel is even worse, necessitating a circuitous trip through the Panama Canal and adding thousands of miles to the transportation journey.

These commenters are all in agreement on this point—whether by increasing the distance transported, the number of hazardous materials that will need to be transported, the number of loading and unloading events, the environmental impact of the underlying operations, or by causing unnecessary delays—the law presents increased risks and is an obstacle to accomplishing and carrying out the Federal hazmat law.

Sandia Study and Conclusions

Commenters contend the Washington State law is misguided because its purported safety justification for mandating a vapor pressure limit for Bakken crude is not supported by science. The commenters point to the Sandia Study [32] and its recently reported findings and conclusions. DGAC, WIRA, NDPC, Marathon, Hess, AFPM, and others, contend that the results of the Sandia Study are conclusive, finding that vapor pressure is not a statistically significant factor in affecting pool fire and fireball characteristics. Crestwood interprets the findings to mean that Bakken crude with higher vapor pressure is not more unstable than crudes with lower vapor pressures. Hess notes the Sandia Study ultimately concluded that all the oil samples studied have comparable thermal hazard distances and none of the oils studied indicate outlier behavior. These commenters collectively assert that the advancement of rail safety is simply not furthered by requiring the alteration of a material's vapor pressure.

Moreover, the commenters claim the Sandia Study does not support creating a distinction for crude oils based on vapor pressure with regard to

[29] The Williston Basin is a large ''intracratonic sedimentary basin'' in eastern Montana, western North Dakota, South Dakota, and southern Saskatchewan, that is known for its rich deposits of petroleum and potash. The geological basin underlies the oil producing region known as the Bakken.

[30] The North Dakota Industrial Commission Order sets forth operating standards guiding the use of conditioning equipment to separate production fluids into gas and liquid components. The standard requires North Dakota operators to condition Bakken crude oil to a vapor pressure of no more than 13.7 psi. The Order is discussed in more detail in Section VI.

[31] Commenters discussing the ''rerouting'' compliance option indicate it has many of the same issues already identified with respect to the alternate mode option, *e.g.,* increased handling, additional miles traveled, longer transit times, and unnecessary delays.

[32] DOT and the U.S. Department of Energy commissioned Sandia Laboratories to conduct an extensive review and analysis of crude oil, focusing on its chemical and physical properties, and its potential for ignition, combustion, and explosion. The Sandia Study is discussed in more detail in Section VI.

combustion events. According to WIRA, the recently completed study shows that regulating according to vapor pressure distinctions results in no measurable benefits in terms of transportation safety as compared to what is already covered under the existing Federal regulations, which are designed to ensure safe national transportation standards. NDPC believes that once packaged properly, vapor pressure levels have no additional impact on the safety effectiveness during the shipment of Bakken crude oil by rail tank car.

AFPM also avers that vapor pressure of petroleum crude oil in transportation has no impact on the frequency of derailments. Furthermore, although API recognizes the existence of genuine concerns generated by recent high profile rail incidents, it states that the science, lessons learned, and investigations of those incidents have failed to reveal any casual connection between the vapor pressure of the product and the outcomes of the incidents.

RSI-CTC acknowledges that to date, PHMSA has not determined that it is appropriate to establish a vapor pressure standard for crude oil. Furthermore, Hess suggests there are other recent studies that support the Sandia Study's finding that characteristics of Bakken crude oil are similar to other crude oils. Accordingly, Hess recommends that PHMSA defer to those studies for accurate analytic information regarding the safety characteristics of Bakken crude oil. NDPC suggests the Sandia Study settles any lingering uncertainties—that is, vapor pressure does not need to be regulated, whether through a rulemaking by PHMSA or legislation from the State of Washington, in order to secure the safe transportation of the subject commodity via the nation's rail network.

B. Comments Opposing Preemption

The Description, Classification, and Handling of Hazardous Materials

The AG of Washington and Earthjustice commented on the Applicants' arguments regarding classification and handling. Their comments on these topics were essentially the same.

Classification

The commenters attempt to refute the Applicants' argument that the law effectively reclassifies petroleum crude oil with a vapor pressure greater than 9 psi. This assertion is simply not true according to the AG of Washington. He asserts that the law has no impact on the Federal crude oil classification requirements. Furthermore, the AG of Washington contends that under the Washington State law's requirements, crude oil shipped to Washington State facilities will continue to be classified as a Class 3 hazardous material in accordance with the HMR. In addition, he argues that all other requirements (packaging, marking, labeling, and shipping papers) will remain unchanged.

Handling

The commenters opposing preemption contend that the vapor pressure limit is not ''handling'' subject to preemption because it only impacts unloading activities at facilities after transportation had ended. According to the AG of Washington, the Washington State Department of Ecology (WADOE) is purportedly familiar with the facilities' unloading protocols. He describes a practice whereby facility personnel unload crude-by-rail shipments after the rail carrier delivers the tank cars and departs. After the facility unloads the crude oil, the rail carrier returns and retrieves the empty tank cars. Earthjustice's description of the unloading practices at Washington State facilities is the same. Here, the descriptions provided by the commenters are noteworthy because they purport to depict unloading operations that appear to be outside the scope of the HMTA.

The Three Avenues of Compliance

The AG of Washington and Earthjustice challenge the Applicants' arguments regarding the three purported avenues of compliance. Regarding pretreatment, the AG of Washington accuses the Applicants of overgeneralizing and impermissibly speculating when they suggest that all Washington State-bound crude oil will need to undergo cost-prohibitive offsite pretreatment. According to the AG of Washington, and supported by Earthjustice's comments, the average vapor pressure of Bakken crude is 11.81 psi. Moreover, he references a research study that suggests some Bakken wellheads will produce crude oil that already satisfies the 9 psi limit. Meaning, compliance can likely be achieved by conditioning the oil, which is relatively cheap. Earthjustice adds that oil producers are already performing some oil conditioning. Earthjustice also notes that at least one North Dakota pipeline operator will not accept crude oil with a vapor pressure greater than 9 psi for transportation.

Pretreating

The AG of Washington claims the Applicants' pretreatment argument rests on a double standard, considering the fact that North Dakota has already established its own vapor pressure limit through the North Dakota Industrial Commission (NDIC) order. He asks, if North Dakota can impose a vapor pressure limit, then why can't the State of Washington do the same? If North Dakota's limit is consistent with the HMTA, then why does Washington State's limit pose an obstacle?

Alternate Modes of Transportation

The AG of Washington and Earthjustice assert that the Applicants, beyond mere speculation, have not provided any evidence to support their position that a shift in the mode of transportation would have implications for crude oil transit time, distance traveled, number of transloading events, accident rates, and other factors that impact the safe transportation of hazardous materials. On this point, the commenters insist that a vague allusion to implications is not sufficient evidence.

Rerouting

The AG of Washington and Earthjustice dismiss the Applicants' argument that rerouting will create unnecessary delay in the transportation of hazardous materials. The AG of Washington contends that this argument fails because Washington State's law will have no impact on transit time because it addresses loading and unloading at Washington State facilities; it does not regulate the movement of crude oil in any other way.

Regulates Facilities, not Transportation

Generally, it is the position of commenters opposing preemption that the Washington State law only regulates activities performed at in-state facilities. According to the AG of Washington and Earthjustice, the law does not impose any requirements on rail carriers and it will have no direct impact on the Applicants. Specifically, regarding the vapor pressure requirement, Earthjustice claims it will have no direct impact on rail carriers and that it expressly does not prohibit a railroad car carrying crude oil from entering the State; nor does it require the trains to stop or be checked for vapor pressure before entering the State. Similarly, as with the vapor pressure limit, the commenters contend that the ANT requirement's compliance burden falls entirely on Washington State facilities. Thus, shippers and carriers do not submit ANT data and the Applicants, or any

other States, do not have new duties under the law. Moreover, the AG of Washington indicated that a version of the ANT requirement has already been in effect in the State since 2015, and points out that neither North Dakota nor Montana challenged the law when it was originally enacted.

The commenters contend that the Applicants' claim that the vapor pressure limit's explicit purpose is to regulate the handling of hazardous materials during transportation by imposing volatility limits, is false. The AG of Washington and Earthjustice assert that the vapor pressure limit is not ''handling'' subject to preemption because it only impacts unloading activities at facilities after transportation had ended. As they explain it, the unloading practices at Washington State refineries exhibit something along the following: Facility personnel unload crude-by-rail shipments after the rail carrier delivers the tank car and departs. After the facility unloads the crude oil, the rail carrier returns and retrieves the empty tank cars.

Regulatory Gap

The AG of Washington, Earthjustice, and individual commenters defend the law by claiming its vapor pressure limit addresses a regulatory gap in the Federal law and regulations governing the transportation of crude-by-rail. Earthjustice states that despite a number of well-documented oil train crashes and derailments, there is no Federal regulations limiting the volatility of crude oil shipped in railroad tank cars. Individual commenters agree, and characterize the perceived regulatory gap as PHMSA's failure to protect communities.

The AG of Washington alleges the Federal government has undertaken no serious effort to regulate vapor pressure. Furthermore, Earthjustice contends that PHMSA has failed to set a nationwide volatility standard, even though it has received a petition for rulemaking requesting that it set one.

The AG of Washington and Earthjustice explain that the State of North Dakota stepped in to address the regulatory gap in 2015, with the NDIC Order setting a vapor pressure limit of 13.7 psi to allegedly improve the safety of Bakken crude oil for transport. But according to the AG of Washington, the State of North Dakota's vapor pressure limit is insufficient to protect public safety because the threshold is too high and enforcement is lenient. Notwithstanding, the AG of Washington asserts that his State is under no obligation to honor the State of North Dakota's standard. And, since there is no national standard, the commenters reason that Washington State is free to establish its own vapor pressure limit to fill a regulatory vacuum.

ANT Requirement

The AG of Washington asserts the ANT requirement improves local emergency preparedness and therefore poses no obstacle to the HMTA. According to the AG of Washington, the law applies only to Washington State facilities that unload crude-by-rail shipments, and as such, rail carriers do not have duties under the law. Also, the AG of Washington states that the law does not conflict with the High-Hazard Flammable Train (HHFT) notification rules,[33] nor will it cause confusion among Washington State's emergency responders because responders will still rely on the material's emergency response information contained in the shipping papers. Finally, the AG of Washington argues the law does not regulate a pre-transportation function as alleged by the Applicants because it does not apply to shippers or carriers.

Earthjustice also attempts to refute the Applicants' case for preemption of the Washington State law. Earthjustice contends the law only applies to Washington State facilities, not railroads. Earthjustice argues that since there is no corresponding Federal ANT requirement, and Washington State's law does not apply to shippers or carriers, it cannot possibly pose an obstacle. As for the Applicants' objection to the ANT requirement based on the theory it will be confusing to first responders, Earthjustice counters with the supposition that emergency responders should have the best and most complete information.

C. Rebuttal Comments

Opposing Preemption

The AG of Washington filed rebuttal comments. Also, the Attorneys General of New York, California, Maryland, and New Jersey (AG Alliance against Preemption) jointly filed their rebuttal comments.

The AG of Washington asserts that the Applicants lack authority to seek a preemption determination because they are not ''directly affected'' by the challenged laws. According to the AG of Washington, the question of standing is a threshold issue and he points out that none of the commenters supporting preemption, nor the Applicants, have adequately demonstrated that North Dakota and Montana satisfy this requirement. Furthermore, he cautions PHMSA that the agency has no discretion to disregard the standing question and that it risks judicial review if it proceeds despite the Applicants' lack of standing. Here, the AG of Washington reiterates his initial comment on this issue, *e.g.,* that the Applicants are not directly affected because (1) the vapor pressure limit has not yet taken effect; (2) the potential impact to the Applicants' tax revenue is unduly speculative; and (3) a tax revenue impact is a classic indirect impact. For these reasons, the AG of Washington continues to assert that Washington State's vapor pressure limit has no direct impact on any opposing State's sovereign interests.

The AG of Washington also argues that PHMSA must separately determine that the Applicants have standing to challenge the law's ANT requirement, claiming the Applicants made no connection between their respective sovereign interests and the ANT requirement. The AG of Washington submits that should PHMSA find the ANT requirement—alleged to be an entirely local safety measure—directly affects another State's sovereign interests, the agency will have rendered the standing requirement toothless. Notwithstanding the above standing question, it is the AG of Washington's position that the vapor pressure and ANT requirements are legitimate exercises of State authority that will improve public safety given the extreme risks of crude-by-rail transportation.

The AG of Washington further asserts the vapor pressure law is not an obstacle under the HMTA because it does not regulate the transportation of crude oil and is therefore not subject to preemption under the HMTA. Moreover, the AG of Washington argues that the law cannot be preempted under the HMTA's ''substantively the same'' test with respect to handling (loading and unloading) or classification, because the vapor pressure law regulates loading and unloading functions at facilities, after the crude oil has been delivered and transportation has ended. Regarding classification, the

[33] The HHFT notification rules specify that HHFT information sharing notification must include: (1) A reasonable estimate of the number of HHFTs that the railroad expects to operate each week, through each county within the State or through each tribal jurisdiction; the routes over which the HHFTs will operate; (2) a description of the hazardous material being transported and all applicable emergency response information required by subparts C and G of part 172; (3) at least one point of contact at the railroad with knowledge of the railroad's transportation of affected trains; and (4) if the route is subject to oil spill response plan requirements, the notification must include a description of the response zones and contact information for the qualified individual and alternate. Railroads are required to update the notifications for changes in volume greater than twenty-five percent. *See* 49 CFR 174.312.

AG of Washington points out—contrary to the claims made by commenters in support of preemption that the law creates a new classification of crude oil based on vapor pressure—the law has no impact on the Federal classification requirements for crude oil. Crude oil shipped to Washington State refineries will still be classified as a Class 3 hazardous material in accordance with the HMR.

The AG of Washington also highlights the willingness of certain commenters to challenge Washington's vapor pressure law, while apparently not objecting to the State of North Dakota's vapor pressure limit. The AG of Washington believes both laws are valid exercises of State authority given the absence of Federal action on the subject. Furthermore, he suggests that a decision by PHMSA preempting Washington State's law would not only suppress innovation that would result from efforts to comply with Washington State's law, but also reward the State of North Dakota for winning a regulatory ''race to the bottom'' with its comparatively weak vapor pressure limit that seems to be regarded as the *de facto* national standard.

Also, the AG of Washington attempts to refute commenters' arguments that the Sandia Study disproved a link between vapor pressure and rail safety by noting the Sandia Study's pool fire and fireball experiments did not adequately consider ignition potential, which the AG of Washington says his State's vapor pressure limit is intended to address.

Finally, the AG of Washington contends the State's ANT requirement is not preempted because it is a local emergency preparedness measure that applies only to Washington State facilities. Furthermore, the AG of Washington dismisses claims that the requirement will create confusion for shippers and carriers, or that the ANT measures will result in additional requirements for hazmat shipping papers. According to the AG of Washington, local facilities have already been providing advance notice of crude oil shipments since 2015, without any major technical difficulties or confusion; and the new requirement will have no impact on shipping papers nor impose any additional compliance obligations on shippers and carriers.

The AG Alliance against Preemption filed its joint comments to respond primarily to the comments filed by the AG Alliance for Preemption, led by Oklahoma. The AG Alliance against Preemption supports the Washington State law and believes that in the face of PHMSA's failure to adopt a Federal vapor pressure standard, it is entirely appropriate for States to take reasonable and necessary measures to protect communities, first responders, businesses, and natural resources within their respective borders.

The AG Alliance against Preemption, with regard to vapor pressure, indicates that despite Federal mandates, a petition for rulemaking, and PHMSA's publication of an Advanced Notice of Proposed Rulemaking on the petition, the agency has failed to close an ''existing regulatory loophole'' by either finalizing a vapor pressure rule or establishing an interim protective vapor pressure standard. In fact, the AG Alliance against Preemption asserts that rather than close the regulatory loophole, the Federal government's efforts have either lagged or actively moved to roll back critical safety protections for high-hazard flammable unit trains that transport crude oil across the country. For example, the AG Alliance against Preemption notes the Sandia Study is more than two years behind schedule; and it criticizes the August 2019 report as a ''limited experiment'' that does not inspire confidence in the project's planning, sampling, or analytical methods, or the report's conclusions. Moreover, the AG Alliance against Preemption asserts that the Department's recent regulatory reform actions will increase the likelihood, and dangerous consequences, of oil train accidents and derailments. Here, the AG Alliance against Preemption points to the recent withdrawal by the Federal Railroad Administration (FRA) of the 2-person crew ANPRM, and PHMSA's and FRA's decision not to include an electronically controlled pneumatic brakes requirement in the HHFT final rule.

According to the AG Alliance against Preemption, these regulatory failures coupled with known market failures in the rail sector that prevent or discourage actions to improve the safety of transporting crude oil by rail, has created the situation today where States are filling this regulatory void by adopting their own protective vapor pressure standards.

Supporting Preemption

The Applicants submitted their rebuttal to comments filed in opposition to their petition. In addition, API and AFRM each filed rebuttal comments.

The Applicants assert they have standing to bring this petition and characterize the AG of Washington's interpretation of the requirement as overly narrow and also contradictory of the agency's long-standing precedent of interpreting the standing requirement broadly. The Applicants claim that they will suffer several direct effects, including specific reductions in oil and gas severance tax revenue, and reductions in royalties received from producers, as the rightful landowners underlying oil and gas leases. In addition, they say both States will confront real and decidedly non-speculative safety, environmental, and economic effects associated with the additional pre-treatment requirements for Bakken crude oil or with the need to identify alternative modes and routes of transportation in order to comply with the law.

According to the Applicants, the State of North Dakota imposes an oil and gas severance tax. The State of North Dakota relies upon the resulting tax revenue to support its education system, its drinking water infrastructure development, and more. The Applicants contend that pretreatment of oil will devalue the product and alternative markets will yield lower returns and therefore generate lower tax revenues. Moreover, the Applicants state they are land grant States, meaning each State itself is the landowner for several oil and gas leases throughout the Bakken region, generating direct royalties from oil and gas extraction operations occurring on State-owned land. As such, they contend the Washington State law will directly affect their royalty revenue.[34]

Also, the Applicants say they will face multiple consequences associated with the construction of new infrastructure to meet Washington State requirements (pretreatment facilities and access roads), including environmental and safety consequences associated with the additional handling and movement of hazmat related to pretreatment.

Regarding the Applicants' standing for the notification requirement, they both argue that it is not appropriate for PHMSA to sever the ANT and vapor pressure requirements for the requisite preemption analysis—as suggested by the AG of Washington—because the ANT requirement enables the State to enforce its vapor pressure limit and accordingly, it must be examined in the context of the prescribed the limit.

[34] North Dakota estimates that it will lose an average of approximately $32,000 per day from July 1, 2019–June 30, 2020 (*i.e.,* through the end of the current fiscal year) and an average of approximately $36,000 per day thereafter through July 1, 2031, in lost oil and gas severance tax revenue as a result of the Washington Law (based on the market rate for Bakken crude oil in July 2019). See Docket No.: PHMSA–2019–0149; Document No.: 4397; at *https://www.regulations.gov/document?D=PHMSA-2019-0149-4397.*

API suggests the facts presented by the Applicants convincingly support a finding that the States of North Dakota and Montana are directly affected by the Washington State law. For example, API argues that certain changes required to pretreat Bakken crude oil to satisfy Washington State's vapor pressure limit will naturally impact the Applicants' energy economy and underlying infrastructure, and further, that it will increase handling and transportation of hazardous materials resulting in increased safety risks within both States. API also notes that the inability to treat Bakken crude oil to comply with State of Washington's vapor pressure limit will inevitably result in lower commodity values or lost sales, corresponding to lost tax and royalty revenue for the Applicants. Moreover, API contends that additional facts showing the Applicants are directly affected include the comments submitted in this proceeding by Washington State refineries that attempt to refute the AG of Washington's claims that the law has no immediate or substantial effects or impacts on North Dakota and Montana companies that develop, produce, condition, and transport Bakken crude.

AFPM states the AG of Washington's argument that the Applicants' tax and revenue will not be reduced because Washington State refineries will simply turn to other sources of crude oil demonstrates a fundamental misunderstanding of the global petroleum market. According to AFPM, the options for Bakken crude oil producers and suppliers to market their crude oil are reduced as a result of the Washington State law. AFPM explains that due to the shortage of pipeline infrastructure, the majority of Bakken crude oil is transported by rail. AFPM suggests that should Washington State refineries stop receiving Bakken crude oil, it would likely still move by rail, but potentially at longer distances and at higher costs. This would reduce the value of the crude oil and therefore directly reduce the Applicants' State tax and royalty revenue. AFPM asserts that this outcome will have an immediate and harmful effect on the Applicants' interests, which stands in direct contradiction of the AG of Washington's assertion that the law will have no real-world effect.

AFPM informs PHMSA that as the leading trade association representing the refinery industry, it has standing to seek a preemption determination since its members are directly affected by Washington State's law. In fact, several AFPM members have filed comments in this proceeding explaining how they are directly affected. Therefore, in the event the agency has concerns with the Applicants' standing, AFPM requests that the agency treat its comments in this proceeding as a separate application for a preemption determination on the Washington State law.

The Applicants attempt to refute the AG of Washington's contention that they have failed to provide sufficient evidence to support their petition. They argue the HMTA does not limit PHMSA's preemption consideration to the information presented in the original petition and that the administrative record is sufficient based on the contents of their application and the other relevant information received from other commenters' submissions.

Moreover, the Applicants note that commenters opposing preemption claim the law only regulates unloading of crude oil at facilities as opposed to handling of crude oil—and thus, is beyond the scope of the Federal law and regulations. However, the Applicants state that the vapor pressure limit is equally applicable to loading facilities in North Dakota and Montana, which is inherently a regulated function under the HMR. Furthermore, the Applicants point out that ''unloading incident to movement'' is an activity regulated by the HMR when performed by carrier personnel or in the presence of carrier personnel. As such, the Applicants assert that the Washington State law involves transportation regardless of whether a carrier is present and therefore, the challenged law seeks to regulate activities that include ''loading incident to movement,'' a regulated function falling within the scope of the HMR.

API asserts that the AG of Washington misstates the purpose and nature of its vapor pressure law by stating that it applies only to unloading activities at facilities located in Washington State, even though elsewhere in its comments the AG of Washington admits that the law was enacted to address the threats posed by crude-by-rail transportation. API notes that other commenters have conceded that the law targets the transportation of Bakken crude-by-rail and not the unloading of the material at facilities. API opines that the law's vapor pressure limit and prohibitions on unloading at facilities will severely curtail or eliminate rail transport of untreated Bakken crude into the State of Washington. As such, API states that PHMSA should reject Washington State's insincere and pretextual focus on ''unloading'' and preempt the law because, by its nature and purpose, it seeks to regulate transportation in a manner that is not substantively the same as, and that poses obstacles to the accomplishment of, the HMTA.

API claims the AG of Washington falsely asserts that the law has not taken effect and that its penalties do not affect rail transportation. According to API, the law's volume restriction for existing facilities currently applies to 2019 volumes. As such, facilities cannot ignore this cap simply because, once triggered, the total ban on further shipments and potential associated penalties do not take effect for two years. For example, API notes that at least one refinery has commented that it has already drastically reduced scheduled shipments to avoid exceeding the law's volume cap.

The Applicants argue the Washington State law fails the obstacle test because the State's self-styled three avenues of compliance actually increase the risk of an incident during transportation; cause unwarranted delay; and increase transit times. Here, the Applicants reiterate a primary argument they raised in their petition; that is, that there are only three avenues for compliance: Pretreatment; seek alternative modes of transportation; or redirect the crude oil to facilities located outside of Washington State. Regarding pretreatment, the Applicants note that multiple commenters have reinforced their arguments that pretreatment is cost prohibitive and existing conditioning infrastructure is insufficient to achieve Washington State's 9 psi vapor pressure limit. Furthermore, the Applicants state that pretreatment increases the inherent risk of an incident in transportation because the law ultimately requires additional handling and movement. The AG of Washington argues that the Applicants have failed to provide evidence of the anticipated increase in miles traveled due to pretreatment, re-routing, or modal shift. But the Applicants insist that the administrative record contains ample evidence that these activities will result in an increase of total miles traveled for hazardous materials.

The Applicants and AFPM attempt to refute the AG of Washington's argument that under Washington State's law, crude oil will still be classified as a ''Class 3 Flammable liquid,'' just as it is classified under the HMR. According to the Applicants and AFPM, the Washington State law creates two classes of crude oil, one with vapor pressure below 9 psi and one with vapor pressure above 9 psi. The Applicants and AFPM contend this new classification essentially forbids the transportation of crude oil by rail because of the law's handling (loading and unloading) restrictions.

AFPM states that any argument asserting the Washington State law is beyond the scope of the Federal hazmat law because it only regulates unloading at facilities after transportation has ended, mischaracterizes the purposes of the Washington State law. AFPM notes that commenters, in defense of the Washington State law, have conceded its intent is to regulate and address potential safety issues associated with the transport of Bakken crude by rail, not the unloading of the petroleum products at the facilities to which they are shipped. AFPM points out the Washington State law does not address areas typically reserved to local police powers, such as worker safety, public health, and environmental safety. As such, AFPM contends that the law impacts transportation and is not just confined to unloading operations. Thus, AFPM has concluded the Washington State law starts regulating from the time Bakken crude, destined for Washington State facilities, is loaded onto rail cars in North Dakota and Montana. Notwithstanding, AFPM also notes that the Federal hazmat law and regulations include pre-transportation and transportation-related functions, including unloading operations.

The Applicants assert that the Washington State law is an obstacle to carrying out the purpose of the HMTA and does not enhance safety or fill a regulatory gap. The Applicants further contend that the Sandia Study Report underscores the conclusion that Washington's law is preempted and does not enhance safety. The Applicants believe the Sandia study is important for the following reasons: (1) It was commissioned by Federal agencies and conducted by a respected national laboratory; (2) it demonstrates in practical terms that a vapor pressure limit is within the province of a national inquiry and should therefore be left to determinations at the Federal level; and (3) it debunks the Washington State law's purported purpose of imposing a vapor pressure limit to improve public safety in the event of a crude-by-rail derailment. Simply stated, the Applicants conclude that the science does not support the assumption that regulating vapor pressure will mitigate the consequences of a derailment. The Applicants note that commenters supportive of the law rely on the findings from a 2014 DOT enforcement effort, rather than the latest comprehensive and scientific research study undertaken by Sandia National Laboratories. The Applicants highlight the fact that the report concluded that vapor pressure is not a statistically significant factor in affecting pool fire and fireball burn characteristics. The applicants contend that the results of the study do not support a basis for creating a distinction among crude oils based on vapor pressure.

AFPM alleges that the AG of Washington's safety rationale for the Washington State law is not supported by science as evidenced by the Sandia Study and the recently completed Task 3 report. AFPM notes the commenters against preemption have failed to rebut the extensive scientific research that is included in this proceeding's administrative record. AFPM rejects the AG of Washington's argument that the Sandia Study is irrelevant because it allegedly does not examine the relationship between higher vapor pressure and ignition. AFPM points out that the Sandia Study concluded that ignition potential cannot be identified by a single index, and that vapor pressure is not a statistically significant factor in affecting the degree of thermal hazardous outcomes incident to a derailment scenario; and accordingly, there is no scientific basis for making regulatory distinctions based on vapor pressure levels. To the contrary, AFPM states that derailments typically produce ignition sources such as sparks from metal-on-metal stresses. The vapor pressure of a flammable liquid has no bearing on the likelihood of ignition or the frequency of derailment in these circumstances. Therefore, it is AFPM's position that Washington State and its supporters' heightened concerns about high vapor pressure ignition potential in a derailment scenario is entirely misplaced. AFPM dismisses the notion that any further research on Bakken crude oil vapor pressure is necessary given the comprehensive research and results contained in the Sandia Study.

AFPM notes that Earthjustice relies on data from the Department's initial examination of the crude-by-rail transportation system to support the proposition that Bakken crude oil is uniquely dangerous. However, AFPM points out that DOT's earlier approach was driven by a lack of understanding, research and analysis, and that these limitations are now overcome by virtue of the Sandia Study, representing the most comprehensive and definitive scientific research on this issue. AFPM reiterates its contention that there is no regulatory gap here as alleged by the AG of Washington and other commenters. Rather, AFPM believes the Department has taken a measured and thorough approach in considering whether to regulate vapor pressure and as such, the Sandia Study effectively completes Federal research on this topic, and accordingly, the agency can now conclude that no additional regulation on vapor pressure limits is warranted.

VI. Discussion

A. The Applicants' Standing To Apply for a Preemption Determination

The AG of Washington and other commenters opposing the application assert the Applicants lack standing to challenge Washington State's vapor pressure requirements. The AG of Washington, Earthjustice, and other commenters believe the Applicants have not shown they are directly affected by the challenged law, as required by the HMTA.

According to the AG of Washington, the Applicants do not have standing because the vapor pressure limit has not yet taken effect; the potential impact to the Applicants' tax revenue is unduly speculative; and a decrease in tax revenue is a classic ''indirect'' impact.

Furthermore, the AG of Washington argues that irrespective of the Applicants' standing with respect to the requirement to set a vapor pressure limit, the agency must make a separate determination regarding the Applicants' eligibility to bring a challenge against the ANT requirement, and he claims the Applicants make no connection between their sovereign interests and that requirement.

The Applicants assert they have standing to bring this petition and characterize the AG of Washington's interpretation of the HMTA's standing requirement as overly narrow, stating that this view contradicts the agency's long-standing precedent of interpreting the standing requirement broadly. Furthermore, the Applicants, as landowners, contend they will suffer several direct effects including specific reductions in oil and gas severance tax revenue, and reductions in royalties received from oil producers. The Applicants explain that North Dakota and Montana are land grant States, meaning the States themselves are the landowners for several oil and gas leases throughout the Bakken region. Accordingly, they say each State receives direct royalties from oil and gas extractions occurring on State-owned land.

In addition, the Applicants assert that both States will confront real and ''decidedly'' non-speculative safety, environmental, and economic effects due to the State of Washington's requirements. American Petroleum Institute (API) and the American Fuel & Petrochemical Manufacturers (AFPM) agree that the Applicants have standing. They contend that the Applicants'

submissions, as well as other comments filed in this proceeding, sufficiently demonstrate how the Applicants are directly affected.[35] API also notes the HMTA's preemption provision expressly grants States their own right to seek a preemption determination by its explicit reference to a ''State'' in the language authorizing who is eligible to apply.

Section 5125(d) authorizes ''[a] person (including a *State,* political subdivision of a State, or Indian tribe) directly affected by a requirement of a State . . .'' to apply for a determination of preemption. 49 U.S.C. 5125(d) (emphasis added). Under the ''directly affected test,'' it must be determined whether the applicant will benefit by having the issues in its petition resolved. *See* Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest, 58 FR 11176, 11181 (Feb. 23, 1993). The agency has a long-standing practice of liberally construing this threshold requirement. Generally, the agency interprets the requirement broadly to advance the notion that important preemption issues (such as national uniformity of hazardous materials transportation regulation) are raised under the HMTA, and all parties engaged in hazmat transportation will be served by the agency addressing preemption issues. *See* PD–32(R), Maine Department of Environmental Protection Requirements on Transportation of Cathode Ray Tubes, 74 FR 46644, 46648 (Sept. 10, 2009), quoting from PD–2(R) at 11181.

PHMSA has considered petitions from applicants who are affected by non-Federal requirements in a variety of ways. We have said, for example, that if a ''requirement applies to the applicant,'' the applicant need not show that it ''is 'adversely affected,' 'aggrieved,' or has suffered 'injury' or 'actual harm.' '' PD–12(R), New York Department of Environmental Conservation; Requirements on the Transfer and Storage of Hazardous Wastes Incidental to Transportation, 60 FR 62527, 62532 (Dec. 6, 1995), decision on reconsideration, 62 FR 15970 (April 3, 1997). We have also held that a group of hazardous waste shippers could seek a determination with respect to a State law mandating that hazardous waste generators create a certain type of manifest. PD–2(R), 58 FR at 11182. And while enforcement issues, and how the non-Federal requirement is actually applied, are relevant to our preemption analysis under the obstacle test, these issues do not factor into whether an applicant is within the scope of those persons entitled to use the statute's administrative procedure for requesting a preemption determination. *Id.*

The plain language of the statute presupposes a State as a potential applicant. 49 U.S.C. 5125(d). Since a State will rarely if ever actually be subject to another State's law, the inclusion of States as applicants confirms that Congress used ''directly affected'' broadly. In this case, the only issue is whether the Applicants have made a sufficient showing that they are ''directly affected'' by the Washington State law. The Applicants have indicated they are land grant States, and as such, are landowners for several oil and gas leases throughout the Bakken region. According to the Applicants, North Dakota and Montana each receives direct royalties from oil and gas extractions occurring on State-owned land. In addition, the Applicants assert that both States will confront real and ''decidedly'' non-speculative safety, environmental, and economic effects due to the Washington State requirements.

Based on information in the administrative record for this proceeding, it has been established that a majority of all the crude oil that leaves the Applicants' borders is destined for refineries in Washington State. And, since the law purports to regulate the volatility of crude oil transported into Washington State for loading and unloading, it likely applies to crude oil shipments originating from the Applicants' holdings in the Bakken region. As such, the Applicants' quasi-sovereign interests over their natural resources are tangible interests that are directly affected by the State of Washington's law. Contrary to Washington's arguments, these effects are not too indirect or speculative under PHMSA's broad interpretation of ''directly affected.'' PHMSA rejects Washington's contention that the Applicants are not directly affected because the vapor pressure limit has not yet gone into effect. This argument would deny standing to any applicant at this time, and would require the Applicants to file a new application at some point in the future; we do not believe that the Federal hazardous materials transportation law requires PHMSA to delay making a determination.

Moreover, regarding the ANT requirement, we do not accept the AG of Washington's bifurcated interpretation of the standing requirement, which would require us to make a separate determination of the Applicants' eligibility to challenge this section of the Washington State law. Here, the ANT requirement is an integral part of the overall statutory scheme providing for the State's new requirements addressing alleged safety concerns related to the transportation of crude oil by rail within the State. As such, the Applicants are directly affected by the entire legislative scheme, including the ANT requirement, and thus, have demonstrated substantial interests in the outcome of this proceeding to justify access to the administrative process.

In light of the above, the Applicants have provided sufficient information and an adequate factual basis to establish they are directly affected by Washington State's vapor pressure and ANT requirements and, accordingly, are entitled to submit an application to PHMSA.

B. Vapor Pressure

PHMSA finds that Washington State's vapor pressure limit is preempted. The requirement concerns both the ''classification'' and ''handling'' of hazardous materials and is not ''substantively the same'' as the Federal regulations, and is therefore preempted by 49 U.S.C. 5125(b)(1)(A). The requirement, moreover, is an obstacle to accomplishing and carrying out the HMTA and the HMR, and is therefore preempted by 49 U.S.C. 5125(a)(2).

Covered Subject Preemption—Classification

The Applicants contend that Washington State's vapor pressure requirement designates a new class of crude oil based on its vapor pressure and that the State's requirement is not substantively the same as the HMR requirements for crude oil. PHMSA agrees.

Federal hazardous material transportation law preempts a non-Federal requirement on the ''designation, description, and classification'' of hazardous material that is not ''substantively the same'' as the Federal rules. 49 U.S.C. 5125(b)(1)(A).

The current HMR requirements for the classification of unrefined petroleum

[35] AFPM notes in its rebuttal comments that it is a leading trade association representing the refinery industry and has associational standing consistent with long-standing agency precedent. Therefore, AFPM writes that in the event PHMSA has concerns with the Applicants' standing, AFPM has requested that the agency treat its comments in the proceeding as a separate application for a preemption determination on the Washington State law. See Docket No.: PHMSA–2019–0149; Document No.: 4395; at *https://www.regulations.gov/document?D=PHMSA-2019-0149-4395.* PHMSA agrees. AFPM represents refineries that are regulated by Washington's law. Even if the Applicants were not directly affected, AFPM would be, and PHMSA could make a determination on that basis.

based products include proper classification, determination of an appropriate packing group, and selection of a proper shipping name and description of the material. The HMR contain detailed rules that guide an offeror through each of these steps in the classification process. *See generally,* 49 CFR 172.101 (The Hazardous Materials Table), 173.2–173.41; 173.120, 173.121, 173.150, 173.242, 173. 243, and part 174 (Railroads). However, there is not a Federal vapor pressure standard for the classification of unrefined petroleum-based products, such as crude oil. The Washington State law has set a State-wide vapor pressure standard of 9 psi for unrefined petroleum-based products, such as crude oil.

Washington State's attempt to set a vapor pressure limit for crude oil constitutes a scheme for classifying hazardous materials that is not substantively the same as the HMR. Indeed, as noted further below, the Washington law is also squarely at odds with the agency's recent declaration that regulation of vapor pressure is neither necessary nor appropriate. The reasoning for this conclusion is more fully elaborated below. The Washington AG and other commenters contend that Washington's vapor pressure limit does not concern ''classification'' because it does not change the Federal classifications of crude oil. But the question under 49 U.S.C. 5125(b)(1)(A) is not whether a State law changes the Federal classifications of hazardous materials, but whether a State law imposes additional, different classifications. Washington's vapor pressure limit does just that, by creating a new class of crude oil that is subject to special requirements. The vapor pressure limit is therefore preempted under 49 U.S.C. 5125(b)(1)(A).

Covered Subject Preemption—Handling

The Applicants also contend that by prohibiting facilities from loading or unloading crude oil into or from a rail tank car unless the oil has a vapor pressure of less than 9 psi, Washington has imposed a handling requirement that is not substantively the same as the HMR handling requirements for crude oil, and therefore is preempted. PHMSA agrees.

Loading and unloading fall within the scope of ''handling,'' which is a covered subject for purposes of the HMTA preemption analysis. 49 U.S.C. 5125(b)(1)(B). Under the ''substantively the same'' test, a non-Federal requirement concerning a covered subject (*i.e.,* handling), is preempted when it is not substantively the same as a requirement in the Federal hazmat law or regulation. 49 U.S.C. 5125(b)(1).

The Department has extensive regulations governing the handling of Class 3 flammable liquids, including loading and unloading, during transportation. *See generally,* 49 CFR 173.2–173.41, and part 174 (Railroads). However, there is no specific Federal prohibition on the handling of crude oil with a vapor pressure greater than 9 psi. Washington State's crude oil by rail vapor pressure law imposes a vapor pressure requirement on the loading and unloading of crude oil where the Federal law does not.

The AG of Washington asserts that the State's vapor pressure requirement is not a handling regulation because it only regulates unloading functions at Washington State facilities after the crude oil has been delivered, transportation has ended, and the carrier has departed. He argues that because such post-delivery unloading is generally not regulated by the HMTA or HMR, the Washington law is not subject to preemption. As explained further below, PHMSA disagrees, as the AG of Washington does not accurately describe the Washington law, and ignores the law's significant upstream effects.

PHMSA, in prior preemption determinations, has confirmed that Federal hazardous material transportation law and the HMR apply to hazardous materials that are in transportation in commerce, including loading, unloading and storage that is incidental to that transportation. *See* PD–9(R), California and Los Angeles County Requirements Applicable to the Onsite Handling and Transportation of Hazardous Materials, 60 FR 8774 (February 15, 1995), Decision on Petitions for Reconsideration, 80 FR 70874 (November 16, 2015) (a time-restriction for unloading tank cars was preempted because unloading activities are ''handling,'' a covered subject); *see also* PD–12(R), New York Department of Environmental Conservation; Requirements on the Transfer and Storage of Hazardous Wastes Incidental to Transportation, 60 FR 62527 (December 6, 1995), Decision on Petition for Reconsideration, 62 FR 15970 (April 3, 1997) (secondary containment requirement for the transfer or storage of hazardous wastes at transfer facilities preempted because it created confusion as to the requirements in the HMR and increased the likelihood of non-compliance with the HMR). Furthermore, the agency has determined that non-Federal requirements that purport to regulate ''facilities'' are subject to preemption when those requirements affect transportation-related activities such as loading, unloading, and storage of hazmat. *Id.*

Since those decisions, PHMSA, through rulemaking, has clarified the applicability of the HMR to specific functions and activities, including hazardous materials loading and unloading operations. PHMSA, in a rulemaking, defined ''pre-transportation function'' to mean a function performed by any person that is required to ensure the safe transportation of a hazardous material in commerce. *See* ''Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage,'' HM–223, 68 FR 61906 (October 30, 2003); Response to Appeals, 70 FR 20018 (April 15, 2005).

Thus, loading functions fall within the scope of Federal regulations when performed by any person, *e.g.,* shipper or carrier, transporting a hazardous material. *Id.* In addition, because carrier possession of a hazardous material is a key aspect of the definition of ''transportation'' under the HMR, loading functions that are performed by carrier personnel or by shipper personnel in the presence of the carrier are still considered ''loading incidental to movement'' and consequentially, are transportation functions. *Id.*

Regarding unloading, if carrier personnel are present during the unloading of packaged hazardous materials from a transport vehicle or the unloading of a bulk package, such as a cargo tank or a rail tank car, into a storage tank or manufacturing process, then the operation is considered ''unloading incidental to movement'' of the hazardous material, and accordingly, is subject to regulation under the HMR. *Id.*

The State of Washington relies on the ''carrier possession'' distinction for determining the applicability of the HMR in defense of its vapor pressure law. It argues that ''as a practical matter'' the law only affects unloading activities at Washington facilities, that the ''practice'' at Washington facilities is to unload oil only after carrier personnel have departed, and that the law therefore only regulates activities not subject to the HMR. PHMSA disagrees, for two reasons. First, regardless of what Washington characterizes as standard ''practice,'' the Washington law on its face does not apply only to unloading after a carrier departs. The law also applies to loading within the State, and to unloading in the presence of carrier personnel; as noted above, these activities are unquestionably covered by the HMTA and HMR.

Second, even though the law is written to only regulate loading and unloading at facilities in Washington, its practical effect is to regulate pre-transportation activities outside of Washington, as well as transportation itself. The administrative record and the facts contained therein as presented by numerous commenters, belies Washington State's claim that the scope of the vapor pressure requirement is either narrow or local. For example, the Washington law does not specify how a facility is to determine whether the oil it is loading or unloading has a vapor pressure of less than 9 psi. As such, it is likely that the vapor pressure of crude oil received by the facilities will have to be provided by the shipper. This essentially means that the crude oil would have to be sampled, tested, and treated at the source of production before it is loaded onto rail cars, even though there is no Federal requirement for either measuring vapor pressure or pre-treatment. Moreover, there is no Federal requirement for shippers of crude oil to communicate the material's vapor pressure to carriers or consignees when it is offered for transportation. Any conditioning of Bakken crude oil to a vapor pressure of less than 9 psi is not a post-production process since the oil must be pretreated or conditioned at the point of production and before loading, which clearly is a pre-transportation function. Of greater significance is the fact that the oil cannot be conditioned at Washington State facilities before it is unloaded from the railcars.

In light of these facts, it is evident that upstream impacts are inevitable at the point of *origin* in the transportation network—and not downstream at the point of destination as the State of Washington contends. The reach of the State's legislative activity inevitably traces all the way back to the production activities to North Dakota and Montana. As such, we must find that the law imposes a requirement on shippers that was purposefully omitted from the current text of the HMR. Washington's law affects the handling and transportation of crude oil because the oil producers cannot load crude-by-rail destined for Washington State refineries unless it has a vapor pressure of not greater than 9 psi, and that requirement can only be satisfied at the point of production before the material is placed into the transportation network. It is also noteworthy that there currently is no Federal requirement for shippers of crude oil to communicate a Class 3 material's vapor pressure to carriers or consignees downstream when it is offered for transportation.

Simply stated, before Washington State enacted this law, there were no special restrictions on the transportation of crude oil with a vapor pressure greater than 9 psi. However, after the law, handling, including loading and unloading, of crude-by-rail is directly affected, and potentially banned altogether unless it meets Washington State's vapor pressure requirement. Therefore, Washington State's vapor pressure limit is a transportation handling requirement that is not substantively the same as the Federal requirements covering the same subject. Moreover, in light of the agency's withdrawal of the ANPRM, the Department has taken specific action to not require vapor pressure limits. Accordingly, the Washington law cannot stand and is therefore preempted under 49 U.S.C. 5125(b)(1)(B).

Obstacle Preemption

The Applicants contend that Washington's vapor pressure requirement is an obstacle to accomplishing and carrying out the HMTA and the HMR, and is therefore preempted under 49 U.S.C. 5125(a)(2). PHMSA agrees.

When Congress enacted the HMTA, it made several findings that emphasized the importance of uniform regulations governing the transportation of hazardous materials. For example, Congress noted that many States and localities had enacted laws and regulations which varied from Federal law and regulations pertaining to the transportation of hazardous materials, which created the potential for transferring unreasonable hazards to other jurisdictions and created confusion for shippers and carriers attempting to comply with multiple and conflicting requirements. Due to the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, Congress determined that consistency in laws and regulations governing the transportation of hazmat was necessary and desirable, and that PHMSA's efforts to achieve greater uniformity are necessary to promote the public health, welfare, and safety at all levels. Thus, the Congress found it desirable that only Federal standards regulate the transportation of hazardous materials in intrastate, interstate, and foreign commerce. *See Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1580 (10th Cir. 1991).

In light of these Congressional findings, it is widely understood that a primary purpose of the HMTA is regulatory uniformity that will be achieved through the HMTA's preemption provisions. *Id.* Regulatory uniformity is frustrated when State and local governments adopt requirements like those at issue in this proceeding.

Several principles of regulatory uniformity have been developed through agency interpretations and case law. First, State and local requirements that impede hazardous materials transportation that is being conducted in accordance with the Federal requirements constitute inconsistent restraints on such transportation. Second, transportation carried out within the Federal framework of the HMTA and HMR is presumptively safe and additional State or local requirements concerning matters covered by Federal law or regulation are neither necessary nor appropriate. Finally, where the Department has examined an area otherwise within its authority to adopt regulations and has declined to regulate, State and local requirements in that area may be preempted where they have adverse impacts on the Federal regulatory scheme and the transportation that occurs thereunder. *See generally,* PD–6(R), Michigan Marking Requirements for Vehicles Transporting Hazardous and Liquid Industrial Wastes, 59 FR 6186 (Feb. 9, 1994); Inconsistency Ruling (IR)–8, State of Michigan Rules and Regulations Affecting Radioactive Materials Transportation, 49 FR 46637 (Nov. 27, 1984), decision on appeal, 52 FR 13000 (April 20, 1987); IR–15(A), Vermont Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste, 49 FR 46660 (Nov. 27, 1984), decision on appeal 52 FR 13062, 13063 (April 20, 1987); quoted and followed, IR–19; IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24407 (June 30, 1987), decision on appeal, 53 FR 11600 (April 7, 1988), affirmed in IR–19(A) and *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada,* 909 F.2d 352 (9th Cir. 1990), reversing No. CV–N–86–444–BRT (D. Nev. 1988).

In light of its jurisdictional responsibilities and consistent with court precedents, the Department has taken a system-wide approach to achieving safety of the Nation's transportation systems that includes regulatory and non-regulatory actions to ensure the safe and secure transportation of crude oil by rail. As previously discussed, these actions resulted in the addition of new sampling and testing requirements to the HMR; an assessment of the merits of setting a Federal vapor pressure limit; and the commissioning of the Sandia Study. The volatility and vapor pressure

of crude oil have been important characteristics studied by the agency throughout this entire process.

PHMSA, after closely examining the results and conclusions of the Sandia Study (as discussed earlier in Section VI.A), and in consideration of the public comments to the ANPRM from industry, stakeholders, and other interested parties, withdrew the ANPRM. PHMSA determined that issuance of any regulation setting a vapor pressure limit for unrefined petroleum-based products was not justified because such a regulation would not lessen risks associated with the transport of crude oil by rail. The agency's withdrawal of the ANPRM is the most definitive statement to the regulated community and the public that there is no need for a Federal regulation that sets a vapor pressure limit for unrefined petroleum-based products within the HMR.[36]

In summary, the Department and PHMSA have pursued a comprehensive approach to address volatility of crude-by-rail, and have determined that existing Federal requirements are adequate to ensure the safe transportation of crude oil, particularly in light of the compelling conclusions of recent research activities discussed above. Therefore, State and local provisions that fundamentally alter the requirements for the same hazardous material are clearly obstacles to the accomplishment and execution of the objectives of the HMTA and HMR.

Having considered all of the implications of Washington State's unilateral regulatory action setting a vapor pressure limit for crude oil, the agency must conclude that the State's action epitomizes the type of patchwork State regulation that Congress sought to avoid when it enacted the HMTA and established a framework of uniform national regulations for regulating the transportation of hazardous materials. The Washington State vapor pressure requirement, if allowed to persist, would set an alarming precedent. Other State and local jurisdictions would be encouraged to enact their own vapor pressure limits for crude oil. The resultant multiple and conflicting requirements will undermine the uniform Federal regulatory scheme. Moreover, a multitude of differing regulations in this area would surely create uncertainty and confusion for offerors. And the likelihood of copycat regulation of crude oil vapor pressure is not merely speculative as evidenced by the administrative record for this proceeding. PHMSA is aware of one State legislature that has introduced a similar bill regulating vapor pressure for oil or gas, and at least six States that have advocated for a vapor pressure limit.[37]

Furthermore, a patchwork of varying and conflicting State and local regulations would likely increase risk by exporting potentially unreasonable hazards to other jurisdictions as offerors employ various avenues of compliance either through rerouting shipments; seeking alternate markets or modes of transportation; or avoidance of a jurisdiction altogether. This last option is particularly troubling as it resembles a *de facto* ban on transportation.

Proponents of the law insist Washington State has a legitimate public interest to protect its citizens from oil train fires and explosions, but in the context of the transportation of crude oil by rail, a State cannot use safety as a pretext for inhibiting market growth or instituting a *de facto* ban on crude oil by rail within its borders.

Notwithstanding the State of Washington's interest in the welfare and safety of its citizens, any State laws supporting those interests that implicate the transportation of hazardous materials, must not conflict with the objectives of the HMTA. Here, we find that the vapor pressure requirement is an obstacle to carrying out the HMTA and HMR—it not only hinders the movement of hazardous materials but also creates unnecessary delays in direct conflict with HMTA. Accordingly, the law is preempted.

C. ANT Requirement

One remaining question before the agency is whether Washington State's ANT requirement regulates the same subject covered by the Federal requirements for the requisite shipping paper's material description and emergency response information, and if so, whether the State's requirement is substantively the same as the HMR requirements for crude oil. Alternatively, we must consider whether Washington's ANT requirement is inconsistent with the HMR rule governing HHFT information sharing notification for emergency response planning, or is otherwise an obstacle to accomplishing and carrying out the HMTA.

Federal hazardous material transportation law preempts a non-Federal requirement for the ''preparation, execution, and use of shipping documents'' and ''requirements related to the number, content, and placement'' of those documents, that are not ''substantively the same'' as the Federal rules. 49 U.S.C. 5125(b)(1)(C).

The HMTA and HMR prescribe the information and documentation requirements for the safe transportation of hazardous materials. *See generally,* 49 CFR part 172, subparts C and G; part 174 (railroads). This includes the preparation, execution, and use of shipping documents. Under the HMR, offerors of a hazardous material for transportation are required to prepare a shipping paper to accompany the material while it is in transportation with information describing the material and emergency response information. In general, the Federal rules do not require additional information, documentation, or advance notification for the transportation of hazardous materials. PHMSA recently adopted new HHFT information sharing requirements in order to ensure that safety and security planning is occurring for crude-by-rail shipments. 49 CFR 173.41. The information sharing requirements include a weekly estimate of the number of trains expected to operate through the local jurisdiction, a description of the hazardous material and all applicable emergency response information (consistent with the HMR requirements), and a railroad point of contact. Updates are only required when volume changes more than twenty-five percent. *Id.*

We note that Washington State amended the ANT requirement to add new data elements, ''type'' and ''vapor pressure'' to the ANT database. Before this amendment, the data elements that were being reported generally consisted of the same data that is required under the HHFT notification requirements. For example, route, product description, and quantity. It is noteworthy, that this information is either necessary or optional information under the HMR, or otherwise ascertained from the shipping paper that is required to accompany a shipment of crude oil—except vapor pressure. Similarly, with the addition of these new data elements and the different reporting threshold, the ANT requirement is different from the HHFT notification requirements, albeit not to the extent that commenters have described it.

[36] *See Supra* note 21.

[37] See House Bill 4105, 80th Oregon Legislative Assembly—2020 Regular Session (February 3, 2020), *https://olis.leg.state.or.us/liz/2020R1/Downloads/MeasureDocument/HB4105/Introduced* (last visited February 12, 2020). In this proceeding, the Attorneys General of New York, California, Maryland, and New Jersey submitted comments against preemption. In addition, the Attorneys General of California, Illinois, Maine, and Maryland filed joint comments with the Attorneys General of New York and Washington, supporting a national vapor pressure standard in the ANPRM proceeding.

The State of Washington asserts that the ANT requirement is a local emergency preparedness measure that applies only to in-state facilities that unload crude-by-rail shipments, with no attendant reporting duties for shippers or carriers. Yet, it is unclear from where, and whom, the facilities will get the crude oil's ''type'' and ''vapor pressure'' data in order to comply with the amended ANT requirement. A reasonable inference could be made that this information must be provided by the shipper or carrier. Notwithstanding, we cannot ignore the fact that none of the refineries that submitted comments in this proceeding provided any meaningful information regarding how they have been complying with the current iteration of the requirement, or how they intend to comply with the amended law. Without more information, it is unclear whether there is a sufficient nexus to the ANT requirement and the Federal requirements that fully implicates HMTA preemption. Therefore, on balance, PHMSA finds that the administrative record regarding the ANT requirement is insufficient to make a determination whether the requirement is preempted under the HMTA.

VII. Ruling

PHMSA finds that Washington State's vapor pressure requirement setting a vapor pressure limit of 9 psi for crude oil, has created a scheme for classifying a hazardous material that is not substantively the same as the Federal hazardous materials regulations. PHMSA also finds that the vapor pressure requirement is a handling requirement that is not substantively the same as existing Federal requirements. Furthermore, PHMSA has determined that the vapor pressure requirement is an obstacle to accomplishing and carrying out the HMTA and HMR, and is, therefore preempted.

In addition, PHMSA finds that the administrative record regarding the ANT requirement is insufficient to make a determination whether the requirement is preempted under the HMTA.

VIII. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this determination may file a petition for reconsideration within 20 days of publication of this determination in the **Federal Register**. If a petition for reconsideration is filed within 20 days of publication in the **Federal Register**, the decision by PHMSA's Chief Counsel on the petition for reconsideration becomes PHMSA's final agency action with respect to the person requesting reconsideration. *See* 49 CFR 107.211(d).

If a person does not request reconsideration in a timely fashion, then this determination is PHMSA's final agency action as to that person, as of the date of publication in the **Federal Register**.

Any person who wishes to seek judicial review of a preemption determination must do so by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit, or in the United States Court of Appeals for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final with respect to the filing party. *See* 49 U.S.C. 5127(a).

The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5127(a).

Issued in Washington, DC, on May 11, 2020.

Paul J. Roberti,

Chief Counsel.

[FR Doc. 2020–10381 Filed 5–14–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Disclosure of Returns and Return Information by Other Agencies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the guidance on the disclosure of returns and return information by other Agencies.

DATES: Written comments should be received on or before July 14, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Ronald J. Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Returns and Return Information by Other Agencies.

OMB Number: 1545–1757.

Regulation Project Number: TD 9036.

Abstract: In general, under the regulations, the IRS is permitted to authorize agencies with access to returns and return information under section 6103 of the Internal Revenue Code to re-disclose returns and return information based on a written request and the Commissioner's approval, to any authorized recipient set forth in Code section 6103, subject to the same conditions and restrictions, and for the same purposes, as if the recipient had received the information from the IRS directly.

Current Actions: There is no change to the burden previously approved by OMB. This request is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal Government, State, Local, or Tribal Gov't.

Estimated Number of Respondents: 11.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 11.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 11, 2020.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2020–10427 Filed 5–14–20; 8:45 am]

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FEDERAL REGISTER

Vol. 85 Friday,

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Southern Sierra Nevada Distinct Population Segment of Fisher; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2018–0105; FF09E21000 FXES11110900000 201]

RIN 1018–BD85

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Southern Sierra Nevada Distinct Population Segment of Fisher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act (Act), as amended, for the Southern Sierra Nevada Distinct Population Segment (DPS) of fisher (*Pekania pennanti*). This DPS occurs in California. The effect of this regulation will be to add this DPS to the List of Endangered and Threatened Wildlife.

DATES: This rule is effective June 15, 2020.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* in Docket No. FWS–R8–ES–2018–0105 and at *https://www.fws.gov/Yreka*. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov*. Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, CA 96097; telephone 530–842–5763.

FOR FURTHER INFORMATION CONTACT: Jenny Ericson, Field Supervisor, Yreka Fish and Wildlife Office, telephone: 530–842–5763. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species may be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. This rule will add the Southern Sierra Nevada DPS of fisher (*Pekania pennanti*) (SSN DPS) as an endangered species to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h).

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We identified multiple threats under various factors that are acting on, and will continue to act on, the SSN DPS, the full list of which can be found in our final Species Report 2016 (Service 2016, entire).

Of particular significance regarding implications for the DPS's status were loss and fragmentation of habitat resulting from high-severity wildfire and wildfire suppression (*i.e.,* loss of snags and other large habitat structures on which the species relies), climate change, and tree mortality from drought, disease, and insect infestations. Also of significance were threats related to potential direct impacts to individual fishers (*e.g.,* increased mortality, decreased reproductive rates, increased stress/hormone levels, alterations in behavioral patterns), including wildfire, increased temperatures resulting from climate change, disease and predation, exposure to toxicants, collisions with vehicles, and potential effects associated with small population size. These factors are resulting in a cumulative effect to such a degree that the best available information indicates the Southern Sierra Nevada DPS of fisher meets the definition of an endangered species.

Peer review and public comment. 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 comments from independent specialists to ensure that our consideration of the status of the species is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on both the draft Species Report (Service 2014) as well as the 2014 Proposed Rule (79 FR 60419, October 7, 2014). We also considered all comments and information received during three public comment periods (and one extension) for the 2014 Proposed Rule (79 FR 60419, October 7, 2014; 79 FR 76950, December 23, 2014; 80 FR 19953, April 24, 2015; 84 FR 644, January 31, 2019) and two comment periods for the 2019 Revised Proposed Rule (84 FR 60278, November 7, 2019; 84 FR 69712, December 19, 2019). All comments received during the peer review process and the public comment periods have either been incorporated in the final Species Report (Service 2016, entire), in this rule, or addressed in the Summary of Comments and Recommendations section of the preamble.

Acronyms and Abbreviations Used

We use several acronyms and abbreviations throughout the preamble of this final rule. To assist the reader, we list them here:

BLM = Bureau of Land Management
CAL FIRE = California Department of Forestry and Fire Protection
CBI = California Biology Institute
CCAA = Candidate Conservation Agreements with Assurances
CDFW = California Department of Fish and Wildlife
CESA = California Endangered Species Act
CEQA = California Environmental Quality Act
CFGC = California Fish and Game Commission
C.I. = confidence interval
DOI = Department of the Interior
DPS = distinct population segment
EKSA = Eastern Klamath Study Area
EPA = Environmental Protection Agency
ESU = evolutionarily significant unit
FPR = forest practice rules
GDRC = Green Diamond Resource Company
GNN = gradient nearest neighbor
HCP = Habitat Conservation Plan
MAUCRSA = Medicinal and Adult-Use Cannabis Regulation and Safety Act
MOU = Memorandum of Understanding
NCSO = Northern California/Southern Oregon
NEPA = National Environmental Policy Act
NFMA = National Forest Management Act
NPS = National Park Service
NSN = Northern Sierra Nevada
NWFP = Northwest Forest Plan
ODF = Oregon Department of Forestry
OGSI = old growth structure index
ONP = Olympic National Park
PECE = Policy for the Evaluation of Conservation Efforts
RCP = representative concentration pathways
RMP = resource management plan

SHA = Safe Harbor Agreements
SNAMP = Sierra Nevada Adaptive Management Project
SOC = Southern Oregon Cascades
SPI = Sierra Pacific Industries
SSN = Southern Sierra Nevada
USFS = U.S. Forest Service
USDA = U.S. Department of Agriculture

Previous Federal Actions

We first found the West Coast DPS of fisher (previously delineated as a contiguous area encompassing parts of the three States of Washington, Oregon, and California) to be warranted for listing in 2004 and each subsequent year in the annual Candidate Notice of Review. On October 7, 2014, we proposed to list the West Coast DPS of fisher as a threatened species under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) (79 FR 60419; Docket No. FWS–R8–ES–2014–0041) (hereafter referred to as 2014 Proposed Rule). On April 18, 2016, we withdrew the proposed rule to list the West Coast DPS of fisher (81 FR 22710), concluding that the potential threats acting upon the DPS were not of sufficient imminence, intensity, or magnitude to indicate that they were singly or cumulatively resulting in significant impacts at either the population or rangewide scales such that the DPS met the definition of an endangered or threatened species.

On October 19, 2016, the Center for Biological Diversity, Environmental Protection Information Center, Klamath-Siskiyou Wildlands Center, and Sierra Forest Legacy filed a complaint for declaratory and injunctive relief, alleging that our determination on the West Coast DPS of fisher violated the Act. By Order Re: Summary Judgment issued on September 21, 2018, the District Court for the Northern District of California vacated the listing withdrawal and remanded the Service's final determination for reconsideration. The Court's amended order, dated November 20, 2018, directed the Service to prepare a new determination by September 21, 2019.

On January 31, 2019, we reopened the comment period on the October 7, 2014, proposed rule to list the West Coast DPS of fisher as a threatened species (84 FR 644).

On May 17, 2019, the District Court for the Northern District of California granted a request by the Service for a 35-day extension to comply with the November 20, 2018, order as a result of delays due to the Federal Government's lapse in appropriations that prohibited the Service from working on this determination. The Court's amended order directed the Service to submit for publication a final listing determination or notice of a revised proposed rule by October 26, 2019, and in the event of publishing a revised proposed rule, submit for publication a final listing determination by April 25, 2020.

On November 7, 2019, we published a revised proposed rule to list the West Coast DPS of fisher (84 FR 60278) (hereafter referred to as 2019 Revised Proposed Rule). In the 2019 Revised Proposed Rule, we evaluated new information available since 2014 and reconsidered the best available information already in our files (including all peer, partner, and public comments received during previous comment periods as well as the two recent comment periods on the 2019 Revised Proposed Rule). In the 2019 Revised Proposed Rule, we concluded that the West Coast DPS of fisher continued to meet the definition of a threatened species based on cumulative effects associated with multiple threats across the DPS's range.

Additional information on Federal actions concerning the West Coast DPS of fisher prior to October 7, 2014, is outlined in the 2014 Proposed Rule (October 7, 2014, 79 FR 60419).

Summary of Changes From the 2019 Revised Proposed Rule

Our 2019 Revised Proposed Rule discussed how potential changes from the proposed rule to the final rule regarding status would constitute a logical outgrowth, stating that, ''Because we will consider all comments and information received during the comment period, our final determination may differ from the proposed rule. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered or a threatened species. 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 (84 FR at 60278–79, November 7, 2019).'' Although this discussion centered on a final decision regarding the status of the previously singular West Coast DPS, and the logical outgrowth leading to that decision from our Revised Proposed Rule, we have followed this approach in developing this final rule in its totality, to include our re-evaluation of the DPS and the resulting status determinations that followed from our revised DPS determinations.

In our 2019 Revised Proposed Rule we presented our delineation of the DPS for West Coast populations of fishers, which was revised from the 2014 Proposed Rule. This revised delineation identified the West Coast DPS as comprising the two extant historically native subpopulations, Northern California/Southern Oregon (NCSO) and Southern Sierra Nevada (SSN), as well as the Northern Sierra Nevada (NSN, also known as the Stirling subpopulation, as referenced in specific text regarding the Stirling Management Unit) and Southern Oregon Cascades (SOC) subpopulations that resulted from reintroductions within a portion of the historical range of the DPS. These four subpopulation groups occur geographically in essentially two groupings: NCSO (including NSN and SOC subpopulations) and the wholly separate SSN subpopulation.

In the 2014 Proposed Rule, we explained that the DPS we proposed to list included all the fisher subpopulations in the three western States (Washington, Oregon, California) known to be extant at that time. Thus, the DPS included the fisher subpopulations in NCSO (including SOC and NSN), SSN, and Olympic National Park (ONP) in Washington. Both the ONP and SOC subpopulations were established with fishers translocated from areas outside the three western States, *e.g.,* British Columbia, Alberta, and Minnesota; the NCSO and SSN subpopulations were existing subpopulations historically indigenous to this three-State area, and NSN was established with fishers translocated from the NCSO source subpopulation.

However, we also included a discussion of potential alternative DPS configurations in the 2014 Proposed Rule, and we requested public comment and peer review on the two alternative DPS configurations.

DPS Alternative 1 consisted of a single DPS encompassing the extant subpopulations with unique genetic characteristics in California and southern Oregon (*i.e.,* NCSO, NSN, and SSN). Alternative 1 focused on conservation of known fishers indigenous to this California and southern Oregon region, and it excluded all reintroduced subpopulations established with non-California/Oregon fishers (*i.e.,* SOC and ONP). In addition, Alternative 1 excluded areas to the north of NCSO where subpopulations of historically indigenous fishers were likely extirpated. It included both SSN

and NCSO (which includes NSN), which each have unique genetic characteristics; this inclusion would allow for management of both these native subpopulations as a single DPS. In addition, this would allow for recovery efforts throughout the historical range in California and southern Oregon.

DPS Alternative 2 consisted of two narrowly drawn DPSs around each of the extant subpopulations with unique genetic characteristics in California and southern Oregon (*i.e.,* NCSO with NSN, and SSN). This alternative also focused on conservation of known fishers indigenous to this California and southern Oregon region with unique genetic characteristics, and it excluded all reintroduced subpopulations (*i.e.,* SOC and ONP) established with non-California/Oregon fishers. This Alternative excluded the areas to the north of NCSO where fisher subpopulations were likely extirpated; it included both NCSO (which includes NSN) and SSN subpopulations, which each have unique genetic characteristics; and it allowed for management of the subpopulations as separate DPSs, recognizing the unique genetic characteristics within each. In addition, if the magnitude of threats was found to be different in the two DPSs, this would allow for different management for each DPS with regard to recovery.

We received multiple comments on our DPS approach and possible alternative DPS configurations in response to the 2014 Proposed Rule. These comments spanned a broad range of responses from support for the full three-State DPS to support for each of the possible Alternatives to support for other configurations. The basis for the commenters' positions was equally varied; these positions ranged from supporting differing genetics between subpopulations to supporting the need for different management considerations. After consideration of all of these comments, we moved forward with a modified Alternative 1 in the 2019 Revised Proposed Rule, with the exception that we included SOC in the DPS (as part of NCSO). In the 2019 Revised Proposed Rule, we did not specifically state that the DPS was based on focusing on conservation of the extant subpopulations with unique genetic characteristics, but we did explain that the DPS was centered on what we called the ''historically native'' subpopulations (*i.e.,* those subpopulations of known fishers indigenous to the California and southern Oregon region with unique genetic characteristics) and included SOC because of the recent interbreeding with indigenous NCSO fishers.

Our 2019 Revised Proposed Rule further sought comment regarding its revised DPS determination (84 FR at 60279, November 7, 2019). We received numerous comments regarding the revised DPS determination in response to the 2019 Revised Proposed Rule, both during the initial 30-day comment period and in the subsequent 15-day comment period. Similar to the comments received on the 2014 Proposed Rule, the comments received on the 2019 Revised Proposed Rule expressed support for a wide range of DPS approaches. Various commenters suggested reverting back to the three-State DPS (*i.e.,* include Washington State again), making all subpopulations (NCSO, SSN, NSN, and SOC) individual DPSs, having two separate DPSs as in Alternative 2, and not including SOC in any DPS configuration.

While the comments presented a broad range of positions regarding DPS approaches, there was also a relatively consistent theme regarding management considerations. Many comments pointed to a concept we presented in the 2014 Proposed Rule that outlined alternative DPSs based on recognizing the unique genetic characteristics within each subpopulation and allowing for separate management of these two population segments (NCSO [including NSN and SOC] and SSN).

In light of the numerous comments received during multiple comment periods over the last 5 years recommending we reexamine our DPS configuration, we have again reevaluated our DPS approach. We determined that the most appropriate path forward was to evaluate the two population segments ((1) NCSO [including NSN and SOC] and (2) SSN) as individual DPSs (similar to Alternative 2 in the 2014 Proposed Rule). For each population segment, if both the discreteness and significance criteria were met, we would then evaluate the status for that individual DPS. We determined our analysis would focus on the conservation of extant subpopulations historically indigenous to the California and southern Oregon region with unique genetic characteristics (as outlined in the 2014 Proposed Rule) while also allowing for separate management of the two DPSs if either or both were warranted for listing. The concept of the possible need for different management between the two DPSs was further strengthened, in part, by the recent limited introduction of non-California/Oregon fisher genes into the NCSO subpopulation via interbreeding between NCSO and SOC fishers. We have now determined that the singular West Coast DPS configuration should instead be two separate DPSs: The NCSO DPS and the SSN DPS.

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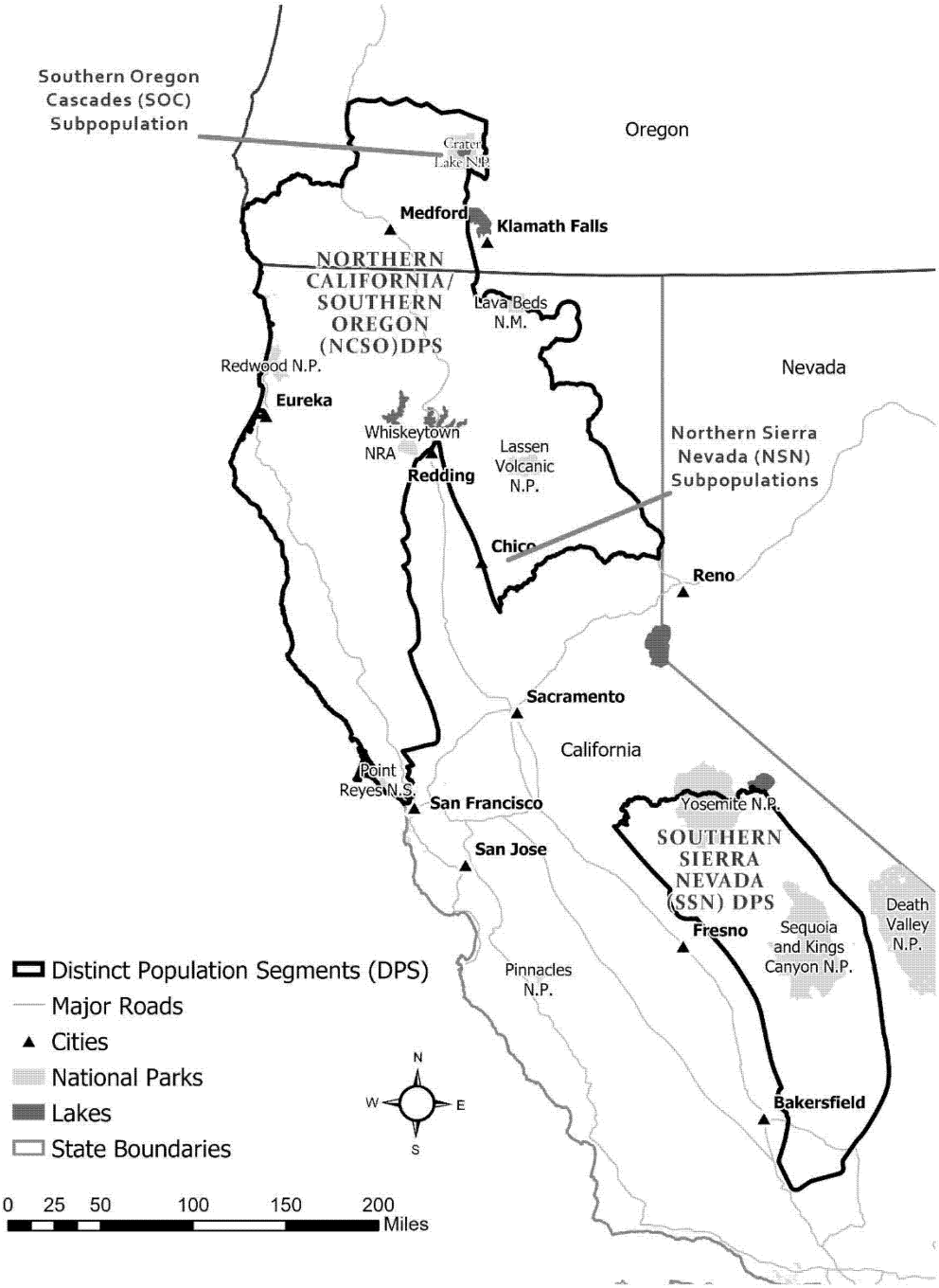

Figure 1. Distinct population segments (DPSs) and subpopulations of fisher in California and Oregon.

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The above discussion presents a logical outgrowth from our 2019 Revised Proposed Rule regarding our DPS determination for the following reasons. First, our 2014 Proposed Rule (79 FR 60419, October 7, 2014) recognized that for fisher, the Service's DPS analysis had started with the petitioned DPS, which included portions of California, Oregon, and Washington, but also pointed out that the Service had identified smaller areas within the larger DPS boundary that would also potentially constitute a valid DPS, and that may warrant listing under the Act (79 FR at 60438). The 2014 Proposed Rule further announced the Service's evaluation of a number of alternative DPSs that may potentially also be valid DPSs (covering a smaller entity or entities) and that the Service was considering in particular the appropriateness of two of these alternatives and seeking public and peer

review input on potential DPS alternatives (79 FR at 60438). One of these alternatives was Alternative 2, which consisted of two narrowly drawn DPSs around the extant subpopulations with unique genetic characteristics in California and southern Oregon; Alternative 2 is similar to the two DPS approaches we use here. Therefore, the public has seen this approach presented before, was aware that we were considering it and thus could anticipate that adoption of this approach was possible, and had several opportunities to provide comments on the approach.

Second, we outlined the uncertainty associated with our DPS approach in the 2014 Proposed Rule and alerted the public to this uncertainty. Specifically, our 2014 Proposed Rule stated that we sought peer review and public comment on the uncertainties associated with the specific topics outlined in the Information Requested section and in the Other DPS Alternatives section. Specific information from the peer reviewers and the public on the proposed DPS and the two alternatives informed our final listing decision (70 FR at 60441).

Third, our 2014 Proposed Rule explained to the public that the DPS approach in our final rule may differ from the proposed rule as a result of public comment. We stated that we may determine that the proposed DPS as set forth is the most appropriate for fisher conservation. Alternatively, through peer review and public comment, we could determine that one of the alternative DPSs set forth would be most appropriate for the conservation of fisher, and, therefore, any final listing determination may differ from this proposal (79 FR at 60438). As outlined above, we have explained the basis for this changed DPS and have articulated a rational connection between the facts found and our conclusion by which we have determined to separate the singular West Coast DPS configuration into two separate DPSs.

The Secretary has discretion when determining DPSs based upon the Congressional guidance that the authority to list DPS's be used '. . . sparingly' while encouraging the conservation of genetic diversity and in consideration of available scientific evidence of the discrete population segment's importance to the taxon to which it belongs (61 FR 4722, 4725, February 7, 1996). Our DPS approach of evaluating the two fisher population segments ((1) NCSO [including NSN and SOC] and (2) SSN) as separate DPSs encourages the conservation of genetic diversity by focusing on conserving extant native subpopulations with unique genetic characteristics.

Once we determined that the singular West Coast DPS should instead be two separate DPSs, we began individually evaluating the status of the NCSO DPS and the SSN DPS. In the 2019 Revised Proposed Rule (84 FR 60278, November 7, 2019), we proposed to list the then-singular West Coast DPS as a threatened species under the Act, and we also proposed a concurrent rule under section 4(d) of the Act for that DPS. While the magnitude of the threats discussed below have not changed substantially from our consideration of them in the 2019 Revised Proposed Rule, what has changed in this analysis is the consideration of their distribution across the ranges of the two separate DPSs, as opposed to applying an analysis for a singular West Coast DPS, and then how the impact of those threats affects each separate DPS where they occur. This final determination represents a change to that 2019 Revised Proposed Rule. We now add the SSN DPS as an endangered species to the List of Endangered and Threatened Wildlife, and we present our finding that the NCSO DPS does not warrant listing under the Act. As detailed below in the General Threat Information section and the specific threats discussions for each DPS, these final determinations are based on the best scientific and commercial data available, including new information received in response to the 2019 Revised Proposed Rule. Further, we have clearly articulated the rationales for our conclusions.

Distinct Population Segment Analysis

Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any DPS of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for listing under the Act (and, therefore, are referred to as listable entities), should we determine that they meet the definition of an endangered or threatened species.

Under the Service's DPS Policy (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the determination and classification of a possible DPS as threatened or endangered. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* is the population segment endangered or threatened).

A population segment of a vertebrate taxon may be considered discrete under the DPS policy if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used ''sparingly'' (see Senate Report 151, 96th Congress, 1st Session). In making this determination, we consider available scientific evidence of the DPS's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy, this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the DPS in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the DPS would result in a significant gap in the range of a taxon;

(3) Evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or

(4) Evidence that the DPS differs markedly from other populations of the species in its genetic characteristics.

To be considered significant, a population segment needs to satisfy only one of these criteria, or other classes of information that might bear on the biological and ecological importance of a discrete population

segment, as described in the DPS policy. Below, we summarize discreteness and significance for each of the DPSs.

Northern California/Southern Oregon DPS of Fisher (NCSO DPS)

Discreteness

The NCSO DPS is markedly separate from other North American fisher populations to the east by enormous distances, geographical barriers, unsuitable habitat, and urban development. Fishers in this DPS are separated from the Rocky Mountains and the rest of the fisher taxon in the central and eastern United States by natural physical barriers including the non-forested high desert areas of the Great Basin in Nevada and eastern Oregon. Other physical barriers that separate the NCSO DPS from Rocky Mountain and eastern United States fisher populations include large areas without forests, including urban and rural open-canopied areas, agricultural development, and other non-forested areas.

The NCSO DPS is also markedly separate from fisher populations to the north by approximately 560 miles (mi) (900 kilometers (km)) (to the current populations of fishers in Canada) and 270 mi (430 km) (to the reintroduced fisher populations in Washington). These distances are well beyond the various reported fisher dispersal distances (as described in more detail in Service 2016, pp. 13–14). An additional component contributing to marked separation between the NCSO DPS and fishers in Washington is the Columbia River and adjacent human developments (*e.g.,* roads and towns); these likely act as a physical impediment to crossing by fishers dispersing in either direction. While juvenile fishers dispersing from natal areas are capable of moving long distances and navigating various landscape features such as highways, rivers, and rural communities to establish their own home range (Service 2016, pp. 13–14), the magnitude of these impediments and the distance between the NCSO DPS and Washington State fishers would preclude this possibility. Therefore, it is extremely unlikely that any transient individuals from the NCSO DPS could disperse far enough to reach the Washington range of reintroduced fishers, and even if they attempted to do so, they would likely not be able to cross the Columbia River. Not only is the river especially wide and deep year-round, but in the Cascade Range, it is bordered on one side by an interstate highway, a two-lane State highway on the other side, as well as a railroad track on both sides. These impediments further restrict the ability of fishers to surpass this obstacle.

In addition, the NCSO DPS is also markedly separate from the SSN DPS to the southeast by approximately 130 mi (209 km) from the southern end of the NCSO DPS to the northern end of the SSN DPS. This distance, although less than that between the NCSO DPS and Washington fishers, is still several times beyond the known maximum dispersal distances for fishers (Zielinski et al. 2005, p. 1402). The intervening habitat between the NCSO DPS and SSN DPS is additionally characterized by habitat that is highly altered with reduced forest density and increased human development of the landscape further limiting potential fisher dispersal across this region (Zielinski et al. 2005, p. 1,403).

In summary, the NCSO DPS is geographically isolated from all other populations of the species. Therefore, the marked separation condition for discreteness is met by geographical barriers, urban development, unsuitable habitat, and distances that are beyond the known dispersal distance of fishers.

Significance

For the NCSO DPS, we found that a combination of several of the criteria listed above provide evidence of its biological and ecological importance to the taxon. First, we note that the NCSO DPS represents a large portion of the taxon's range along the Pacific coast, and its loss would leave a significant gap between the SSN DPS and all fisher populations to the north. While we recognize that the NCSO DPS is geographically separated from other fisher populations, and this separation likely precludes the NCSO DPS from ever acting as a connection for a contiguous range of fishers from the SSN DPS to Canada, we note that its loss would still result in an even greater break in the west coast range of fishers than what currently exists. Furthermore, the NCSO DPS supports thousands of individuals, while the SSN supports just a few hundred, and populations in Washington are still small. Therefore, a loss of the NCSO DPS would mean the majority of the fishers in the West Coast States would be lost.

Significance is also demonstrated by the NCSO DPS's marked difference from other populations of the species in their genetic characteristics. The NCSO DPS is primarily composed of fishers native to this region of the country and which are genetically distinct from fishers in the remainder of North America (for example, Canada, Rocky Mountains, and Great Lakes). In addition, fishers in the NCSO DPS are also genetically distinct from those found in the SSN DPS, as we describe in Service 2016 (pp. 134–135). We note the NCSO DPS does include the translocated SOC subpopulation, which was established with fishers not native to this region (*i.e.,* British Columbia and Minnesota) and which do not share all the same genetic characteristics of the native fishers. However, it is highly unlikely that the unique genetic characteristics that have evolved over time as native fishers in the NCSO DPS have adapted to the environmental conditions of this area will be lost as a result of this very limited introduction of genes from fishers not indigenous to this region. Although there is interbreeding between SOC and indigenous fishers, we base our conclusion on the fact that SOC fishers do not appear to have expanded their range far from their original reintroduction area since their translocation over 40 years ago (Barry 2018, p. 23). We therefore conclude that the loss of fishers in the NCSO DPS would result in a reduction of the species' overall genetic diversity.

In light of the above, we conclude that the NCSO DPS is significant to the fisher taxon.

Summary

Given that both the discreteness and the significance elements of the DPS policy are met for fisher in the Northern California/Southern Oregon portion of its range, we find that the NCSO DPS of fisher is a valid DPS. Therefore, the NCSO DPS of fisher is a species under the Act.

Southern Sierra Nevada DPS of Fisher (SSN DPS)

Discreteness

Similar to the NCSO DPS, the SSN DPS is markedly separate from other North American fisher populations to the east by enormous distances, geographical barriers, unsuitable habitat, and urban development. Fishers in this DPS are separated from the Rocky Mountains and the rest of the taxon in the central and eastern United States by natural physical barriers including the non-forested high desert areas of the Great Basin in Nevada and eastern Oregon. Other physical barriers that separate the SSN DPS from Rocky Mountain and eastern United States fisher populations include large areas of unsuitable habitat such as urban and rural open-canopied areas, agricultural development, and other non-forested areas.

As noted above, the SSN DPS is markedly separate from the NCSO DPS

by approximately 130 mi (209 km). The intervening habitat between the NCSO DPS and SSN DPS is highly altered with reduced forest density and increased human development of the landscape, further limiting potential fisher dispersal across this region (Zielinski et al. 2005, p. 1,403). In addition, the SSN DPS is also considerably farther away from the Washington State and Canada fisher populations than the NCSO DPS, clearly meeting the marked separation condition of discreteness.

In summary, the SSN DPS is geographically isolated from all other populations of the species. Therefore, the marked separation condition for discreteness is met by geographical barriers, urban development, unsuitable habitat, and distances that are beyond the known dispersal distance of fishers.

Significance

For the SSN DPS, we also found that a combination of the criteria listed above provides evidence of the biological and ecological importance to the fisher taxon. First, we note that the SSN DPS represents the southernmost periphery of the taxon's range. Loss of the SSN DPS would shift representation of the taxon at its southern boundary approximately 400 miles northward to the range of the NCSO DPS.

We also note that the SSN DPS differs markedly from other populations of the species in its genetic characteristics. The SSN DPS is wholly composed of fishers native to this region of the country, and these fishers are genetically distinct from fishers in the remainder of North America (for example, Canada, Rocky Mountains, and Great Lakes). In addition, fishers in the SSN DPS are also genetically distinct from those found in the NCSO DPS. There is high genetic divergence between the SSN DPS and NCSO DPS with the populations being separated for thousands of years (Tucker et al. 2014, p. 3). The SSN DPS has only a single mitochondrial DNA haplotype, which is genealogically unique from the rest of the fisher taxon, including the NCSO DPS (Knaus et al. 2011, pp. 7, 11; Tucker 2019, pers. comm.). In addition, the SSN DPS has a unique distribution of alleles in comparison to the NCSO DPS (Tucker et al. 2012, p. 6). We therefore conclude that the loss of fishers in the SSN DPS would result in a reduction of the species' overall genetic diversity.

In light of the above, we conclude that the SSN DPS is significant to the fisher taxon.

Summary

Given that both the discreteness and the significance elements of the DPS policy are met for fisher in the Southern Sierra Nevada portion of its range, we find that the SSN DPS of fisher is a valid DPS. Therefore, the SSN DPS of fisher is a species under the Act.

Background

General Species Information

Species Information and Distribution

The fisher is a medium-sized, light brown to dark blackish-brown mammal found only in North America, with the face, neck, and shoulders sometimes being slightly gray, and the chest and underside often having irregular white patches. The fisher is classified in the order Carnivora, family Mustelidae, which is a family that also includes weasels, mink, martens, and otters (Service 2016, p. 8). The occurrence of fishers at regional scales is consistently associated with low- to mid-elevation coniferous and mixed conifer and hardwood forests with characteristics of mid- and late-successional forests (*e.g.,* diverse successional stages, moderate to dense forest canopies, large-diameter trees, coarse downed wood, and singular features of large snags, tree cavities, or deformed trees). Throughout their range, fishers are obligate users of tree or snag cavities for denning, and they select denning and resting sites with a high proportion of characteristics associated with late-successional forests, such as snags, down wood, and vertical and horizontal diversity. These characteristics are maintained and recruited in the forest through ecological processes such as fire, insect-related tree mortality, disease, and decay (*e.g.,* Service 2016, pp. 64, 123–124).

Fishers on the west coast of the continent have historically occurred in British Columbia, Washington, Oregon, and California. Fishers indigenous to the west coast in the contiguous United States were historically well distributed in the habitats described above, from the State of Washington south through Oregon, and into northern California and the Sierra Nevada mountains. Subpopulations of these indigenous fishers still occur in northern California/southwestern Oregon and the Sierra Nevada; however, populations of indigenous fishers were extirpated from Washington (Lewis and Hayes 2004, p. 1) and northern Oregon (Aubry and Lewis 2003, pp. 81–82). Recent surveys in the northern Oregon Cascades yielded no fishers (Moriarty et al. 2016, entire), suggesting they remain absent in this area, whereas surveys in the southern Oregon Cascades suggest fishers in this locale may be shifting to the south (Barry 2018, pp. 22–23) compared to their distribution in the late 1990s (Service 2014 and 2016, entire, though see current condition section for NCSO). Fishers in the southern Oregon Cascades were translocated from British Columbia and Minnesota circa 1980. In addition, a translocation of fishers from northwestern California to the northern Sierra Nevada (*i.e.,* NSN) occurred in 2009.

Fishers now occurring and reproducing in Washington were established using fishers translocated from outside this three-State region. Fishers from British Columbia were reintroduced to the Olympic Peninsula from 2008 to 2010 (Happe et al. 2017, p. viii; Happe et al. 2020, p. 345) and to the Washington Cascade Range south of Mt. Rainier from 2015 to 2017 (Lewis et al. 2018, p. 5). Reproduction has been documented in both areas. Beginning in 2018, fishers from Alberta were released in the northern Washington Cascades in North Cascades National Park; all animal translocations are expected to be completed in 2020 (Hayes and Lewis 2006, p. 35; Lewis et al. 2019, pp. 19–20).

Fishers were once well distributed throughout their historical range in the habitats described above. In Oregon and California, outside of the existing NCSO DPS and SSN DPS (see Figure 1, above), fishers are considered likely extirpated, though occasional sightings, verifiable and unverifiable, are reported. Additionally, in California, recent survey efforts have not detected fishers south of the reintroduced NSN subpopulation or north of the SSN DPS.

Additional information on the species' biology and distribution is described in the final Species Report (Service 2016, pp. 9–12, 25–53).

General Threat Information

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following

factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, and then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future. In our determination, we correlate the threats acting on the species to the factors in section 4(a)(1) of the Act.

Potential threats currently acting upon both the NCSO DPS and SSN DPS, or likely to affect them in the future, are evaluated and addressed in the final Species Report (Service 2016, pp. 53–162). The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' response to those threats are likely (50 CFR 424.11(d)). For fisher, in determining the foreseeable future, the immediacy of each threat was assessed independently based upon the nature of the threat and time period that we can be reasonably certain the threat is acting on fisher populations or their habitat. In general, we considered that the trajectories of the threats acting on fisher subpopulations across the DPS's range could be reasonably anticipated over the next 35–40 years. The reader is directed to the Species Report (Service 2016, entire) for a more detailed discussion of the threats summarized in this document (*http://www.fws.gov/cno/fisher/*). However, please note that our most recent consideration of new data since 2016 (including comments and information received during the two comment periods associated with the 2019 Revised Proposed Rule) coupled with our reevaluation of the entirety of the best available scientific and commercial information is represented and summarized in the various analyses below.

Our analyses below represent an evaluation of the biological status of the two DPSs, based upon our assessment of the effects anticipated for the identified threats, consideration of the cumulative impact of all effects anticipated from the identified threats, and how that cumulative impact may affect each DPS's continued existence currently and in the future. We used the best available scientific and commercial data, and the expert opinions of the analysis team members. The threats identified as having the potential to act upon both DPSs include: habitat-based threats, including high-severity wildfire, wildfire suppression activities, and post-fire management actions; climate change; tree mortality from drought, disease, and insect infestation; vegetation management; and human development (Factor A). We also evaluated potential threats related to direct mortality of fishers including trapping and incidental capture (Factor B), research activities (Factor B), disease or predation (Factor C), collision with vehicles (Factor E), exposure to toxicants (Factor E), and potential effects associated with small population size (Factor E). Finally, we evaluated the inadequacy of existing regulatory mechanisms (Factor D).

As we conducted our threats analyses, we began under the premise that those with the greatest potential to become significant drivers of the future status of both DPSs were: Wildfire and wildfire suppression; tree mortality from drought, disease, and insect infestation; the potential for climate change to exacerbate wildfire and tree mortality; threats related to vegetation management; and exposure to toxicants. Upon determining that the previous singular West Coast DPS configuration should instead be two separate DPSs, we then also modified our premise regarding threats with the potential to become significant drivers of status, and added to the above list of threats: The potential for effects from small population size; disease or predation; and collision with vehicles. While our assessment of the status of each DPS was based on analysis of all identified threats acting upon them, including the cumulative effects of those threats, we are only presenting our detailed analyses on these specific, potentially significant threat drivers common to both DPSs for the purposes of this rulemaking. We refer the reader to the Species Report (Service 2016, entire) for full detailed analyses of all the other individual threats.

As these potentially significant threat drivers were relevant to both DPSs, much of the fundamental information pertaining to the threats was also applicable to both DPS analyses. Although the ultimate conclusion about the significance of each threat varied between the DPSs, below we present scientific information about these threats common to both DPSs, followed by DPS-specific evaluations.

Wildfire and Wildfire Suppression

Our evaluation includes both the effects of wildfire on fisher habitat as well as those activities associated with wildfire suppression that may result in changes to fisher habitat (for example, backburning, fuel breaks, and snag removal). Naturally occurring fire regimes vary widely within the range of both the NCSO DPS and SSN DPS (Service 2014, p. 58), and fisher habitat has been burned across a spectrum from low- to high-severity.

Mixed-severity wildfire includes patches of low-severity wildfire and patches of high-severity wildfire (Jain et al. 2012, p. 47). At the landscape scale, mixed-severity wildfire effects to fisher habitat may affect an area's ability to support fishers for only a short period of time due to the patchy nature of burned and unburned areas. Additionally, a beneficial aspect of mixed-severity wildfires (as opposed to

just high-severity wildfires) is that these wildfires may contribute to the regeneration of the hardwood component of mixed-conifer forest used by fisher (Cocking et al. 2012, 2014, entire). Further these types of fires can sustain patches of unburned refugia that are important for maintaining patches of higher canopy cover, acting as a source for future tree regeneration, and providing habitat for fisher (Blomdahl et al. 2019, p. 1,049). Mixed-severity wildfire may reduce some elements of fisher habitat temporarily, but also helps to contribute to the ecological processes necessary to create tree cavities and other decay and structural abnormalities essential for denning and resting fishers (Weir et al. 2012, pp. 237–238). Low-severity wildfire is unlikely to remove habitat, and post-wildfire areas that burned at low-severity are likely still used by fishers (Naney et al. 2012, p. 6; Truex and Zielinski 2013, p. 90).

The potential for large, high-severity wildfires to affect fisher habitat and fisher populations is concentrated in northern California–southwestern Oregon and the Sierra Nevada areas as compared to the remainder of the fisher's historical range in the West Coast States (Service 2014, pp. 62–63). In general, high-severity wildfire can alter fisher habitat by removing forest canopy, large trees, and structurally diverse understories, which can take from decades to a century or more to regrow (Service 2014, pp. 59–60), but it may also provide foraging opportunities for fishers since these post-fire areas are often abundant with small mammals that fishers eat (Hanson 2013, p. 27; Service 2016, p. 66). For example, there is evidence of fishers associated with high-severity burned areas, or a mix of moderate- and high-severity burns (Service 2016, p. 66), particularly if the area was structurally complex prior to the fire (Hanson 2013, p. 28). However, another study found fishers avoiding areas of high- and moderate-severity fire (Thompson et al. 2019a, p. 15), so there is likely a threshold in high-severity patch size that influences fisher use of these areas (also see individual DPS sections).

Within shrub, grassland, and forested lands across the western United States (including the Sierra Nevada, southern Cascades, and Coast ranges), the wildfire season length increased over each of the last four decades, from 65 days in the 1970s to 140 days in the 2000s (Westerling 2016, pp. 3, 8, 10). The lengthening of the wildfire season is largely due to declining mountain snowpack and earlier spring snowmelt, which contributes to a decrease in vegetation moisture; this scenario causes wildfires to be more frequent and larger with an overall increase in the total area burned (Westerling 2016, pp. 8–9). Throughout the western United States there has been an increase in the patch size and total area of fires in recent decades. The evidence for an increasing area of high-severity fire is mixed given that studies present different historical levels of high-severity fire (Mallek et al. 2013, pp. 11–17; Stephens et al. 2015, pp. 12–16; Hanson and Odion 2016, pp. 12–17; Odion et al. 2016, entire; see Spies et al. 2018, p. 140 for summary of recent literature), but the scientific consensus accepts that mixed conifer forests were characterized by areas burned at low-, moderate-, and high-severity, with higher proportions of low-severity than is currently observed (Safford and Stevens 2017, p. 50). Given projected changes in climate, forests are expected to become more vulnerable to wildfires over the coming century.

Recent publications on wildfire occurrence and severity within the NCSO DPS and SSN DPS continue to support our conclusions that fire is likely to have a negative impact on fisher populations but will depend on fire size, burn severity, and proximity to occupied habitat (79 FR 60419, at 60429, October 7, 2014). Recent information on fishers' behavioral and localized population response to wildfires is available and discussed below in the NCSO DPS and SSN DPS specific discussions.

Climate Change

Overall, fisher habitat is likely to be affected by changing climate conditions, but the severity will vary, potentially greatly, among different regions, with effects to fishers ranging from negative, neutral, or potentially beneficial. Climate throughout the West Coast States is projected to become warmer over the next century, and in particular, summers will be hotter and drier, with heat waves that are more frequent (Hayhoe et al. 2004, p. 12,423; Tebaldi et al. 2006, pp. 191–200; Mote and Salathé 2010, p. 41; Salathé et al. 2010, p. 69; Cayan et al. 2012, pp. 4, 10; Mote et al. 2013, p. 34; Pierce et al. 2013, pp. 844, 848; Ackerly et al. 2018, pp. 6–8; Bedsworth et al. 2018, pp. 23, 26, 30; Dettinger et al. 2018, p. 5; Grantham 2018, p. 6).

In Oregon, Dalton et al. (2017, pp. 4, 8) evaluated greenhouse gas emissions via global climate models with future emission pathways called ''representative concentration pathways'' (RCPs). They considered multiple greenhouse gas emission scenarios, including both RCP 4.5 and RCP 8.5. Their analysis indicates that extreme heat events are expected to increase in frequency, duration, and intensity by the 2050s due to warming temperatures (RCP 4.5 = mean annual temperature increase predicted on average 3.6 degrees Fahrenheit (°F) (2.0 degrees Celsius (°C)); RCP 8.5 = mean annual temperature increase predicted on average 5.0 °F (2.8 °C). Summers are expected to warm more than the annual average and will likely become drier. Annual precipitation is projected to increase slightly, although with a high degree of uncertainty. Extreme heat and precipitation events are expected to increase in frequency, duration, and intensity.

In California, information from Pierce et al. (2013) and Safford et al. (2012) used multiple general circulation models and downscaling with regional climate models to develop probabilistic projections of temperature and precipitation changes over California by the 2060s. Predictions indicate an annual mean temperature increase of 4.3 °F (2.4 °C) by 2060 (Pierce et al. 2013, p. 844). Similarly, and more recently, Bedsworth et al. (2018, entire) summarizes 44 technical peer-reviewed reports to provide a California-wide climate change assessment. Under two modeled scenarios, average temperatures are projected to increase by 2.5 to 2.7 °F (1.4 to 1.5 °C) in the early century (2006 to 2039) and 4.4 to 5.8 °F (2.4 to 3.2 °C) in the mid-century (2040 to 2069) (Bedsworth et al. 2018, p. 23). Precipitation models suggest that northern California may become wetter, while most southern parts of California will become drier (Bedsworth et al. 2018, p. 25). The authors caution that ''due to large annual variation, changes in annual mean or long-term precipitation are not the best metrics to understand'' the effects to changes in precipitation in California (Bedsworth et al. 2018, p. 25). Specifically, the models project less overall precipitation with more extreme daily precipitation, inter-annual precipitation will be more erratic, and the number of dry years will increase (Bedsworth et al. 2018, p. 25 citing others; Polade et al. 2017, p. 1).

Higher temperatures during spring and summer, coupled with early snow melt, will reduce the moisture of both live fuels and dead surface fuels by increasing evaporative demands during the dry season and lengthening the fire season (Keeley and Syphard 2016, pp. 2–3; Restaino and Safford 2018, p. 500). In addition, models project an increase in lightning frequency that may be associated with an increase in potential fire ignitions (Restaino and Safford 2018, p. 500).

Studies specific to predicting the effects of climate change on suitable fisher habitat have produced a wide range of results. Ecotype conversion from conifer forest to woodland, shrubland, or grassland will result in the loss of suitable fisher habitat. This type of shift is predicted, for example, in the southern Sierra Nevada (Gonzalez et al. 2010, Figure 3; Lawler et al. 2012, p. 388; Dettinger et al. 2018, pp. 31–34; Restaino and Safford 2018, p. 500). On the other hand, shifts from conifer forest to hardwood-dominated mixed forest in the southern Sierra Nevada or Klamath region could either increase or decrease the habitat available to fishers (Lawler et al. 2012, pp. 384–386; Loarie et al. 2008, p. 4 and Figure 4). Given the more significant contribution of hardwood trees to fisher habitat in the drier parts of both the NCSO DPS and SSN DPS, a shift to increasing hardwoods in more coastal or higher elevation forest types could improve habitat, but shifts to hardwood-dominated stands may also reduce protective cover from rain and snowfall (Suffice et al. 2019, pp. 10, 11, 13). Nevertheless, trees are long-lived and mature forests can persist under suboptimal conditions, and these factors can prevent better-suited vegetation from becoming established until disturbance removes the original forest (Sheehan et al. 2015, p. 27). Consequently, the increase in the hardwood component of fisher habitat in predominantly conifer areas may not occur until after fires have changed the composition of the existing stand to allow hardwood establishment. All of these circumstances add to the uncertainty associated with climate change and how it relates to fisher.

Other studies suggest that climate change will adversely impact forest habitat by intensifying large-scale, high-severity wildfire, drought, and tree mortality (Kadir et al. 2013, pp. 132, 137; Westerling 2016, pp. 1–2; Westerling 2018, pp. 21–23; Bedsworth et al. 2018, p. 64; Dettinger et al. 2018, pp. 28–29; Stephens et al. 2018a, p. 77; Stephens et al. 2018b, p. 162; Restaino and Safford 2018, pp. 493–505). A wide range of assumptions and caveats typically accompanies these types of predictions. For example, fire modeling shows a decline in future (approximately 100 years) fire intensities after the existing woody vegetation is burned (Restaino and Safford 2018, p. 499), but it is uncertain if the resulting vegetation and composition will be suitable for fisher.

Variables predicting fisher resting habitat as described by Zielinski and Gray 2018 (p. 903) include stand characteristics such as high canopy closure, large basal area of conifer and hardwood trees, and diameter and age of dominant conifers. To date, climate change has not significantly affected resting habitat for fishers, which, according to Zielinski and Gray (2018, pp. 899, 903), has remained stable over the past 20 years across the California-portion of the range, although habitat suitability tends to be lower on private lands than public lands. However, when considering resting habitat trends over these 20 years to determine potential future resting habitat conditions in light of climate change projections, data from the Sierra National Forest (within a portion of the SSN DPS) indicates the beginning of a negative trend in resting habitat suitability (Zielinski and Gray 2018, p. 903), whereas resting habitat examined within the NCSO DPS varied greatly (*i.e.,* suitable resting habitat decreased in the Shasta-Trinity National Forest, increased in the Six Rivers National Forest, and remained unchanged over time for both the Klamath and Mendocino National Forests).

In addition to the potential climate change effects to fisher habitat discussed above, some researchers have suggested climate change may cause direct effects to fishers, including increased mortality, decreased reproductive rates, alterations in behavioral patterns, and range shifts. Fishers may be especially sensitive, physiologically, to warming summer temperatures (Zielinski et al. 2004, p. 488; Slauson et al. 2009, p. 27; Facka 2013, pers. comm.; Powell 2013, pers. comm.). As a result, researchers (*e.g.,* Burns et al. 2003, Zielinski et al. 2004, Lawler et al. 2012, Olson et al. 2014) theorize that fishers likely will either alter their use of microhabitats or shift their range northward and upslope, in order to avoid the thermal stress associated with increased summer temperatures. Preliminary research on fisher occupancy and climate begins to support these theories. For example, during a drought in central and southern California from 2012 to 2015, fisher utilized higher elevation areas that were otherwise inaccessible due to snowpack during other years (Tucker 2019, pers. comm.). Although fisher occur across a wide range of precipitation levels and minimum temperatures, and appear able to utilize higher elevations in years with less snowpack, it is unknown how the interaction of vegetation, fire regimes, and competition with other species will influence future fisher occupancy patterns in a changing climate (Zielinski et al. 2017, pp. 542–543).

The best available information indicates there is a link between changing climate conditions and the resulting changes to overall habitat suitability and availability for fishers throughout their range. There is also a link between changing climate conditions and the potential to increase fisher stress levels when habitat changes occur. More specifically, these changes affect the amount and distribution of habitat necessary for female fishers to be able to have places to den and raise their young. We provide three examples below.

First, ongoing climate change in California is likely to result in significant or amplified wildfire activity, with the area burned and fire severity likely to increase (Hurteau et al. 2019, pp. 1, 3; Moritz et al. 2018, p. 36). This in turn can result in reduced denning habitat availability for fishers (*e.g.,* Sheehan et al. 2015, pp. 20–22; Dalton et al. 2017, p. 46).

Second, under modeled increases in drought conditions, tree mortality and large-scale high-severity wildfire are likely to increase in frequency, size, and severity, especially if fuel loads in forests are not decreased (Young et al. 2017, p. 78; Westerling and Bryant 2008, pp. S244–S248; Abatzoglou and Williams 2016, pp. 11,770, 11,773; Bedsworth et al. 2018, pp. 29–30; Larvie et al. 2019, p. 1; Westerling 2018, pp. 21–23). Some models suggest that fire severity may be independent from fire intensity; thus, a lower-intensity fire could kill more trees if they are also experiencing a severe drought (Restaino and Safford 2018, p. 500). Although we can expect that seasonal summer dryness may prolong future droughts, it is unknown whether droughts in the future will be worse than our worst droughts in the past (Keeley and Syphard 2016, p. 6; Bedsworth et al. 2018, pp. 26, 57). Regardless, it appears that climate change is intensifying the effects of drought, given that changing climate conditions are estimated to have contributed 5 to 18 percent to the severity of one of the worst recent droughts in 20th-century California history (Williams et al. 2015, p. 6,819; Keeley and Syphard 2016, p. 6). The combination of drought and wildfire can result in loss of adequate forest-canopy cover and individual trees that provide habitat suitable for denning female fishers (*e.g.,* CBI 2019a, p. 9).

Third, the observed increases in wildfire activity in Oregon and California are partially due to climate change; increasing wildfire activity is expected under future warming, which in turn can increase tree mortality from disease and insects like mountain pine

beetles (Dalton et al. 2017, p. 46; Bedsworth et al. 2018, p. 64). Widespread tree mortality (climate related or not) is likely to result in fishers experiencing reduced fitness (*e.g.,* a positive relationship between higher amounts of tree mortality and higher cortisol levels in fishers; Kordosky 2019, pp. 14, 36) and an overall reduction in forest-stand conditions suitable for denning (CBI 2019a, entire; Green et al. 2019a, pp. 3–4). Most forests will experience some form of climate stress by the late 21st century and higher temperatures will result in more droughts in California, revealing the interconnected nature of climate, wildfire, and tree mortality that collectively can shift forest composition and structure (Larvie et al. 2019, pp. 12–14; Restaino and Safford 2018, p. 502) and further challenge the ability of fishers to locate suitable habitat.

Tree Mortality From Drought, Disease, and Insect Infestation

In our 2019 Revised Proposed Rule, this section was titled ''Forest Insects and Tree Diseases''; we have changed the title to more accurately describe the threat. Localized tree mortality from insect outbreaks and tree diseases are natural processes, and they provide structures used by fisher for rest and den sites as well as their prey. However, widespread insect and disease outbreaks can alter the overall distribution and abundance of fisher habitat. For example, severe drought events in California since 2010, combined with insect outbreaks and tree diseases, have led to more than 147 million dead trees in California (California Department of Forestry and Fire Protections (CAL FIRE) and USFS 2019, no page number). Although both the NCSO DPS and SSN DPS experienced tree mortality during the recent drought, the magnitude of this effect on the landscape differed tremendously between each DPS (CAL FIRE and USFS 2019, no page number). The highest levels of tree mortality occur in the southern Sierra Nevada due to increased susceptibility to forest insects and tree disease from the severe drought while most of the NCSO DPS experienced background levels (0–5 dead trees per acre) of tree mortality (CAL FIRE and USFS 2019, no page number; California Tree Mortality Task Force 2020, entire).

Vegetation Management

Vegetation management techniques of the past (primarily timber harvest) have been implicated as one of the two primary causes for fisher declines across the United States. Many fisher researchers have suggested that the magnitude and intensity of past timber harvest is one of the main reasons fishers have not recovered in the western United States as compared to the northeastern United States (Service 2014, pp. 54–56). At the time of the 2014 Proposed Rule, we stated that vegetation management techniques have, and can, substantially modify the overstory canopy, the numbers and distribution of structural elements available for use by fisher, and the ecological processes that create them. An increase in open areas, such as those resulting from timber harvest, may increase the risk of predation on fishers by bobcats and other predators that frequent these areas (see the Predation and Disease section below). Overall, fisher home ranges comprise mosaics of forest-stand types and seral (stand age) stages but often with a high proportion of mid- to late-seral forests (Raley et al. 2012, p. 231).

Fishers occupy managed landscapes and stands where timber harvest and other vegetation management activities occur; the degree to which fishers tend to be found in these areas often depends on a multitude of factors, including the scale, intensity, and rate of activities; the composition and configuration of suitable habitat; and the amount and type of retained legacy structures (Service 2016, pp. 59–60; Thompson and Clayton 2016, pp. 11–16, 22; Niblett et al. 2017, pp. 14–17; Marcot et al. 2018, p. 400; Powell et al. 2019, entire; Parsons 2018, pp. 31, 53–55, 63; Purcell et al. 2018, pp. 60–61, 69–70). Fishers tolerate some clearcuts in their home ranges, though the mean proportion tends to be below 25 percent of their home-range area (Powell et al. 2019, p. 23). Fishers are also observed denning in areas where as much as 25 percent of the area near the den sites is in openings (Niblett et al. 2017, p. 17). Some level of open areas or younger stands may provide suitable prey for fishers (Parsons 2018, pp. 26–29, 53–55). Yet even in these situations, fishers are associated with forests that contain structures associated with older forests, such as complex canopies, down wood, hardwoods, and trees with microsites conducive to denning, resting, or supporting prey (Niblett et al. 2017, pp. 16–17; Powell et al. 2019, pp. 19–23). Therefore, for vegetation management it is important to maintain decadent structures that serve as den and rest trees and that likely required much time and site-specific conditions to develop (Matthews et al. 2019, p. 1,313). Overall, it appears fishers can tolerate management activities that promote forest heterogeneity (variation) and that consider the natural range of variation in forest structure, distribution, and composition when identifying and protecting valuable habitat elements (Thompson et al. 2019b, pp. 13–14).

While historical loss of mature and older forests via timber harvest through much of the 1900s resulted in a substantial loss of fisher habitat in California and Oregon, harvest volume has sharply declined throughout this area since 1990, primarily on Federal lands, but also on non-Federal lands. Although timber harvest is still ongoing throughout the NCSO and SSN DPSs, habitat ingrowth (*i.e.,* forest stands becoming habitat as a result of forest succession) is also occurring, offsetting some of those losses. We address this for each of the DPSs below.

Exposure to Toxicants

Wildlife can encounter a wide range of chemicals in the environment. Fertilizers and pesticides (*e.g.,* herbicides, insecticides, and rodenticides) are among the most common chemicals wildlife are exposed to and impacted by, especially near urban and agricultural areas. Of these chemicals, the rodenticides are the longest lasting and therefore the easiest to test for, track, and understand impacts to species. Both the draft and final Species Reports detail the exposure of fishers to rodenticides in Oregon and California (Service 2014, pp. 149–166; Service 2016, pp. 141–159).

The rodenticides impacting fishers include first- and second-generation anticoagulant rodenticides and neurotoxicant rodenticides. First-generation anticoagulant rodenticides are in a bait form that rodents consume for several consecutive feedings (*i.e.,* sublethal doses) to deliver a lethal dose. Second-generation rodenticides are significantly more potent than first-generation rodenticides, and a lethal dose can be ingested in a single feeding. Additionally, second-generation rodenticides are more likely than first-generation rodenticides to poison predatory wildlife (*e.g.,* fishers) that eat live or dead poisoned prey because they are more persistent in the environment. Neurotoxicant rodenticides are delivered in either single or multiple doses and have highly variable potency (multiple hours or days). Both first- and second-generation anticoagulant rodenticides as well as neurotoxicant rodenticides are used to kill small mammals that are destroying crops. Rodenticides impair an animal's ability to produce several key blood-clotting factors (anticoagulant rodenticides) or affect brain and liver function

(neurotoxicant rodenticides). Anticoagulant rodenticide exposure causes bleeding from the nose and gums, extensive bruises, anemia, fatigue, difficulty breathing, and also damage to small blood vessels, resulting in spontaneous and widespread hemorrhaging.

A sublethal dose of a rodenticide can produce significant clotting abnormalities and hemorrhaging, leading to a range of symptoms, such as difficulty moving and a decreased ability to recover from physical injury. Ingestion of the neurotoxicant bromethalin, which has been detected in DPS fisher carcasses, has fast-acting and physical effects such as unsteadiness and weakness, and at higher dosage levels, seizures. Both anticoagulant and neurotoxicant rodenticides can change or impede normal fisher movement and foraging behaviors and therefore may increase the probability of mortality from other sources such as predation or vehicle collision. In addition, anticoagulants bioaccumulate and become increasingly prevalent in predators; as they continue to eat contaminated prey, they accumulate more and more anticoagulant (Lopez-Perea and Mateo 2018, p. 165). Contaminated rodents are found within and adjacent to treated areas weeks or months after bait application (Geduhn et al. 2014, pp. 8–9; Tosh et al. 2012, pp. 5–6; Sage et al. 2008, p. 215).

Rodenticide use in agricultural or urban areas is common and wildlife exposure rates can be high. For example, in California 70 percent of tested mammals were positive for at least one anticoagulant rodenticide (Hosea 2000, p. 238). And across the world, 58 percent of tested predators were positive for anti-coagulant rodenticides (Lopez-Perea and Mateo 2018, p. 172). Not surprisingly, mammals are most impacted by rodenticides, when compared to birds, reptiles, and insects; and generalist species that eat a variety of prey species are more likely to be contaminated relative to specialist species that feed on one or a few species (Lopez-Perea and Mateo 2018, pp. 163, 173).

Predators that are (a) nocturnal, (b) opportunistic in feeding habitats where rodents are an important part of their diet, and (c) nonmigratory and live close to or within landscapes that are heavily impacted by human activities are more likely to be exposed to rodenticides and have relatively high liver-residue concentrations of multiple rodenticide compounds (Hindmarch and Elliott 2018, p. 251). Because fishers are territorial, nonmigratory mammals, and females remain particularly tied to their territories (Arthur et al. 1993, p. 872), they are among the species that are more vulnerable to rodenticide exposure. Additionally, fisher diets consist primarily of small mammals (Golightly et al. 2006, entire), which are the target species for rodenticides (Gabriel et al. 2015, entire; Thompson et al. 2014, pp. 97–98). Top predators within the range of fishers, including northern spotted owls (*Strix occidentalis caurina*) and barred owls (*S. varia*), have also been exposed to rodenticides (Franklin et al. 2018, p. 1; Gabriel et al. 2018, p. 1).

Data available since completion of the final Species Report in 2016 continue to document exposure and mortalities to fishers from rodenticides in both the NCSO and SSN DPSs (Gabriel and Wengert 2019, unpublished data, entire; Powell et al. 2019, p. 16). Here we discuss data specific to both the NCSO and SSN DPS; more DPS-specific information is found in the NCSO DPS and SSN DPS discussions below. Fisher carcasses have been collected and tested for their cause of death and their exposure to rodenticides (Gabriel and Wengert 2019, unpublished data). Data for 97 fisher carcasses collected in California in the period 2007–2014 indicate 81 percent of fishers tested positive for one or more rodenticides, and 48 fishers collected from 2015–2018 indicate 83 percent tested positive (Gabriel and Wengert 2019, unpublished data). Using data from both the SSN and the NCSO DPS and comparing the periods 2007–2011 and 2012–2014, mortalities due to rodenticide toxicosis increased from 5.6 to 18.7 percent (Gabriel and Wengert 2019, unpublished data, p. 2). And, from 2015 to 2018, additional fisher mortalities due to both anticoagulant and neurotoxicant rodenticides have been documented, including the toxicosis of neonatal kits in the womb (Gabriel and Wengert 2019, unpublished data, p. 4). The probability of fisher mortality increases with the number of anticoagulant rodenticides a fisher has been exposed to, and most fishers are exposed to more than one (Gabriel et al. 2015, p. 15).

The primary source of rodenticide exposure to fishers is from illegal marijuana grow sites on public, private, and tribal lands in California and Oregon (Gabriel et al. 2015, pp. 14–15; Thompson et al. 2014, pp. 97–98). In the mid- to late 1970s, 90 percent of the marijuana consumed in the United States came from abroad (Brady 2013, pp. 70–71). Marijuana cultivation in California really began in 1974 or 1975, and by 1979, 35 percent of the marijuana consumed in California was from California (Brady 2013, pp. 70–71). By 2010, 79 percent of all the marijuana consumed in the United States came from California (Brady 2013, pp. 70–71).

Information on the amount and types of rodenticides have been collected at more than 300 illegal grow sites in California from 2012 through 2018 (Gabriel and Wengert 2019, unpublished data, pp. 5–7). Through this time period the use of second-generation rodenticides decreased. This is likely because of regulation changes in 2014 that placed additional restrictions on the use of second-generation rodenticides in California (California Department of Pesticide Regulation 2014). The change in policy has led to a more intensive use of first-generation anticoagulant rodenticide and the highest amount of neurotoxicant rodenticide use since 2012 (Gabriel and Wengert 2019, unpublished data, pp. 5–7).

In order to evaluate the risk to fishers from illegal grow sites and any differences between populations, we use a Maximum Entropy model to identify high and moderate likelihood of illegal grow sites being located within habitat selected by fisher in California and Oregon (Gabriel and Wengert 2019, unpublished data, pp. 7–10). This model indicates that 44 percent of the habitat modeled (combined NCSO and SSN DPSs) for fishers is within areas of high and moderate likelihood for illegal grow sites—see also the individual DPS sections below. However, the extent to which the use of toxicants occurs on marijuana grow sites on private land, as well as other agricultural, commercial, and public land sites within the range of the fisher (and habitats that fishers select for), is unknown.

Illegal grow sites are regularly discovered in California (617 from 2012 through 2018, and 2,039 from 2004 through 2018) (Gabriel and Wengert 2019, unpublished data, p. 7). Law-enforcement specialists estimate they locate and raid roughly 20 to 40 percent of sites each year and only about 10 percent of those are remediated (Thompson et al. 2017, p. 45). If these estimates are accurate, it is reasonable to conclude that thousands of illegal grow sites—known and unknown, and with an undetermined amount of toxicants present—remain scattered within both the NCSO DPS and SSN DPS (Gabriel et al. 2015, entire; Thompson et al. 2017, p. 45). Rodenticides persist in the landscape, with first-generation rodenticides having a half-life of up to 16 days and second-generation rodenticides having a half-life up to 307 days (Shore and Coeurdassier 2018, p. 146).

As discussed, both the draft and final Species Reports detail the exposure of fishers to rodenticides (Service 2014, pp. 149–166; Service 2016, pp. 141–159). Below we summarize new information:

(1) *Rodent diversity*—Illegal grow sites that were treated with rodenticides contained only mice, as compared to untreated sites where rodenticides were not used and where large-bodied rodents (*e.g.,* woodrats, squirrels, chipmunks) were found. The absence of larger rodents at treated sites suggests that larger-bodied rodents may be impacted by rodenticides more than smaller bodied rodents. These large-bodied rodents are the prey species fishers prefer (Gabriel et al. 2017, p. 10). Further, illegal grow sites may act as ''sinks'' for prey moving in from neighboring areas meaning less prey is available for fisher (Gabriel 2018, pers. comm.).

(2) *Law Enforcement Activities*—During the ''Operation Forest Watch, Department of Justice'' campaign in California between October 2017 and September 2018, more than 20,000 pounds of fertilizer, pesticides, and chemicals were removed from 160 illegal grow sites (Department of Justice (DOJ) 2018, p. 2). Of these, 89 percent were confirmed or strongly suspected to have carbofuran or methamidophos (*i.e.,* insecticides (non-rodenticides) that cause central nervous system dysfunction), up from the previous year's total of 75 percent (DOJ 2018, p. 2). Estimates vary of the number of illegal grow sites that necessitate reclamation of toxicants, but as of 2018, 766 known illegal grow sites are still in need of reclamation (DOJ 2018, p. 2).

(3) *Effect of legalization*—Since the 2014 Proposed Rule, recreational marijuana cultivation and use became legal in Oregon (2015) and California (2016). The data are mixed with respect to how legalization is affecting illegal grows sites on public lands. Some studies find that illegal grow sites on National Forests have decreased in States where marijuana was legalized (Klassen and Anthony 2019, p. 39; Prestemon et al. 2019, p. 1). Conversely, many law-enforcement officials have found no indication that illegal grow sites have decreased with cannabis legalization, and may in fact be increasing, in part due to legalization providing an effective means to launder illegal marijuana (Hughes 2017, entire; Bureau of Cannabis Control California 2018, pp. 28, 30; Sabet 2018, pp. 94–95; Fuller 2019, no page number; Klassen and Anthony 2019, p. 45). Data from fisher monitoring suggests that illegal grow sites are dropping in number but are getting larger (impacting more fisher home ranges) (Gabriel 2018, pers. comm.). And, law-enforcement actions have caused illegal grow sites to disperse further, which makes them more difficult to locate (Gabriel 2018, pers. comm.). Other uncertainties make it difficult to reach conclusions about trends in the abundance and frequency of illegal grow sites this soon after legalization, including legal marijuana market forces, the clandestine nature of the black market, Federal illegality and trends of legalization in other States, State taxation of marijuana, local employment and economic conditions, and regulatory and law enforcement responses (Hughes 2017, entire; Bureau of Cannabis Control California 2018, pp. 28, 30; Sabet 2018, pp. 94–95; Fuller 2019, no page number; Klassen and Anthony 2019, pp. 45–46; Prestemon et al. 2019, pp. 9–11).

Legalization has resulted in an increase in legal marijuana cultivation. At this time, we have limited data about the prevalence of rodenticide use on legal private grow sites and whether fishers are at risk from rodenticide use on private land. In urban-wildland interfaces, or where private lands abut public forestland or occur as inholdings, legal grow sites are more likely within fisher home ranges (*e.g.,* Franklin et al. 2018, p. 3).

(4) *Reclamation Efforts*—Existing law enforcement cannot keep up with illegal marijuana activities (Bureau of Cannabis Control California 2018, p. 30; Wendt 2019, pp. 4–6). In addition, support from States and local governments to Federal law enforcement on public lands (*e.g.,* U.S. Forest Service (USFS)) has dwindled as they redirect resources to regulate the legalized marijuana industry (Bureau of Cannabis Control California 2018, p. 30; Klassen and Anthony 2019, p. 45).

The California Comprehensive Medical Cannabis Regulation and Safety Act of 2016 specifies that, after control and regulation of the program, 20 percent of the marijuana tax fund (established by this Act) shall be given to California Department of Fish and Wildlife (CDFW) for (1) cleanup, remediation, and restoration of environmental damage in watersheds affected by marijuana cultivation (a portion of which may be distributed through grants); and (2) the stewardship and operation of State-owned wildlife habitat areas and State park units to prevent illegal cultivation, and use (Comprehensive Medical Cannabis Regulation and Safety Act 2016, pp. 43–44). This language is not included in the 2017 Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) that updates the 2016 Act (MAUCRSA 2017, entire).

In 2017, CDFW used their Regulation and Forest Restoration funds for their newly formed Cannabis Restoration Grant Program (CDFW 2017a, p. 3). The program funded the restoration of watersheds impacted by marijuana cultivation, including removing trash and equipment, diversion removal, riparian enhancements, and streambank stabilization (CDFW 2017b, p. 1). Funds for projects in 2017 totaled $1,300,000 (CDFW 2017a, p. 1). Monies from this program went to fund four efforts for watersheds within the range of the NCSO DPS (CDFW 2017a, p. 2). The largest and widest-ranging of these efforts included the removal and remediation of rodenticides at illegal grow sites. Monies were not made available in 2018 or 2019, but it is our understanding there are plans to add monies to this grant program in the future.

The CROP Project (Cannabis Removal on Public Lands) is a citizen-based organization established in 2018 with the primary goals of: (1) Securing and increasing State and Federal resources for illegal-grow-site reclamation; (2) increasing U.S. Department of Agriculture (USDA) USFS law enforcement and overall presence on National Forests; and (3) implementing a Statewide public education campaign, focusing on the human health risks associated with ingesting unregulated marijuana (*www.cropproject.org*). Successful accomplishment of these goals could substantially improve the discovery and reclamation of illegal grow sites, but it is too early to determine the degree to which this program reduces the threat of toxicants to fishers.

Please also see Existing Regulatory Mechanisms in both the NCSO and the SSN DPS discussions below for more information on voluntary conservation efforts that address illegal grow sites.

At this time, our evaluation of the best available scientific and commercial information regarding toxicants and their effects on fishers leads us to conclude that individual fishers within both DPSs have died from toxicant exposure, fishers suffer a variety of sublethal effects from exposure to rodenticides, and the potential for illegal grow sites within fisher habitat is high. The exposure rate of more than 80 percent of fisher carcasses tested in California has not declined between 2007 and 2018 (Gabriel and Wengert 2019, unpublished data, pp. 3–4), while poisoning has increased since 2007 (Gabriel et al. 2015, p. 7). We do not know the exposure rate of live fishers to

toxicants since this information is difficult to gather and has not been collected. In addition, the minimum amount of anticoagulant and neurotoxicant rodenticides required for sublethal or lethal poisoning is unknown. Specific information on fishers and toxicants within the NCSO DPS and the SSN DPS is described in the DPS-specific sections below.

Potential for Effects Associated With Small Population Size

Small populations are vulnerable to a rapid decline in their numbers and localized extinction due to the following: (1) Loss of genetic variability (*e.g.,* inbreeding depression, loss of evolutionary flexibility), (2) fluctuations in demographic parameters (*e.g.,* birth and death rates, population growth rates, population density), and (3) environmental stochasticity or random fluctuations in the biological (*e.g.,* predation, competition, disease) and physical environment (*e.g.,* wildfire, drought events, flooding) (Primack 2014, pp. 252–268). We note that forest carnivore populations, including fisher, are often isolated and generally occur in low densities (Service 2016, p. 29). While we do not have data across the entire fisher range on the West Coast demonstrating that fishers are exhibiting specific effects associated with small population size, consideration of these three elements along with life-history traits can provide an extinction-vulnerability profile for both the NCSO DPS and SSN DPS. Fishers in Oregon and California are currently restricted to two historically extant indigenous populations (NCSO and SSN), one extant reintroduced subpopulation (NSN, established with fishers from NCSO), and one subpopulation established with fishers from outside this region (SOC). We recognize the two geographic areas of fisher, SSN and NCSO (the latter of which includes the SOC and NSN for this analysis), are geographically isolated from one another with no evidence of and very little opportunity for genetic interchange. Our evaluation of the best scientific and commercial information available indicates that the separation of the SSN and NCSO populations occurred a very long time ago, possibly on the order of more than a thousand years, pre-European settlement (Tucker et al. 2012, pp. 1, 7; Knaus et al. 2011, p. 11). Despite their isolation and the small size of the SSN DPS, the native NCSO DPS and SSN DPS have persisted over a long period of time.

At this point in time, fishers in both the NCSO DPS and SSN DPS are reduced from their original/historical range within the West Coast States. The best available information suggests these populations are expected to remain isolated from one another (as has been apparent since pre-European settlement). Estimates of fisher population growth rates for the NCSO DPS and the portion of the SSN DPS surveyed do not indicate any overall positive or negative trend (see Current Condition section for the NCSO DPS below), with the exception of the recently reintroduced subpopulation in the NSN, which has steadily grown since its translocation beginning in 2009. The vulnerabilities related to small population size for each DPS are further described below.

Disease and Predation

We evaluated information on disease and predation in our 2016 Species Report (Service 2016, pp. 128–132). In addition, we evaluated the following new information available regarding disease or predation since the time of our 2014 Proposed Rule (*e.g.,* Gabriel et al. 2015, pp. 5–8, 12–16; Sweitzer et al. 2016a, pp. 444–448; Integral Ecology Research Center 2017, p. 2; Barry 2018, pp. 39–40; Green et al. 2018a, p. 549; Purcell et al. 2018, pp. 39–40, 50–51, 53, 72; CDFW 2019, entire). Although we did not identify this threat in the 2019 Revised Proposed Rule as one that may have been a potentially significant driver of future status, we are considering this new information in this Final Rule in light of our DPS determination that has resulted in two separate DPSs; the magnitude and scale of the effect disease or predation may have on each DPS may differ as a result of the DPS-specific demographics and distribution. Predation and disease are the two greatest sources of mortality for fishers of identified mortality sources studied in California (Gabriel et al. 2015, p. 6; Sweitzer et al. 2016a, p. 447). Of 183 California fishers where the mortality source was identified, 67 percent died from predation and 13 percent from a combination of disease, injury, or starvation (Sweitzer et al. 2016a, p. 447). Gabriel et al. (2015, p. 7) was able to separate disease from other mortality sources and found that 15 percent of 136 necropsied fishers died of disease.

Several viral and bacterial diseases are known to affect mustelids, including fishers. Known diseases that have caused fisher mortality in the area of the NCSO and SSN DPSs include canine distemper virus, *Toxoplasma gondii* (a protozoal infection), and several bacterial infections (Gabriel et al. 2015, pp. 7–8; see Service 2016, pp. 128–130 for diseases summary). Disease only has a minor impact where it has been studied in the SSN DPS (Spencer et al. 2015, p. 66), and it comprises a substantially smaller portion of fisher mortalities compared to predation.

We do not know if current predation rates are similar to historical rates in the area of the NCSO DPS and SSN DPS. Comparing predation rates to populations outside of the West Coast is not informative because most of those populations are trapped, skewing the mortality source results (*e.g.,* Lofroth et al. 2010, p. 62, Table 6.3). Recent research in California suggests that landscape changes as a result of disturbances over the past century may have altered the carnivore community and affected predation rates on fishers by bobcats (Wengert 2013, pp. 59–66, 93, 97–100) where an increased proximity to open and brushy areas (vegetation selected for by bobcats) increases the risk of predation on fishers. Mountain lions and bobcats are major predators of fishers. Of 90 fishers that died from predation or were killed by other animals, 90 percent were killed by members of the cat family (Felidae) (Gabriel et al. 2015, p. 5). Sublethal effects of toxicants may also result in higher than normal mortality rates associated with disease and predation, but we do not know what portion of identified mortalities would not have occurred but for the presence of sublethal levels of toxicants in the individual (Gabriel et al. 2015, p. 16; Sweitzer et al. 2016a, p. 448).

Disease and predation are naturally occurring sources of mortality, although the associated mortality rates may be increased by human-caused factors such as vegetation management or toxicants (Gabriel et al. 2015, pp. 14, 16). Predation has been identified as the most important factor limiting fisher populations in California (Sweitzer et al. 2016a, p. 448). High levels of predation may explain why fisher populations have not expanded into unoccupied suitable habitat throughout much of the NCSO and SSN DPSs (Gabriel et al. 2015, p. 16). However, the reintroduced NSN subpopulation appears to be growing despite mortalities due to predation, indicating that other factors such as fisher dispersal distance through unsuitable habitat may also limit fisher expansion (Powell and Zielinski 1994, pp. 60–61; Aubry and Lewis 2003, p. 88) and that reintroductions can play an important role in recovery for the species (Green et al. 2020, p. 13).

Vehicle Collisions

Fisher collisions with vehicles have been documented at multiple locations

within the NCSO DPS and SSN DPS. We summarize this information in the final fisher Species Report (Service 2016, pp. 137–138). Although we did not analyze this threat in the 2019 Revised Proposed Rule, this information warrants consideration in this Final Rule, particularly because we expect this threat to act differently in each of the newly-identified NCSO DPS and SSN DPS based on population size and proximity to human development. In general, fisher collisions with vehicles documented in California are relatively rare, representing less than 2 percent of documented mortalities (Gabriel et al. 2015, p. 15). And, vehicle-related mortalities may be a more local concern associated with specific high-traffic areas (Gabriel et al. 2015, pp. 7 and 15, Table 2).

Existing Regulatory Mechanisms

Many Federal and State existing regulatory mechanisms provide a benefit to fishers and their habitat. For example, trapping restrictions have substantially reduced fisher mortality throughout the NCSO DPS and SSN DPS of fisher. In some places, forest-management practices are explicitly applied to benefit fishers or other species with many similar habitat requirements, such as the northern spotted owl. State and Federal regulatory mechanisms have abated the large-scale loss of fishers to trapping and minimized the loss of fisher habitat, especially on Federal land (Service 2014, pp. 117–141). Additionally, rodenticides are regulated under Federal and State laws. However, fishers are still exposed to rodenticides where they are used (see NCSO and SSN DPS specific sections on Exposure to Toxicants and Existing Regulatory Mechanisms).

Finally, voluntary conservation measures are in place that provide a benefit to fishers and their habitat. These measures include Habitat Conservation Plans (HCPs), Candidate Conservation Agreements with Assurances (CCAAs), Safe Harbor Agreements (SHAs), Memoranda of Understanding (MOUs), and other conservation strategies, as described for each DPS below (see NCSO and SSN DPS specific sections on Voluntary Conservation Measures below).

Final Listing Determination for NCSO DPS of Fisher

Current Condition

The NCSO DPS comprises a mix of ownerships, with similar amounts of private and Federal ownership (Table 1). The USFS is the predominant Federal land manager within the DPS.

TABLE 1—LAND OWNERSHIP OR MANAGEMENT FOR THE NORTHERN CALIFORNIA/SOUTHERN OREGON DISTINCT POPULATION SEGMENT OF FISHER

Agency	California (CA)		Oregon (OR)		NCSO total	
	Acres (ac)	Percent (%) for CA	ac	% for OR	ac	%
Bureau of Land Management	864,221	4.0	945,910	17.8	1,810,130	6.8
Forest Service	8,433,567	39.5	2,332,813	43.8	10,766,380	40.4
Bureau of Indian Affairs	211,998	1.0	72	0.0	212,070	0.8
National Park Service	353,235	1.7	186,934	3.5	540,170	2.0
State and Local	473,997	2.2	20,637	0.4	494,635	1.9
Private	10,951,353	51.3	1,824,961	34.3	12,776,315	47.9
Total Acres *	21,346,412	100.0	5,327,797	100.0	26,674,209	100.0

* Acres and % may not sum due to rounding and because some other owners with less land are not included.

Population condition and abundance information for the NCSO DPS is presented for three different geographic portions of this DPS. First, the SOC portion west and south of Crater Lake in the Southern Oregon Cascade Range is predominantly represented by reintroduced individuals from British Columbia and Minnesota. However, recent analyses have documented that at least some of these reintroduced SOC individuals and native NCSO individuals are overlapping in range, with confirmed interbreeding (Pilgrim and Schwartz 2016, entire; Pilgrim and Schwartz 2017, entire). Second, the NSN portion is represented by native, reintroduced fishers whose genetic stock is from fishers relocated from the Klamath-Siskiyou and Shasta-Trinity subregions (in the historically native NCSO DPS). These animals were relocated into the northern Sierra Nevada. This geographic portion of the NCSO DPS occurs on land known as the Sierra Pacific Industries (SPI) Stirling Management Unit in Butte, Plumas, and Tehama Counties, California (Powell et al. 2019, p. 2). Third, the remainder of the native fishers in the NCSO DPS occupy the Klamath-Siskiyou Mountains in southern Oregon and northern California, the California Coast Range Mountains, the Shasta-Trinity subregions in northern California, and the western portion of the southern Cascades in northern California.

Fishers in the SOC portion of the NCSO DPS stem from a translocation of 30 fishers from British Columbia and Minnesota to the southeastern Cascade Range and west of Crater Lake between 1977 and 1981, after an earlier reintroduction in 1961 failed (Aubry and Lewis 2003, p. 84; Lofroth et al. 2010, pp. 43–44). Based on survey and research efforts starting in 1995, genetic evidence shows these fishers continue to persist (Drew et al. 2003, p. 57; Aubry et al. 2004, pp. 211–215; Wisely et al. 2004, p. 646; Pilgrim and Schwartz 2014–2017, entire; Moriarity et al. 2017, entire; Barry 2018, pp. 6, 22–24; Moriarty et al. 2019, p. 23).

Prior to 2015, survey work in the Oregon Cascades north of the NCSO DPS was limited to opportunistic or small-scale efforts. Verifiable fisher detections did not exist, except for two single fishers: One just north of the SOC subpopulation in 2014 (Wolfer 2014, pers. comm.) and a single dispersing juvenile male detected in the same general area in the 1990s (Aubry and Raley 2006, p. 5); this finding suggests occasional individuals may disperse north through the central Oregon Cascades. Over the winter of 2015–2016, systematic camera surveys occurred in the northern Oregon Cascades (specifically, the southern portion of the Mt. Hood National Forest and northern portion of the Willamette National Forest). No fishers were detected (Moriarty et al. 2016, entire), suggesting fishers may not reach this far north in the Oregon Cascades. Additionally,

surveys over the past 3 years have not detected fishers north of the Rogue River in the central Oregon Cascades (Barry 2018, pp. 22–23) (see below).

Information is not available on population size for the SOC portion of the NCSO DPS. In the northern portion of the SOC area, fishers were detected in the northern and eastern portions of Crater Lake National Park between 2013 and 2015 (Mohren 2016, pers. comm.). Outside of the Park, large-scale systematic surveys were conducted in 2016 and 2017 north and west of Crater Lake National Park and south to the Klamath Falls Resource Area (south of the reintroduction area) of the Bureau of Land Management (BLM) Lakeview District (Barry 2018, entire). Few fishers were detected in an area west of Crater Lake National Park where fishers were captured and radio-collared in the early 1990s by Aubry and Raley (2002, entire). Within the Klamath Plateau (generally the Klamath Falls Resource Area described above, but including surrounding non-Federal lands), Moriarty et al. (2019, pp. 5, 21) identified 31 to 41 individuals from 2015 to 2018, concluding that fishers in the SOC area do not appear to be expanding from where they were initially reintroduced.

In comparing this range estimate with a coarse baseline range estimate provided by the Service, Barry (2018, pp. 22–24) determined that there was a 67 percent range reduction for the SOC subpopulation, concluding that SOC fishers ''appear to have contracted, shifted south, or the previous population extent was incorrectly estimated'' (Barry 2018, pp. 22–24). Given the lack of systematic range-wide fisher monitoring in Oregon, the author, however, urged caution when comparing his analysis with the baseline range estimate provided by the Service, and we agree. Our baseline range estimate used by Barry (2018, p. 31, Figure 3) was derived by encompassing verifiable fisher locations since 1993 in southwest Oregon. Our boundaries were based on modeled fisher habitat and readily identifiable features such the Rogue River. These range maps included scattered, disjunct detections with intervening areas of few to no fisher detections (*e.g.,* see Service 2016, p. 34, Figure 7); consequently, our range map likely encompassed areas with limited fisher occurrence. Hence, comparing our coarse range map with Barry's fisher distribution, which was quantitatively modeled from systematic detection surveys to delineate areas with a higher probability of fisher occurrence, should indeed be interpreted with caution. Our coarse range map certainly included areas with limited numbers or lack of fishers; consequently, a 67 percent range reduction using that map as a baseline comparison overestimates any change in fisher distribution in the SOC subpopulation to some extent. We do concur, however, that SOC fishers seem to have shifted their distribution, and acknowledge that their distribution may be contracting to some degree. Further, we acknowledge Barry's (2018, pp. 22–24) assertion that the SOC subpopulation has had ample time since their reintroduction to colonize beyond the reintroduction area and has failed to do so, suggesting that either our understanding of suitable habitat may be incorrect, there may be unknown barriers limiting their distribution, or other factors may limit this subpopulation.

Barry (2018, p. 23) also concluded that the SOC subpopulation appears small and relatively isolated given the number and spacing of detections. However, there is interbreeding with indigenous fishers near the Klamath Plateau area, suggesting fishers in the southern part of the SOC subpopulation are not isolated.

Fishers in the NSN portion of the NCSO DPS stem from a 2009 to 2011 translocation of 40 fishers (24 females, 16 males) from Humboldt, Siskiyou, and Trinity Counties, California, to the SPI Stirling Management Unit. Ongoing monitoring has confirmed that fishers born onsite have established home ranges and have successfully reproduced. Trapping efforts in the fall of 2017 as part of ongoing monitoring of the reintroduced subpopulation indicate a minimum of 61 fishers (38 females, 23 males), which is 21 more than were originally introduced (Powell et al. 2019, p. 2). Overall, 220 individual fishers were identified between 2009 and 2017 with a young age structure, suggesting healthy reproduction and recruitment (Powell et al. 2019, p. 2). Although the subpopulation appears to be stable or growing, statistical conclusions will be difficult to draw until year 10 in 2020 (Powell et al. 2019, p. 2). The authors also concluded that the subpopulation is unlikely to go extinct in the next 20 years, barring dramatic decreases in survival and reproduction caused by stochastic events. We also recently received a draft manuscript concluding that estimated recruitment and survival probability of fishers in the NSN subpopulation ''had stabilized and were quite high, indicating that this new population of fishers may be self-sustaining'' (Green et al. 2020, p. 11).

Older estimates for the NCSO DPS (minus SOC and NSN) using various methodologies range from a low of 258–2,850 individuals, based on genetic data (Tucker et al. 2012, pp. 7, 9–10), to a high of 4,018 individuals based on extrapolation of data from two small study areas within the NCSO DPS to the entire NCSO DPS (Self et al. 2008, pp. 3–5). In 2017, a new estimate was developed for the NCSO DPS that includes southern Oregon and coastal California but still excludes SOC and NSN (Furnas et al. 2017, pp. 2–3). This study used detection/non-detection survey data from across much of the NCSO DPS to calculate an average density of 6.6 fishers per 39 mi^2 (100 km^2) across the area they defined for the NCSO DPS (Furnas et al. 2017, pp. 12–15). Using this estimate of fisher density, the NCSO DPS is estimated to be 3,196 individuals (2,507–4,184; 95 percent Confidence Interval (C.I.)) and fishers were detected at 41 percent of 321 paired camera stations (Furnas et al. 2017, pp. 10, 12). Density models indicate a core area of predicted high density (greater than 10 fishers per 39 mi^2 (100 km^2) from between about 25 to 50 mi (40 to 80 km) inland from the coast in the California Coast Range and southern Klamath Mountains in California (Furnas et al. 2017, pp. 12–13). CDFW determined in their status assessment for fishers in California that the assessment done by Furnas, when applied to fishers in the California portion of NCSO, suggests that fishers are common and widespread (estimated to occur at 60 percent of sample units in California) (CDFW 2015, p. 55).

The indigenous population of fishers in Oregon was estimated to have a 26 percent range reduction compared to verifiable fisher records collected since 1993 (Barry 2018, p. 22). However, the author notes this comparison should be treated with caution, and we agree. This estimate is subject to the same limitations as described earlier in this section for the SOC fisher subpopulation. That is, the coarse range map the author used for a baseline comparison included areas with limited numbers or even lack of fishers, so a 26 percent range reduction overestimates any change in the indigenous fisher population in Oregon.

Trend information for fishers within the NCSO DPS is based on the following two long-term study areas. As indicated above, we now consider the NCSO DPS to include the areas previously represented as the SOC and NSN reintroduced fisher subpopulations.

The Hoopa study area is approximately 145 mi^2 (370 km^2) on the Hoopa Valley Indian Reservation north

of California State Highway 299 and near State Route 96, which is largely surrounded by the Six Rivers National Forest and other private lands. The study area represents the more mesic portion (containing a moderate amount of moisture) of the NCSO DPS. Fisher studies have been ongoing since 1996. The population trend in the period 2005–2012 indicates declining populations with lambda of 0.992 (C.I. 0.883–1.100), with a higher lambda rate for females 1.038 (0.881–1.196) than males 0.912 (0.777–1.047) (Higley et al. 2014, p. 102, Higley 2015, pers. comm.). The authors concluded that ''the population as a whole is essentially stable'' (Higley et al. 2014, p. 31), but they raised concerns about declines in survival of males over the last 3 years of the study; they believed the decline was associated with toxicant poisoning associated with illegal marijuana growing and that males were at a higher risk because of their larger home ranges compared to females (Higley et al. 2014, pp. 32, 38).

The Eastern Klamath Study Area (EKSA) is approximately 200 mi^2 (510 km^2) in size straddling the California/Oregon border. This study area represents the more xeric portion (containing little moisture; very dry) of the NCSO DPS. Monitoring has occurred since 2006 (Green et al. 2018b, entire). Fishers in this study area were a source for translocating fishers to the NSN reintroduction site elsewhere in the DPS. The removal of nine fishers over a 2-year period in 2009 and 2010 (equivalent to 20 percent of the population) did not affect fisher abundance or density in the study area (Green et al. 2017, p. 9).

After fires in this study area in 2014, the estimated number of fishers declined by 40 percent from the year before the fire (Green et al. 2019b, p. 8). Prior to the fire, this population varied in the annual number of fishers and lambda trends (increasing and decreasing) (Green et al. 2016, p. 15, Table 1) (Table 2), indicating ''the population of fishers in the Klamath was relatively stable before the fires occurred and for the three years immediately following the removal of fishers for translocations'' (Green et al. 2016, p. 8). Modeling results suggest the post-fire decline was because of the fire. Although the fire notably affected fishers in this population in the 2 years immediately following, the fate of the fishers affected by the fire is unknown; it is possible that some fishers may have emigrated out of the burned areas (Green et al. 2017, pp. 9–10) or may reoccupy areas that burned at lower severities in the future. Credible intervals (a statistical measure of uncertainty) surrounding abundance estimates of fishers both pre- and post-fire overlap; although the post-fire estimate is at the lower range of the pre-fire estimate, the fisher population estimate post-fire does not appear to be substantially different from the lowest estimates in the pre-fire years (Green et al. 2019b, p. 18; Matthews and Green 2020, pers. comm.). Hence, even with the immediate decline in the local fisher population after the fire, the latest population estimate still appears to be within the statistical range of variation of pre-fire estimates. Data since 2016 have not yet been analyzed to assess the EKSA population trend over the past few years.

In the absence of limiting factors, populations tend to steadily increase (lambda >1) until the population growth becomes restricted. Within the NCSO DPS, this situation has been occurring in the NSN reintroduced population as it expands to fill available habitat (Powell et al. 2019, pp. 2, 4). Healthy populations will then naturally fluctuate around their upper limit, or carrying capacity, increasing in some years and decreasing in other years (Figure 2). This trend is exhibited in the data from the EKSA, where annual estimates of abundance for fishers have varied, yielding increasing and decreasing growth rates from year to year prior to the 2014 fires (Table 2). This occurrence is consistent with normal variation for populations that are neither growing nor declining, but fluctuating near carrying capacity. For both the Hoopa and the EKSA studies, the authors' use of the term ''stable'' (Higley et al. 2014, p. 31; Green et al. 2016, p. 8) implies that the lambda rates are not swinging dramatically from year to year, but rather annual abundance estimates are fluctuating around a steady value consistent with normal population variation. There are still uncertainties regarding the post-fire declines from the EKSA study area (addressed below in Wildfire and Wildfire Suppression section) as well as the reduced male survival rates in the Hoopa study area. However, the best available data suggests that populations are exhibiting variability that may be consistent with populations at or near carrying capacity.

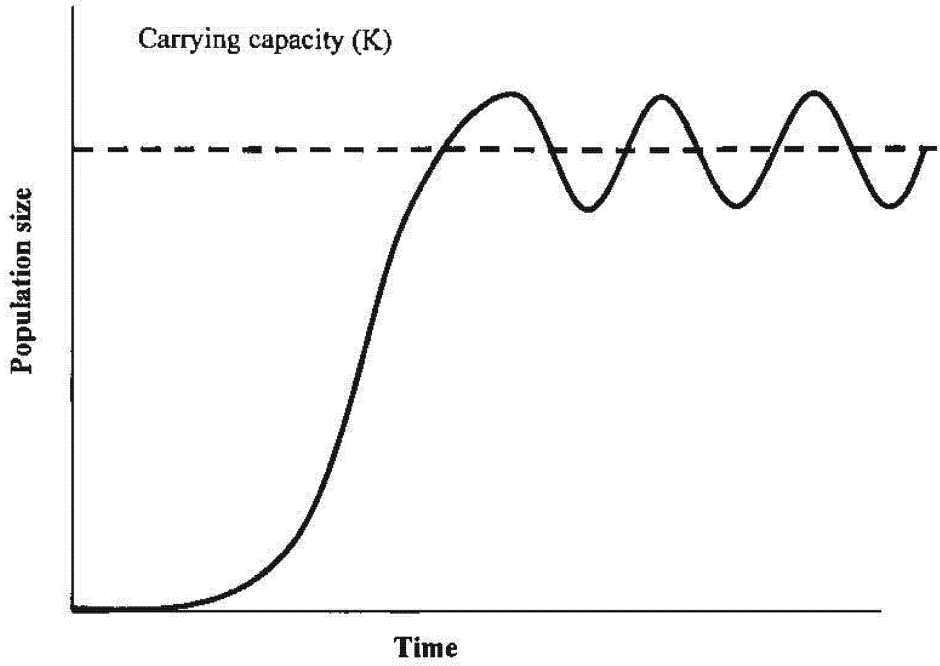

Figure 2. Theoretical population trend with respect to carrying capacity (K). When the population is low, growth rate is rapid. When the population is at or near K, growth rates decelerate and may temporarily decrease as population size fluctuates around K.

TABLE 2—DERIVED POSTERIOR PARAMETER ESTIMATES OF ANNUAL POPULATION DENSITY, ABUNDANCE, AND POPULATION GROWTH OF FISHERS IN THE KLAMATH. PARAMETERS ARE PRESENTED AS MEDIAN [95% CREDIBLE INTERVAL] (GREEN ET AL. 2016, P. 15)

[These estimates have since been reparameterized (Matthews and Green 2020, pers. comm.), indicating a population exhibiting typical fluctuations both increasing and decreasing around K for this time period]

Year	Density (fishers/100 km^2)	Abundance	Lambda
2006	6.64 [4.94, 8.35]	39 [29, 49]	
2007	6.64 [4.94, 8.18]	39 [29, 48]	1 [0.71, 1.35]
2008	6.99 [5.62, 8.69]	41 [32, 50]	1.06 [0.78, 1.4]
2009	6.47 [5.11, 8.18]	38 [29, 47]	0.92 [0.67, 1.2]
2010	5.79 [4.43, 7.33]	34 [26, 43]	0.91 [0.64, 1.21]
2011	6.47 [5.11, 8.18]	38 [28, 46]	1.09 [0.78, 1.45]
2012	6.3 [4.94, 8.18]	37 [27, 46]	0.98 [0.72, 1.33]
2013	6.99 [5.62, 8.69]	41 [32, 50]	1.11 [0.81, 1.49]

Fishers in the NCSO DPS have rebounded substantially from their low in the late 1800s and early 1900s. Grinnell et al. (1937, p. 227) suggested no more than 300 fishers occurred in all of California. Fishers currently occupy much of their historical range in northwestern California, including the redwood region, which may be an expansion from their historical distribution (CDFW 2015, p. 23); fisher detections have increased in northern coastal California since the 1990s, though it is not known as to whether this increase is due to a range expansion, recolonization, increased survey effort, or whether fishers remained undetected in earlier surveys (CDFW 2015, p. 50). Recent monitoring information submitted during the public comment period on the 2019 Revised Proposed Rule indicates fishers continue to occur across much of northern coastal California; systematic camera surveys on private timber lands found fishers at 65 of 93 (70 percent) camera stations (Green Diamond Resource Company [GDRC] 2019, p. 8) during the 2018–2019 winter, suggesting fishers are well-distributed across the company's lands. In Oregon, fishers also appear to have expanded from low numbers in the 1940s, when fishers were considered extremely rare and perhaps close to extirpation (see Barry 2018, pp. 16–17 for summary), to being ''relatively common'' where the indigenous population is found (Barry 2018, p. 22). Fishers also appear to be widespread and common throughout much of the DPS (CDFW 2015, pp. 54–55).

The major habitat-based threats experienced by the NCSO DPS are loss of complex canopy forests and den/rest sites and fragmentation of habitat from high-severity wildfire, wildfire suppression activities (*e.g.,* backburning, fuel breaks, and snag removal), and vegetation management (*e.g.,* fuels reduction treatments, salvage, hazard tree removal). Major non-habitat related threats are exposure to toxicants and, in some areas, predation. In

addition to these threats acting on the NCSO DPS, several conservation efforts are also designed to benefit fishers. These efforts include those being implemented within the portion of the range covered by the Northwest Forest Plan (NWFP) including the conservation and retention of late seral habitats and a network of reserved land use allocations, which provide fisher habitat. We summarize conservation measures and regulation mechanisms that address some of these threats below in the Existing Regulatory Mechanisms section.

Threats

As described above in the General Threats Information section, we determined our foreseeable future timeframe for evaluating the status of the NCSO fisher based upon the period for which we can reasonably determine that both the future threats and the species' responses to those threats are likely. In general, we considered that the trajectories of the threats acting on fisher subpopulations across the DPS's range could be reliably predicted for 35–40 years into the future.

We estimated this timeframe as a result of our evaluation of an array of time periods used in modeling. For example, climate models for areas with fisher habitat, HCPs, and timber harvest models generally predict 50 to 100 years into the future, and forest planning documents often predict over shorter timeframes (10 to 20 years). We considered 40 years at the time of the 2014 Proposed Rule, and given the 5-year time period since, we are modifying the foreseeable future time period to a range of 35–40 years. This is a timeframe that we can reasonably determine that both the future threats and the species' responses to those threats are likely. This time period extends only so far as the predictions into the future are reliable, including a balance of the timeframes of various models with the types of threats anticipated during the 35- to 40-year time period.

Wildfire and Wildfire Suppression

Direct evidence of fisher population response to wildfire is limited. In a monitored fisher population in the Klamath-Siskiyou area, declines in the overall fisher population occurred after wildfires in the study area in 2014 (Green et al. 2019b, entire). This population of fishers has been monitored since 2006. As noted by Green et al. (2019b, p. 4): ''Previous research indicates this population of fishers had been relatively stable up to 2013, despite approximately 20% of the population being translocated elsewhere between 2009 and 2011.'' Fisher numbers in the study area declined 40 percent from 2013, the year prior to the fires. This decrease became apparent the first full year following the fires (2015) and persisted into the following year (Green et al. 2019b, p. 8, Figure 2). While the fate of the fishers affected by the fire is unknown, it is possible that some fishers may have emigrated out of the burned areas (Green et al. 2017, pp. 9–10) or may reoccupy areas that burned at lower severities in the future. The reduced population estimate appears to be within the statistical range of variation of pre-fire estimates, as evidenced by overlapping credible intervals. The post-fire population decline of 40 percent is based on a comparison with the population estimate from 2013, which was the highest measured population estimate compared to all previous years, with 39 animals estimated (Green et al. 2017, p. 19; 2019b, pp. 15–18). The post-fire population estimate was not evaluated in context with the overall pre-fire population trend and its overall variation; such a comparison would likely yield a less dramatic population change. In addition, monitoring data since 2016 is not yet fully evaluated. Both of these tasks are currently underway (Matthews and Green 2020, pers. comm.). Fisher densities declined across all wildfire severity types, but they declined the most in areas with more than a 50 percent loss of tree basal area, consistent with other studies (Green et al. 2019b, pp. 6, 9). The authors note that their data represent only the short-term effects of fires, and any negative effects may not persist. We do not know the fate of individual fishers that left the population after the fire and whether their fitness was ultimately compromised. But this analysis does suggest that high-severity fires can have immediate and substantial effects on local fisher numbers.

Within the Biscuit Fire area in southwest Oregon, which burned in 2002, surveys conducted in 2016 and 2017 did not detect fishers within the burn perimeter (Barry 2018, pp. 22–23), suggesting the fires have extirpated fishers from the burn area. However, detection records do not suggest fishers were ever abundant in the area prior to the fire (Service 2016, pp. 24, 33, 34, and 35, Figures 4, 6, 7, and 8). We do acknowledge, however, that a large part of this area, is within the Kalmiopsis Wilderness Area, where surveys were likely limited due to restricted access. Therefore, fisher occupancy in some areas of the Biscuit Fire remains unknown.

Given projected changes in climate, forests are expected to become more vulnerable to wildfires over the coming century. For example, the proportion of forests considered highly suitable for wildfire in the Klamath Mountains is projected to increase from 18 percent to 48–51 percent by the end of the century, with most of that increase projected to occur on Federal lands (Davis et al. 2017, p. 180). Fire return intervals in low- to mid-elevation forests in Northwest California and the Sierra Nevada Mountains have among the highest departure rates from historical fire return intervals in the State (Safford and Van de Water 2014, pp. iii, 17, 22, 36–37). And, fire return intervals in the Coast Range and Klamath Mountains in Oregon are expected to decrease by half, which would result in a near tripling of the annual area burned in this century compared to last (Sheehan et al. 2015, pp. 20–22; Dalton et al. 2017, p. 46). We note that the projected increases include fires of all severity types, so the potential wildfire areas do not translate directly to an amount of fisher habitat removed. In the case of low- and moderate-severity fires, these may actually create elements used by fishers.

An analysis of fire effects on fisher habitat was done centering on the Klamath Basin and encompassing the NCSO (CBI 2019b and 2019c, entire). The study looked at fisher habitat patches large enough to support five or more breeding female home ranges (CBI 2019b, p. 16) and labeled them as core habitat; the study also identified fisher linkage areas, which were areas on the landscape identified as least-cost pathways to connect the core habitats (CBI 2019b, pp. 3, 16). They found that 24 percent of modeled fisher core areas and 24 percent of modeled fisher linkage areas were considered at risk of at least temporary loss due to severe fires (CBI 2019c, pp. 22, 25). It is important to note that these percentages do not total to 48 percent of the fisher habitat in the study area; core areas are larger patches of fisher habitat, while linkage areas may or may not comprise suitable habitat, but instead represent ''least cost'' paths between core areas.

To update our 2014 analysis of wildfire effects within the NCSO DPS, we conducted an analysis similar to the one completed for the 2014 draft Species Report (Service 2014, pp. 62–64; Service 2019b, unpublished data). Using the fisher habitat map developed for the 2014 Proposed Rule (Service 2016, Appendix B) and USFS data for burn severity for 2008–2018 (USFS 2019), we estimated the effects of high-

severity wildfire to fisher habitat (high and intermediate categories) over the past 11 years. We assumed wildfires that burned at high severity (greater than 50 percent basal area loss) changed fisher habitat to a condition that would not be selected by fishers for denning and resting (although this result may not always be the case, as described above in the General Species Information section). Use of greater than 50 percent basal area loss is consistent with recent fire effects analyses on fishers based on the recent results as reported in Green et al. (2019b, p. 6). Overall, high- and intermediate-quality fisher habitat in the NCSO DPS decreased by 526,424 ac (213,036 ha) from 7,050,035 ac (2,853,047 ha) to 6,523,610 ac (2,640,011 ha), or approximately 7.5 percent was lost as a result of wildfires since 2008; this is an average loss of 6.8 percent per decade.

For comparison purposes, in our 2014 draft Species Report, we estimated 4 percent of fisher habitat would be lost over the next 40 years due to high-severity wildfire, or 1 percent per decade (Service 2014, p. 64). Our 2014 area of analysis for the NCSO subpopulation was based on 27 years of fire data from 1984 to 2011 and assessed approximately 24,080,693 ac (9,745,111 ha), compared to the 10,459,612 ac (4,232,855 ha) assessed in our recent analysis above. The results of our new analysis are based on fire data from the period 2008 to 2018, an 11-year period of the most recent fire activity, which suggests our earlier estimates of changes to fisher habitat from wildfire over the next 40 years may have been an underestimate. However, while this increase in area burned may be consistent with the projections for wildfire increases in the DPS, the magnitude of increase in burned fisher habitat (*i.e.,* from 1 percent per decade in our 2014 analysis to 6.8 percent in our 2019 analysis) may not be a true reflection of the rate of change between the two time periods because of the different temporal (28 years v. 11 years) and geographic (the area analyzed in 2014 was twice as large as the area assessed in 2019) scales used in the comparison. Nevertheless, we recognize the increase in fire activity within the NCSO.

The geography of the Klamath ecoregion, which makes up much of the NCSO where fishers occur, is steep and complex. The variation in elevation and aspect shapes vegetation composition and distribution. This environment influences fuels and ultimately fire behavior and location (Taylor and Skinner 1998, p. 297; Taylor and Skinner 2003, p. 714; Skinner et al. 2018, pp. 179–180). Consequently, fires tend to be more prevalent on drier sites, while less frequent on moister sites, which tend to be areas more consistent with fisher habitat. While these patterns may or may not continue with the effects of climate change, we can use management such as the recent fuels reduction MOUs (see Existing Regulatory Mechanisms below) to leverage existing topography and vegetation condition to better manage for wildfires.

We acknowledge that large-scale wildfires affect fisher habitat, particularly given the predicted increases in wildfire associated with climate change by the end of the century. We also acknowledge that fires, even large fires, are part of the natural fire regime within the NCSO DPS, and fishers have sustained themselves and coexisted with wildfire for centuries. Into the future, it will be important to have areas that can maintain reproducing fishers while severely burned areas can regenerate into fisher habitat again, whether that is foraging habitat within a decade or two, or denning and roosting habitat several decades beyond. Existing land allocations like late-successional reserves from the NWFP on Federal lands throughout much of the NCSO DPS, especially in the areas with the greatest fire severities, will be necessary to manage these areas to return to forest habitat with complex structure. This process will ensure suitable habitat lost to fires will be managed to develop the overstory and structural features conducive to fishers. In the interim, retaining important structural features in burned areas, per reserve land allocation standards and guidelines, will facilitate the use of these areas by prey and foraging fishers within a few decades following high-severity fires.

Although fire risk is expected to increase with climate change, it is not expected to be uniform across the DPS, as described above in this section. The sporadic and episodic nature of fires will help ameliorate some of the risk to fishers across the DPS as a whole. There are effects to local fisher populations immediately after a high-severity fire (*e.g.,* Green et al. 2019b, entire). But fishers are well distributed across the NCSO DPS, including coastal areas such as the redwood region that may be less prone to wildfire risk. This distribution provides redundancy to loss of fishers after a local fire event. Plus, fishers appear to use high severity burned areas, at least for dispersal and foraging (Service 2016, p. 66), suggesting that even severely burned areas can continue to provide some benefits to fishers within a decade or two after the fire. The redundancy exhibited by the NCSO DPS, with multiple subpopulations distributed across a substantial range of habitat (see Resiliency, Redundancy, and Representation section), will allow the NCSO DPS of fishers to absorb the impact of fires, demonstrating the DPS's ability to withstand catastrophic events.

Climate Change

The general climate change related effects discussed above (see General Threats Information) apply to the NCSO DPS, in addition to the following effects, which are more specific to the NCSO DPS. In particular, Siskiyou and Trinity Counties in interior northern California are projected to see the greatest temperature increases for the North Coast Region (Grantham 2018, p. 17). In the Klamath Mountains, models suggest precipitation is likely to fall increasingly as rain rather than snow, becoming mainly rain-dominated by mid-century (Dalton et al. 2017, p. 17). Significant or amplified wildfire activity, with increased area burned and severity can result in reduced denning habitat availability for fishers in the Coast Range and Klamath Mountains. These two areas are projected to experience wildfire return intervals decreased by half and thus result in a near tripling of the annual area burned in this century compared to last (Sheehan et al. 2015, pp. 20–22; Dalton et al. 2017, p. 46). Fire return intervals in low- to mid-elevation forests in Northwest California and the Sierra Nevada Mountains have among the highest departure rates from historical fire return intervals in the State (Safford and Van de Water 2014, pp. iii, 17, 22, 36–37).

Overall, the best available scientific and commercial information suggests that changing climate conditions (particularly warmer and drier conditions) are influencing other threats to fishers and their habitat within the NCSO DPS, in particular the potential for increased wildfire frequency and intensity. However, this is not to say that the DPS will experience widespread or a uniform distribution of climate-driven wildfire events. Even under conditions for a potential increase in wildfire frequency, wildfires will remain sporadic and episodic across the range of the DPS, further moderated by the slope and aspect of terrain throughout the range (*e.g.,* influencing susceptibility to wildfire, and creating a mosaic of fire severity). The DPS's wide variety of topography, vegetation, and climate conditions in its array of physiographic provinces (Service 2016, pp. 15–17, 28–29, 38–39) results in

unpredictable variability in how these provinces will respond to changing climate conditions. Please see additional discussion about potential impacts to fishers or their habitat associated with wildfire (Wildfire and Wildfire Suppression above).

Tree Mortality From Drought, Disease, and Insect Infestation

Specific to the NCSO DPS, sudden oak death (*Phytophthora ramorum*) has caused some tree mortality in southwestern Oregon and northwestern California, but it is not causing widespread losses of oaks (California Oak Mortality Task Force 2019, p. 1; Oregon Department of Forestry (ODF) 2016, pp. 1–2). This finding suggests widespread loss of oaks used by fisher or fisher prey is not occurring as a result of sudden oak death. Overall, warmer and drier climate conditions are projected for the NCSO DPS; however, the varied composition of the vegetation (*e.g.,* Lofroth et al. 2011, pp. 34–90) in the DPS suggests insect outbreaks and disease due to drought-related stress on trees are more likely to be localized should they occur; therefore, future widespread tree mortality impacts to fisher habitat are not anticipated in the NCSO DPS.

Vegetation Management

Although local analyses across the NCSO DPS have assessed fisher habitat at several scales (see Lofroth et al. 2011, pp. 34–90 for study summaries, and Raley et al. 2012, pp. 234–235 for list of additional studies), there is no analysis available that explicitly tracks changes in fisher habitat in recent decades across large portions of the DPS, and which includes fisher habitat ingrowth as well as habitat loss to specific disturbances. Therefore, we used other available information, as described below, to analyze the potential effects of this threat on fishers in the NCSO DPS. In addition to the draft Species Report (Service 2014, pp. 85–96), we used several different sources of information to depict forest vegetation changes caused by vegetation management activities and offset by ingrowth within the range of the NCSO DPS. With the exception of the non-Federal timber harvest database in California (CAL FIRE) 2013), all of these sources are either new or updated since 2014 (Davis et al. 2015, entire; USFS 2016, entire; Spencer et al. 2016, entire; Spencer et al. 2017, entire; gradient nearest neighbor (GNN) data/maps). With these available data, we did not need to rely on northern spotted owl habitat data as a surrogate for fisher habitat data in this evaluation. Our revised methodology is described in detail for the historical, three-State range of the DPS in the 2016 final Species Report (Service 2016, pp. 98–111); we summarize it below and describe how it applies to the NCSO DPS.

Within the portion of the NCSO DPS overlying the Northwest Forest Plan region (generally most of the NCSO DPS except for the northern Sierras), we used information from the draft late-successional and old-growth forest monitoring report (Davis et al. 2015, entire) to assess changes in structural habitat elements associated with fisher habitat (*i.e.,* large trees, down wood, snags) as a result of vegetation management. This information included use of the ''old growth structure index'' (OGSI), which is an index that consists of four structural elements associated with older forests: (1) The density of large live trees; (2) the density of large snags; (3) the amount of down wood cover; and (4) the tree size diversity of the stand. Over a 20-year period (1993–2012), Davis et al. (2015, pp. 5–6, 16–18) tracked changes in forests classed as OGSI–80, which represents forests that begin to show stand structures associated with older forests (*e.g.,* large live trees, snags, down wood, and diverse tree sizes). Though OGSI–80 forests are not a comprehensive representation of fisher habitat, the condition does track forests that contain structural elements consistently used by fishers in habitat studies across the DPS, even in areas with substantially open areas and managed young stands (Lofroth et al. 2010, pp. 81–121; Service 2016, pp. 15–21; Niblett et al. 2017, pp. 16–17; Powell et al. 2019, pp. 21–23; Matthews et al. 2019, pp. 1,309, 1,313; Moriarty et al. 2019, pp. 29–30, 46–49). We acknowledge there is some unknown level of overrepresentation of stands that may not be occupied by fishers and underrepresentation of stands that fishers may actually occupy (Service 2016, p. 102), and we do not suggest that OGSI–80 is a surrogate for fisher habitat proper. Hence, we do not consider it a model of fisher habitat.

However, OGSI–80 does cover a majority of the NCSO DPS and provides a way to assess regional-scale trends in forests that contain the structural elements consistently used by fishers (*e.g.,* large snags, down wood, and large live trees). This information was the only data set available that identified the number of acres lost to timber harvest or vegetation management (as well as disturbances from fire and insects) and the number recruited by forest ingrowth. This OGSI–80 data set allows us to track changes as a result of vegetation management and forest recruitment. In using the OGSI–80 data, we do not expect there to be substantial differences in relative trends for disturbances and ingrowth effects on OGSI–80 stands compared to trends in their effects on fisher habitat.

Details of our analysis of Davis et al. (2015, entire) are explained in the 2016 final Species Report (Service 2016, pp. 101–102). We have since modified that analysis to include only data for the areas (physiographic provinces) that cover the current range of fishers in the NCSO DPS. The California portion of the NCSO DPS covers all of the California physiographic provinces analyzed in Davis et al. (2015, pp. 10, 30–31). The Oregon portion of the NCSO DPS occurs mostly within the Oregon Klamath province, but overlaps somewhat into small portions of the western and eastern Cascades provinces (Davis et al. 2015, pp. 10, 30–31). We assessed the results of including and excluding the data from these two Cascades provinces. Because no substantial differences were revealed between the two data sets, we report here the results of including only the Oregon Klamath province data along with data for all of the California physiographic provinces that are covered by the NWFP.

Although loss of OGSI–80 forests due to timber harvest on non-Federal lands (11.1 percent since 1993) was substantially greater than on Federal lands (1.0 percent since 1993), in combining all ownerships, the percent loss due to timber harvest from 1993 to 2012 was low (5.0 percent). This translates to a 2.5 percent loss per decade. However, this may underestimate future harvest trends because timber harvest volume within the NWFP area on Federal lands has been on a general upward trend since 2000. During the first decade of NWFP implementation, Federal agencies offered, on average annually, 54 percent of the timber harvest sale goals (probable sale quantity or PSQ) identified in the Plan, whereas volume offered in 2012 was at about 80 percent of the PSQ identified in the NWFP, as agencies became more familiar with implementing the NWFP (BLM 2015, p. 340; Spies et al. 2018, pp. 8–9). In addition, BLM has recently revised their management plans in western Oregon and is no longer operating under the NWFP. Consequently, that agency is predicting an increase in timber volume above the NWFP sale quantity in the first decade of implementation (through circa 2025) (BLM 2015, pp. 350–352). Recent litigation may also increase timber harvest on BLM (see Existing Regulatory Mechanisms section). Hence,

overall harvest trends on Federal lands may be increasing and may be closer to or more than rates observed in the last decade of NWFP implementation (2003 to 2012).

The net loss of OGSI–80 conditions to timber harvest, however, is somewhat less because 2.5 percent per decade does not include ingrowth of OGSI–80 stands. Ingrowth represents those stands that did not meet the OGSI–80 structural thresholds at the beginning of the 20-year monitoring period but, through vegetation succession, reached those thresholds at the end of the monitoring period. Stands that grow into the OGSI–80 condition are assumed to offset the loss of other OGSI–80 to disturbance such as vegetation management. However, we acknowledge that OGSI–80 stands exist on a continuum, and OGSI–80 stands lost to timber harvest or some other disturbance are not necessarily equivalent in structural quality to stands that recently cross a threshold of being classified as OGSI–80. That is, the longer stands remain in the OGSI–80 classification, the more likely they are to contain more old-forest structural conditions that benefit fishers.

Ingrowth of OGSI–80 stands within the NWFP portion of the DPS occurred at a rate of 8 percent over the 20-year period, or 4 percent per decade (calculated from Davis et al. (2015, Tables 6 and 7, pp. 30–31)). This ingrowth more than offsets the OGSI–80 stands lost to vegetation management. However, there is still an overall net loss of OGSI–80 stands in the DPS because all disturbances (*i.e.,* wildfire and forest insects and pathogens) need to be considered. When all disturbances and ingrowth are factored in, there is a net loss of 1 percent per decade. However, vegetation management affects a small portion of those habitat components used by fisher within the NWFP area. Furthermore, ingrowth rates are expected to increase in the foreseeable future on Federal lands within the NWFP area because forests regenerating from the post-World War II harvest boom starting in the 1940s are beginning to meet the OGSI–80 threshold (Davis et al. 2015, p. 7).

We note that we incorporated the loss of OGSI–80 stands to wildfire into this analysis of vegetation management only to fully consider the degree to which ingrowth can offset loss of OGSI–80 stands to disturbance. We use a different metric to address the loss of fisher habitat to wildfire (see the Wildfire and Wildfire Suppression section). For the wildfire analysis, we were able to obtain data from past wildfires and overlay it on fisher habitat to better represent fisher habitat loss to high-severity wildfires as well as to incorporate the effects from more recent wildfires than those analyzed by Davis et al. (2015, p. 29).

Outside of the NWFP portion of the DPS (primarily Sierra Nevada region), while we could track vegetation changes over time, the available data did not indicate the amount or types of disturbances affecting the specific vegetation types; that is, we could determine net change in a particular vegetation type, but could not quantify the amount lost to a specific disturbance type, unlike in the NWFP area. Timber harvest records were available for the Sierra Nevada region, but idiosyncrasies in the FACTS (Forest Service Activity Tracking System) database (see Spencer et al. (2016, p. A–30)) and the fact that the available private lands database (CAL FIRE timber harvest plans) did not indicate types of treatment or what portion of the plans may have actually been implemented, led to concerns in translating acres of ''treatment'' as depicted in these databases into on-the-ground changes in forest vegetation types that could represent fisher habitat. Instead, we relied on net vegetation change data to display actual changes in forests that approximate conditions suitable for fisher habitat, although we realize that net changes include other disturbances and that vegetation management will be some unknown portion of that change.

For the Sierra Nevada Range (note that this includes the entire range, as we were not able to split out the SSN DPS from the NCSO DPS), we approximated fisher habitat change using a vegetation trend analysis to track changes in forests with large structural conditions thought to be associated with fisher habitat (see Service 2016, p. 106 for a description related to using GNN data). The vegetation category tracked in this analysis is not equivalent to the OGSI–80 forests used by Davis et al. (2015, entire). Instead, the available data limited us to using predefined structure conditions describing forests with larger trees (greater than 20 in (50 cm)). We realize this process may not include all vegetation types used by fishers. This analysis showed that net loss of forests with larger structural conditions in the Sierra Nevada Range was 6.2 percent across all ownerships over the past 20 years, which equates to a loss of 3.1 percent per decade. However, this amount is loss associated with all disturbance types, including wildfire, insects, and disease, that occurred from 1993 through 2012. Hence, vegetation management is some unknown subset of this loss.

Vegetation management is not affecting large areas of the NCSO DPS, though fragmentation could be restricting fisher movements in localized areas or increasing predation risk. For example, fishers continue to persist in actively managed landscapes (GDRC 2019, no page numbers), and fishers reintroduced into the Sierra Nevada portion of the NCSO DPS on SPI lands, which are managed for timber production, suggest that fisher populations can become established and persist in a landscape where substantial portions were historically and are currently managed for timber production (Powell et al. 2019, entire; Green et al. 2020, entire). Hence, we conclude that vegetation management is a low-level threat because of the small proportion of area harvested in the NCSO DPS and because of the widespread distribution of fishers and their occurrence in actively managed landscapes.

Exposure to Toxicants

As described above in the General Threat Information section, rodenticides analyzed as a threat to the NCSO DPS of fishers include first- and second-generation anticoagulant rodenticides and neurotoxicant rodenticides. Both the draft and final Species Reports detail the exposure of the NCSO DPS of fishers to rodenticides in northern California and southern Oregon (Service 2014, pp. 149–166; Service 2016, pp. 141–159). Data available since the completion of the final Species Report in 2016 continue to document exposure and mortalities to fishers from rodenticides in the NCSO DPS (Gabriel and Wengert 2019, unpublished data, entire). Data for 48 fisher carcasses collected in the range of the NCSO DPS in the period 2007–2018 indicate 36 fishers (75 percent) tested positive for one or more rodenticides (Gabriel and Wengert 2019, unpublished data), while 13.5 percent of fisher mortalities with a known cause in the NCSO DPS from 2007 through 2014 were attributable to rodenticides (7 of 52 mortalities) (Gabriel et al. 2015, p. 6). Using data from both the SSN and the NCSO DPSs, mortalities due to rodenticide toxicosis increased from 5.6 to 18.7 percent since the collection and testing of fisher mortalities using data comparing the periods 2007–2011 to 2012–2014 (Gabriel and Wengert 2019, unpublished data, p. 2). From 2015 to 2018, additional NCSO DPS fisher mortalities due to both anticoagulant and neurotoxicant rodenticides have been documented (Gabriel and Wengert 2019, unpublished data, p. 4). At the Hoopa study site, population monitoring found

''the population as a whole is essentially stable'' (Higley et al. 2014, p. 31), but there are concerns about declines in survival of males over the last 3 years of the study. The authors speculate this decline in male survival is attributed to toxicant poisoning associated with illegal grow sites and that males were identified as being at a higher risk for poisoning because of their larger home ranges compared to females (Higley et al. 2014, pp. 32, 38).

To evaluate the risk to NCSO DPS fishers from illegal grow sites, we use a Maximum Entropy model to identify high and moderate likelihood of illegal grow sites being located within fisher habitat (Gabriel and Wengert 2019, unpublished data, pp. 7–10) in Oregon and California. This model indicates that 54 percent of habitat modeled for NCSO DPS fishers is within areas of high and moderate likelihood for marijuana cultivation.

The majority of our illegal grow site data comes from California, and data are limited for the amount of pesticides used in Oregon. The USFS documented 63 trespass grows between 2006 and 2016, with toxicants present at all these sites (Clayton 2019, pers. comm.). In a separate effort, only one illegal grow site in southern Oregon has been sampled using the same protocol as 300 illegal grow sites in California where the amount and type of rodenticide at a site is tracked. This southern Oregon location had 54 pounds (lb) (24.5 kilograms (kg)) of first-generation anticoagulant rodenticide and 8 lb (3.6 kg) of neurotoxicant rodenticide dispersed around the site (Gabriel and Wengert 2019, unpublished data, p. 7).

As of January 24, 2020, 2,138 legal marijuana cultivation permits were active in counties within the NCSO and SSN DPSs in California (California Department of Food and Agriculture 2020, entire), and 423 legal marijuana operations have been approved as of January 17, 2020, in Oregon counties occupied by fishers (Oregon Liquor Control Commission 2020, entire).

Toxicant use on the landscape, and especially anticoagulant rodenticides, is a problem for fisher. However, the NSN subpopulation has grown to the point of becoming self-sustaining (Green et al. 2020, p. 11; Powell et al. 2019, p. 4) even with 11 of 12 fishers testing positive for anticoagulant rodenticides (Powell et al. 2019, p. 17). This finding suggests that toxicants may not be having a limiting effect on growth in this subpopulation. And, at EKSA only small annual variations were seen in the lambda value (Table 2) from 2006 to 2013 (Green et al. 2016, p. 15). This period is at the same time as toxicant data were being collected (Gabriel et al. 2015, entire; Gabriel et al. 2017, entire; Gabriel and Wengert, unpublished data 2019, entire), and presumably there were illegal grow sites distributed throughout the landscape. Illegal marijuana cultivation has been occurring in California since the mid-1970s. To some degree, the fisher's widespread distribution and relative commonness in the NCSO DPS diffuses the potential for a significant percentage of the subpopulation to be exposed to these toxicants. The presence of illegal grow sites on the landscape since the mid-1970s suggests that the fisher has been living with this threat for some time.

We do not know what level of toxicant exposure is occurring in live fishers in the wild. The best available mortality data are limited (19 individuals in California (Gabriel and Wengert 2019, unpublished data, p. 5), and of the 2 fishers found in Oregon that were tested for rodenticide exposure, both tested positive (Clayton 2016, pers. comm.). We also do not know how the legalization of marijuana will change grow-site location and potentially affect exposure and mortality rates of fishers due to rodenticides.

We view toxicants as a potentially significant threat to fishers in the NCSO DPS because of the reported exposure rate of toxicants in the NCSO DPS, the reported mortalities of fishers from toxicants in the NCSO DPS, the variety of potential sublethal effects due to exposure to rodenticides (including potential reduced ability to capture prey and avoid predators), and the degree to which illegal cannabis cultivation overlaps with the range and habitat of fisher in the NCSO DPS. The exposure rate of 75 percent of fisher carcasses tested in the NCSO DPS has not declined between 2007 and 2018 (Gabriel and Wengert 2019, unpublished data, pp. 3–4), while toxicosis has increased since 2007 (Gabriel et al. 2015, p. 7). As noted above, we do not know the exposure rate of live fishers to toxicants because this data is difficult to collect. In addition, the minimum amount of anticoagulant and neurotoxicant rodenticides required for sublethal or lethal poisoning of fishers is currently unknown. In spite of the widespread nature of illegal grow sites and their known association with illegal rodenticide use, as well as the prevalence of toxicants occurring in tested fishers, the NCSO subpopulation may be demonstrating an ability to withstand this threat with regard to population growth (see discussions above in Current Condition section regarding observed population growth and fluctuation information in NSN and at the EKSA and Hoopa sites).

Illegally used toxicants like rodenticides remain a threat to fishers within the NCSO DPS now and in the foreseeable future. Where illegal marijuana grow sites occur on the landscape and overlap with fisher ranges, illegally used pesticides have a high potential to harm those exposed individual fishers. However, while the threat of people developing illegal grow sites is widespread, we also note that such sites are generally widely dispersed within remote landscapes across the DPS range (*i.e.,* illegal growers look to be as isolated and hidden as possible). This situation would suggest that potential for significant exposure to fishers is generally limited to where the grow sites are located. However, while there is no certain discernible trend regarding whether illegal grow sites may increase or decrease as a result of marijuana legalization, it will still likely take many years before the currently existing sites can be found and remediated.

Potential for Effects Associated With Small Population Size

The NCSO DPS, which encompasses both the SOC and NSN reintroduction sites, covers a relatively large geographic area of approximately 15,444 mi^2 (40,000 km^2). Overall, the NCSO DPS has not expanded beyond our previous estimates; however, the SOC subpopulation may have contracted (Barry 2018, p. 22; Moriarty et al. 2019, p. 5) while the NSN subpopulation continues to grow (Powell et al. 2019, p. 2). Please see the Current Condition section above for detailed information on subpopulation size estimates.

Generally, the ability of a species (or DPS) to withstand a catastrophic event (*i.e.,* bounce back from an event that may result in the loss of a population or large proportion of individuals) is lower with relatively few populations or a very limited distribution across the landscape. Overall, the NCSO DPS has not appeared to grow or expand, despite the availability of suitable habitat. However, multiple, well-distributed subpopulations (*i.e.,* NCSO, NSN, and SOC) continue to exist across the DPS; this occurrence includes aggregates of individuals in geographic areas within NCSO (*i.e.,* EKSA fishers, fishers in and around Redwood National Park, Hoopa fishers, or fishers spread downslope of the Siskiyou Crest). At this time, the best available information for monitored fishers within the DPS (*e.g.,* Green 2017, Higley et al. 2014, Powell et al. 2014, entire; Sweitzer et al. 2015a, entire) does not indicate whether the NCSO DPS is

increasing, stable, or declining. Tucker et al. (2012, pp. 8, 11) found low genetic diversity within the NCSO population (and SSN population), but the NCSO population (and SSN population) had also exhibited low genetic diversity from samples collected between 1880 and 1920, suggesting that the currently low diversity occurred prior to when the historical samples were taken, and thus prior to European settlement. However, fishers have rebounded from substantial population reductions that resulted from historical trapping and habitat loss, and they are currently widespread and common across the DPS. Fishers are well distributed across the NCSO DPS, without barriers for genetic exchange between and among its subpopulations (*e.g.,* genetically homogeneous fishers occupy either side of the Klamath River adjacent to a two-lane, paved highway (Service 2016, p. 113). Genetic diversity decreases moving southward with the peripheral areas having the lowest genetic diversity (Wisely et al. 2004, entire). Low genetic diversity can result in inbreeding depression, and one way to assess the risk of inbreeding depression is to determine the effective population size. An effective population size is the number of individuals in an ideal population that would result in the same level of inbreeding or genetic drift as that of the population under study (Jamieson and Allendorf 2012, p. 578). It is usually substantially smaller than the actual number of individuals in the population, often 10 to 20 percent of the census (actual) population size (Frankham 1995, p. 100). An effective population size estimate of 128 individuals for northwestern California suggests inbreeding depression is not a problem (Tucker et al. 2012, pp. 7–8, 10) when compared to thresholds of 50 or 100 individuals from the established literature discussing effective population sizes (Jamieson and Allendorf 2012, entire; Frankham et al. 2014, entire).

As we have described herein and previously, the NCSO DPS is isolated from other fisher populations, and small relative to the taxon as a whole. As such, the risks of small population size effects and of extinction exist. However, the broad distribution of the DPS across its range, in combination with the DPS occurring in multiple subpopulations with no barriers to genetic exchange within and between those subpopulations, and the low likelihood of a catastrophic event at a scale that could hypothetically affect the entire DPS, indicates that the risks of small population size effects and of extinction are very low.

Disease and Predation

A general description of disease and predation on fishers is provided above (see General Species Information and Summary of Threats). Specific to the California portion of the NCSO DPS, of 42 fisher mortalities analyzed, 54 percent were a result of predation and 19 percent were caused by disease (Gabriel et al. 2015, p. 7, Table 2). It is not unexpected that predation is the greatest source of mortality given the suite of larger, generalist predators that occupy the NCSO DPS (*e.g.,* coyotes, bobcats, and mountain lions). As noted in the General Species Information and Summary of Threats section, we do not know whether observed predation rates are substantially different from historical rates, or whether they are comparable with other populations not subjected to trapping. We acknowledge that sublethal effects of toxicants as well as a possible increase in exposure to generalist predators as a result of habitat modification may result in higher predation rates than what historically occurred (Gabriel et al. 2015, p. 14). However, fishers continue to remain widely distributed across the DPS, there is recent evidence of population growth from the NSN subpopulation, and the EKSA exhibits seemingly normal variability in spite of these stressors.

Vehicle Collisions

Vehicle-related mortalities make up a small portion of overall fisher mortality across California (see General Species Information and Summary of Threats above) and particularly in the NCSO DPS (Service 2016, p. 138). Although major paved highways with high-speed traffic occur throughout the DPS, available records do not indicate localized areas of concentrated mortalities that may substantially decrease local fisher populations. Hence, we do not consider vehicle collisions to be a substantial threat to fishers in the NCSO DPS.

Existing Regulatory Mechanisms

Forest Service (USFS) and BLM

A number of Federal agency regulatory mechanisms pertain to management of fisher (and other species and habitat). Most Federal activities must comply with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*). NEPA requires Federal agencies to formally document, consider, and publicly disclose the environmental impacts of major Federal actions and management decisions significantly affecting the human environment. NEPA does not regulate or protect fishers, but it requires full evaluation and disclosure of the effects of Federal actions on the environment.

Other Federal regulations affecting fishers are the Multiple-Use Sustained Yield Act of 1960, as amended (16 U.S.C. 528 *et seq.*), and the National Forest Management Act of 1976, as amended (NFMA) (90 Stat. 2949 *et seq.;* 16 U.S.C. 1601 *et seq.*). The NFMA specifies that the USFS must have a land and resource management plan to guide and set standards for all natural resource management activities on each National Forest or National Grassland. Additionally, the fisher has been identified as a sensitive species and a species of conservation concern by the USFS, requiring Forest Plans to include Standards and Guidelines designed to benefit fisher. Overall, per USFS guidelines under the NFMA, planning rules must consider the maintenance of viable populations of species of conservation concern.

BLM management is directed by the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1704 *et seq.*). This legislation provides direction for resource planning and establishes that BLM lands shall be managed under the principles of multiple use and sustained yield. This law directs development and implementation of resource management plans, which guide management of BLM lands at the local level. Fishers are also designated as a sensitive species on BLM lands.

In addition, the NWFP was adopted by the USFS and BLM in 1994 to guide the management of more than 24 million ac (9.7 million ha) of Federal lands within the range of the northern spotted owl, which overlaps with portions of the NCSO DPS of fisher in Oregon and northwestern California (USDA and U.S. Department of the Interior (DOI) 1994, entire). The NWFP Record of Decision amended the management plans of National Forests and BLM districts and provided the basis for conservation of the northern spotted owl and other late-successional and old-growth forest associated species on Federal lands. However, in 2016 the BLM revised their Resource Management Plan (RMP), replacing NWFP direction for BLM-administered lands in western Oregon, totaling approximately 2.5 million ac (1 million ha) (BLM 2016a, 2016b, entire). This RMP affects BLM lands, which are mostly in the interior portion of the NCSO DPS in Oregon and portions of the SOC subpopulation.

Compared with management under the NWFP, BLM's revised RMP results in a decrease in land allocated for

timber harvest, from 28 percent of their planning area in the Matrix allocation under NWFP to 20 percent under their revised RMP. However, volume of timber harvest is expected to increase to 278 million board feet per year through the first decade, up from the highest NWFP annual amount of about 250 million board feet, and the average NWFP annual amount of 167 (BLM 2015, pp. 350–352). Forest stand conditions assumed to represent fisher habitat are expected to decline in the first two decades under the revised RMP, similar to projections under the NWFP. However, by decade three, habitat is projected to increase under the revised plan compared to the NWFP because more fisher habitat is in reserve allocations under the revised plan (75 percent of fisher habitat on BLM land) than under the NWFP (49 percent) (BLM 2015, pp. 1,704–1,709). We acknowledge that a court recently found that the revised RMP violated statutes regulating timber harvest by setting aside timberland in reserves where the land is not managed for permanent forest production and the timber is not sold, cut, and removed in conformity with the principle of sustained yield; the decision has been appealed, and thus the ultimate outcome is as yet unknown (*American Forest Resources Council,* et al., v. *Hammond,* et al., 2019 WL 6311896 (D.D.C. November 22, 2019) (appeal pending, *American Forest Resources Council,* et al. v. *United States,* et al., (D.C. Cir., appeal filed January 24, 2020)). Thus, while we recognize that timber harvest on BLM lands could possibly increase in the future, at this point we use the existing RMP in our analysis of regulatory mechanisms.

Federal lands are important for fishers because they have a network of late-successional and old-growth forests that currently provide habitat for fisher, and the amounts of fisher habitat are expected to increase over time. Also, the National Forest and BLM units with watersheds inhabited by anadromous fish provide buffers for riparian reserves on either side of a stream, depending on the stream type and size. With limited exceptions, timber harvesting is not permitted in riparian reserves, and the additional protection guidelines provided by National Forests and BLM for these areas may provide refugia and connectivity between blocks of fisher habitat. Also, under the NWFP, the USFS, while anticipating losses of late-successional and old-growth forests in the initial decades of plan implementation, projected that recruitment would exceed those losses within 50 to 100 years of the 1994 NWFP implementation (Davis et al. 2015, p. 7). Furthermore, BLM, under its revised management plans, is also projecting an increase in forest stand conditions that are assumed to represent fisher habitat above current conditions beginning in the third decade of plan implementation (BLM 2015, p. 875).

National Park Service

Statutory direction for the National Park Service (NPS) lands within the NCSO DPS is provided by the provisions of the National Park Service Organic Act of 1916, as amended (54 U.S.C. 100101). Land management plans for the National Parks within Oregon and California do not contain specific measures to protect fishers, but areas not developed specifically for recreation and camping are managed toward natural processes and species composition and are expected to maintain fisher habitat where it is present.

Tribal Lands

Several tribes within the NCSO DPS recognize fishers as a culturally significant species, but only a few tribes have fisher-specific guidelines in their forest management plans. Some tribes, while not managing their lands for fishers explicitly, manage for forest conditions conducive to fisher (for example, marbled murrelet (*Brachyramphus marmoratus*) habitat, old-forest structure restoration). Trapping is typically allowed on most reservations and tribal lands, but it is typically restricted to tribal members. Whereas a few tribal governments trap under existing State trapping laws, most have enacted trapping laws under their respective tribal codes. However, trapping (in general) is not known to be a common occurrence on any of the tribal lands.

Rodenticide Regulatory Mechanisms

The threats posed to fishers from the use of rodenticides are described under the Exposure to Toxicants section, above. In the 2016 final Species Report (Service 2016, pp. 187–189), we analyzed whether existing regulatory mechanisms are able to address the potential threats to fishers posed from both legal and illegal use of rodenticides. As described in the 2016 final Species Report, the use of rodenticides is regulated by several Federal and State mechanisms (*e.g.,* Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended, (FIFRA) 7 U.S.C. 136 *et seq.;* California Final Regulation Designating Brodifacoum, Bromadiolone, Difenacoum, and Difethialone (Second Generation Anticoagulant Rodenticide Products) as Restricted Materials, California Department of Pesticide Regulation, 2014). The primary regulatory issue for fishers with respect to rodenticides is the availability of large quantities of rodenticides that can be purchased under the guise of legal uses, but are then used illegally at marijuana grow sites within fisher habitat. Both the Environmental Protection Agency (EPA) and California's Department of Pesticide Regulation developed an effort to reduce the risk posed by the availability of second-generation anticoagulants to end-users, through the 2008 Risk Mitigation Decision for Ten Rodenticides (EPA 2008, entire). This effort issued new legal requirements for the labeling, packaging, and sale of second-generation anticoagulants, and through a rule effective in July 2014, restricted access to second-generation anticoagulants (California Food and Agricultural Code Section 12978.7).

State Regulatory Mechanisms

Oregon

The fisher is a protected wildlife species in Oregon, meaning it is illegal to kill or possess fishers (Oregon Administrative Rule (OAR) 635–044–0430). In addition, Oregon Department of Fish and Wildlife does not allow trapping of fishers in Oregon. Although fishers can be injured and/or killed by traps set for other species, known fisher captures are infrequent (Service 2016, p. 126). State parks in Oregon are managed by the Oregon Parks and Recreation Department, and many State parks in Oregon provide forested habitats suitable for fishers.

The Oregon Forest Practice Administrative Rules (OAR chapter 629, division 600) and Forest Practices Act (Oregon Revised Statutes 527.610 to 527.770, 527.990(1) and 527.992) (ODF 2018, entire) apply to all non-Federal and non-tribal lands in Oregon, regulating activities that are part of the commercial growing and harvesting of trees, including timber harvesting, road construction and maintenance, slash treatment, reforestation, and pesticide and fertilizer use. The OAR provides additional guidelines intended for conserving soils, water, fish and wildlife habitat, and specific wildlife species while engaging in tree growing and harvesting activities, and these rules may result in retention of some structural features (*i.e.,* snags, green trees, downed wood) that contribute to fisher habitat.

Management of State forest lands is guided by forest management plans. Managing for the structural habitats as described in existing plans should increase habitat for fishers on State forests. However, we acknowledge that the Oregon Department of Forestry recently lost a lawsuit on its State Forest Management Plans that could result in increased timber harvest and reduced retention or development of forest area suitable for fishers, but the ultimate remedy is still unknown. Hence, we must use the existing plans in our analysis of regulatory mechanisms.

California

On June 10, 2015, CDFW submitted its status review of the fisher to the California Fish and Game Commission (CFGC), indicating that listing of the fisher in the Southern Sierra Nevada Evolutionarily Significant Unit (ESU) as threatened was warranted, but that fishers in the Northern California ESU (similar to the California portion of the NCSO DPS) were not threatened (CDFW 2015, entire). CFGC made their final determination to list the Southern Sierra Nevada ESU as threatened and that listing the Northern California ESU was not warranted on April 20, 2016 (CFGC 2016, p. 10). The determination regarding the Northern California ESU was made after concluding that the cumulative effects of threats would not threaten the continued existence of fishers due to the size and widespread distribution of the fisher population in the ESU (CDFW 2015, p. 141; CFGC 2016, pp. 7–10). Accordingly, the Northern California ESU is not listed under the California Endangered Species Act (CESA), and take as defined under CESA of the Northern California ESU is not prohibited. It remains illegal to intentionally trap fishers in all of California (Cal. Code Regs. title 14, § 460 2017). Data on incidental captures of fishers in traps set for other furbearer species is not available, but the requirement to use non-body-gripping traps suggests that most trapped fishers could be released unharmed (Service 2016, p. 126).

The California Environmental Quality Act (CEQA) can provide protections for a species that meets one of several criteria for rarity (CEQA 15380). Fishers throughout the NCSO DPS's range in California meet these criteria, and under CEQA, a lead agency can require that adverse impacts be avoided, minimized, or mitigated for projects subject to CEQA review that may impact fisher habitat. All non-Federal forests in California are governed by the State's Forest Practice Rules (FPR) under the Z'Berg Nejedly Forest Practice Act of 1973, a set of regulations and policies designed to maintain the economic viability of the State's forest products industry while preventing environmental degradation. The FPRs do not contain rules specific to fishers, but they may provide some protection of fisher habitat as a result of timber harvest restrictions.

Voluntary Conservation Mechanisms

An intergovernmental memorandum of understanding (MOU) for fisher conservation was signed in 2016 by Federal and State agencies in Oregon (DOI et al. 2016, entire) to facilitate and coordinate fisher conservation activities among the parties, with an expiration date of April 2021. While we are not aware of how the MOU might influence specific projects (affect actual work on the ground), we consider the facilitation and coordination of fisher conservation activities and the projects that follow a benefit. Multiple interagency MOUs are also in place in California with the intention to coordinate and collaborate on actions that may reduce wildfire risk across multiple ownerships; actions that reduce wildfire may also reduce risk to habitat loss for multiple species including the fisher. Since the publication of the 2019 Revised Proposed Rule, an interagency MOU (titled ''Forest Fuels Reduction and Species Conservation in California'') was signed on February 7, 2020, and amended on February 12, 2020, by the USFS, the State, small timber companies, industrial timber companies, and the National Fish and Wildlife Foundation to facilitate coordinated actions that may contribute to fuels reduction efforts and species conservation across the various land ownerships between now and December 2024 (USFS et al. 2020, entire). An addendum was signed on February 12, 2020, adding additional industrial timber companies and small timber companies. This MOU supersedes multiple previous MOUs from 2017 and 2019 for NSO and CSO (USFS 2020, pp. 1, 13–14). Fisher-specific conservation measures are included in this MOU, in addition to conservation measures for the California and northern spotted owls. The measures promote fisher occupancy and habitat through increased resilience and resistance of habitat from multiple disturbances, including uncharacteristic wildfire. More specifically, participants will implement activities consistent with the conservation needs of the fisher including retention of known natal dens, retention or recruitment of hardwoods and structurally diverse forests, retention of shrubs and smaller trees in areas with sparse overstory cover, and avoid poisoning potential prey species. While the MOU is not specific to what fuels reduction measures will take place on the ground, the MOU will increase the effectiveness of fuels management by considering data and information and coordinating efforts for entire landscapes across multiple ownerships (USFS et al. 2020, p. 3).

There are additional MOUs in California within the range of the NCSO DPS for wildfire and fuels management, that have no specific conservation measures for fisher, but that include other species that use habitat similar to those used by fisher (*i.e.,* northern and California spotted owls). An MOU was signed in 2015 by multiple conservation groups, CAL FIRE, two Federal agencies, and two prescribed fire councils (USFS et al. 2015). The MOU is titled ''Cooperating for the purpose of increasing the use of fire to meet ecological and other management objectives,'' and expires on October 7, 2020. The purpose of this MOU is to document the cooperation between the parties to increase the use of fire to meet ecological and other management objectives. Peripheral to the 2017 MOU for California spotted owl (that has been superseded by the 2020 MOU discussed above), a challenge cost-share agreement was signed in 2017 by the National Fish and Wildlife Foundation, and the USFS, Pacific Southwest Region, Regional Office (USFS 2017); the cost share agreement expires June 29, 2022. The agreement is titled ''Pacific Southwest Fuels Management Strategic Investment Partnership.'' The purpose of this agreement is to document the cooperation between the parties to implement a hazardous fuels management program that reduces the risk of severe wildfire, protects ecological values, and reduces the chance of damage to public and private improvements.

Finally, an MOU was signed in 2019 by small timber companies, industrial timber companies, CAL FIRE, the National Fish and Wildlife Foundation, and the USFS, Pacific Southwest Region, Regional Office (USFS 2019). The MOU is titled ''Forest Fuels reduction and species conservation in California'' with a focus on the California spotted owl and expires on December 31, 2020. The MOU approximately covers the area occupied by the NSN subpopulation of fishers in the NCSO. The purpose of the MOU, similar to others mentioned, is to coordinate and share information on fuels reductions actions across larger landscapes to provide species

conservation. We cannot find language indicating that this MOU was superseded by the 2020 MOU (discussed above) but many of the same landowners are part of both MOUs and much of the intent is the same.

All of these MOUs and the cost-share agreement provide collaboration between Federal partners and non-governmental organizations to coordinate and fund fuel reduction projects within the NCSO DPS, which when implemented could reduce the impact of large-scale high-severity fire. So far, we are aware of two fuel reduction projects that have been funded as part of the MOUs within the NCSO DPS, one on the Lassen National Forest and one on the Six Rivers National Forest. Finally, many of the MOUs expire in the near term; however, we anticipate, based on past track records to renew and update the MOUs, continuing collaboration, and because many of the same partners occur on multiple MOUs, partnerships resulting in conservation of fisher habitat will continue.

A template CCAA for fishers in western Oregon (81 FR 15737, March 24, 2016) has been published, and we have negotiated site plans and issued permits to five private timber entities (with three more site plans under review), as well as Oregon Department of Forestry (84 FR 4851, February 19, 2019; 84 FR 31903, July 3, 2019). Conservation actions in the CCAA include protection of occupied den sites as well as landowner participation and collaboration with fisher surveys and research as part of a defined program of work. To date, permittees have committed $200,000 in cash or in-kind support towards this program of work as part of meeting conservation measures within the CCAA.

In 2009, a programmatic Safe Harbor Agreement (SHA) was completed for northern spotted owls in Oregon (74 FR 35883, July 21, 2009). The agreement authorizes the ODF to extend incidental take coverage with assurances through issuance of Certificates of Inclusion to eligible, non-Federal landowners who are willing to carry out habitat management measures benefitting the northern spotted owl. The purpose of the agreement is to encourage non-Federal landowners to create, maintain, and enhance spotted owl habitat through forest management, which would also benefit fishers given the two species' use of similar habitat components.

For the portion of the NCSO DPS in California, reintroduction efforts have resulted in establishment of a fisher subpopulation in the SPI Stirling Management Unit (NSN) with the potential to connect with fishers in the remainder of the NCSO DPS to the north. In 2016, an approximately 1.6 million-ac (647 thousand-ha) CCAA for fishers on lands in SPI ownership in the Klamath, Cascade, and Sierra Nevada mountains was completed (SPI and Service 2016, entire). This CCAA encompasses approximately 5 percent of potentially suitable fisher habitat in the California portion of the NCSO DPS, 2.7 percent of which is currently occupied. Implementation and monitoring have been underway since that time. The objectives of this CCAA are to secure general forested habitat conditions for fishers for a 10-year time period (2016 to 2026) and the retention of important fisher habitat components (large trees, hardwoods, and snags) suitable for denning and resting into the future. Although this CCAA expires in 6 years, SPI has a track record of partnering with the Service and has demonstrated a commitment to fisher conservation through the development of this CCAA. We anticipate at the end of the CCAA, SPI will continue to conserve fisher. This conservation could be embodied in a new or renewed CCAA, or fisher conservation could be added to an HCP that is currently in development for northern and California spotted owls.

In 2019, the Service finalized for the Green Diamond Forest Resource Company HCP (GDRC 2018, entire) an incidental take permit that is anticipated to provide a conservation benefit for fishers and their habitat in Del Norte and Humboldt Counties, California (portions of forests on the west slope of the coastal and Klamath Mountains). Conservation benefits anticipated by GDRC include (but are not limited to): Identifying and retaining fisher denning and resting trees, including maintaining a 0.25-mi (0.4-km) radius no-harvest buffer around active fisher dens; fisher-proofing water tanks and pipes; implementing measures that detect, discourage, and remove unauthorized marijuana cultivation and associated pesticide use; and cooperating with any Federal or State-approved fisher capture and relocation/reintroduction recovery programs (Service 2019a, p. 2).

In 1999, the Service finalized for the Pacific Lumber Company (now Humboldt Redwood Company) HCP (Pacific Lumber Company et al. 1999, entire) an incidental take permit that provides a conservation benefit for fishers and their habitat in Humboldt County, California. Conservation benefits include, but are not limited to: (1) Retention of late-seral habitats that provide denning and resting habitat for fishers, (2) creation of ''channel migration zones'' and ''riparian management zones'' to provide connectivity across the landscape, and (3) retention and recruitment of suitable habitat structural elements that provide late-seral habitat features for fishers when cut stands reach mid-succession.

Resiliency, Redundancy, and Representation

In this section, we use the conservation biology principles of resiliency, redundancy, and representation to evaluate how the threats, regulatory mechanisms, and conservation measures identified above relate to the current and future condition of the NCSO DPS.

Resiliency is defined as the ability of populations to withstand stochastic events (events arising from random factors). Measured by the size and growth rate of populations, resiliency gauges the probability that the populations comprising a species (or DPS) are able to withstand or bounce back from environmental or demographic stochastic events.

Redundancy is defined as the ability of a species (or DPS) to withstand catastrophic events, and may be characterized by the degree of distribution of the species, either as individuals of a single population or as multiple populations, within the species' ecological settings and across the species' range. The greater redundancy a species exhibits, the greater the chance that the loss of a single population (or a portion of a single population) will have little or no lasting effect on the structure and functioning of the species as a whole. While such a loss would temporarily ''lower'' the species' redundancy relative to any future catastrophic events (*i.e.,* a second catastrophic event causing the loss of another population or portion before the species was able to bounce back from the first loss), the higher a species' initial redundancy, the greater the likelihood its structure and functioning as a whole will be restored before any subsequent catastrophic events.

Representation is defined as the ability of a species (or DPS) to adapt to changing environmental conditions. Measured by the breadth of genetic or environmental diversity within and among populations, representation gauges the probability that a species is capable of adapting to environmental changes.

As noted above, the resiliency of species' population(s), and hence an assessment of the species' overall resiliency, can be evaluated by

population size and growth rate. While data on these parameters are often not readily available, inferences about resiliency may be drawn from other demographic measures. In the case of the NCSO DPS, the population size component of resiliency for the overall DPS may be lower than historical levels to some degree, based simply on historical losses. However, we also know that fishers in the DPS have rebounded from the lows of the early- and mid-1900s, and continue to remain widely distributed and common across the DPS. Furthermore, forest carnivores generally occur at low densities (Ruggiero et al. 1994, p. 146), and fisher density estimates are widely variable for many reasons, including changes in prey populations, seasonal changes caused by pulses in births or mortalities, and sampling error (Powell and Zielinski 1994, p. 43). Effective population size estimates for the California portion of the DPS do not indicate that inbreeding depression is occurring (see Effects Associated with Small Population Size). This combination of qualitative demographic measures (*i.e.,* population rebound from historic lows, and effective population size estimates showing no indication of inbreeding depression), combined with the widespread distribution of fishers in the DPS, leads us to conclude that existing populations have a high level of resiliency.

Threats that cause losses of individuals from a population have the potential to affect the overall resiliency of that population, and when losses occur at a scale large enough that the overall population size and growth rate are negatively impacted, this could reduce the population's ability to withstand stochastic events. Although we identify threats acting upon the NCSO DPS that likely cause losses of individuals, evaluation of all the available information relevant to the demographic condition of the DPS supports our conclusion of resiliency. In addition to the analysis outlined above in this document, we note that in our 2019 Revised Proposed Rule, several of the threats we evaluated under the previously singular West Coast DPS were mostly pertinent in the range of the SSN DPS. The threats related to habitat loss from tree mortality, mortality factors related to disease, predation, and vehicle collisions, and the inherent vulnerability associated with the small population size, are predominant in the range of the SSN DPS, but were determined to not be potentially significant drivers of future status in the range of the NCSO DPS. As such, these threats have limited, or no impact on the resiliency of the populations comprising the NCSO DPS. Further, we point to the evidence of population resilience exhibited by aggregates of individuals in specific geographic areas in the NCSO DPS in response to known disturbances or threats. Namely, fishers in the EKSA were resilient to removal of 20 percent of the population within the study area, with no changes in abundance or density. In addition, the fisher population at NSN has grown at a near steady rate since reintroduction in spite of exposure to toxicants in 11 of 12 tested fishers in the study area (Powell et al. 2019, p. 16). Overall, the best available information indicates that, although the threats acting upon the DPS result in losses of individual fishers, the various subpopulations comprising the NCSO DPS, and hence the NCSO DPS as a whole, are resilient and able to withstand stochastic events.

With regard to redundancy, multiple, interacting populations across a broad geographic area or a single wide-ranging population (redundancy) provide insurance against the risk of extinction caused by catastrophic events. As was recognized in the 2019 Revised Proposed Rule, the NCSO DPS exhibits redundancy by being well distributed and common across a broad geographic range and comprising multiple smaller subpopulations (*i.e.,* NCSO, NSN, and SOC) and aggregates of individuals in geographic areas (*i.e.,* EKSA fishers, fishers in and around Redwood National Park, Hoopa fishers, or fishers spread downslope of the Siskiyou Crest) (see 84 FR at 60299). Consequently, should catastrophic events such as wildfire affect a portion of the DPS, substantial numbers of fishers will still occur elsewhere in the DPS. While the loss of a population within the NCSO DPS, or a substantial portion thereof, would have the effect of temporarily lowering the redundancy of the entire DPS, its current existing redundancy would be sufficient to allow its structure and functioning as a whole to be restored. Remaining fishers would continue to serve as a source for recolonizing disturbed areas as they return to fisher habitat, contributing to the likelihood that fishers in the DPS will persist into the future and contribute to the long-term genetic and demographic viability across the range.

As noted in our 2019 Revised Proposed Rule, fishers in the three west coast states, including the NCSO DPS, occur in smaller numbers and a smaller distribution than historically. This size and range reduction due to historical losses results in a consequent reduction in representation, relative to that historical condition. As such, fishers in the west coast states have a relatively reduced ability to adapt to changing environmental conditions. However, similarly to our discussion above regarding resiliency, the predominant impact of the historical reduction in representation for west coast fishers is seen in the SSN DPS. The NCSO DPS, even with a reduced range relative to historical conditions, still exhibits a wide breadth of genetic or environmental diversity, and thus has sufficient capacity to withstand future environmental changes. Fishers in the DPS display a high degree of representation, exhibited by the ecological variability across the DPS. Fishers are found across multiple physiographic provinces (a geographic region with a specific geomorphology) in the NCSO DPS that represent a wide variety of forest types and ecological conditions, from the Coastal California province that is wetter with lower elevations and redwood forests, to the Klamath province with greater forest diversity and abundant hardwoods, including several endemic tree and other plant species, to the Sierra and Cascade provinces with higher elevations and forests that have adapted to colder and drier conditions. Within the NCSO DPS, fishers have a capacity to occupy these different provinces and environments, reflecting an ability to adapt to changing environmental conditions, further contributing to long-term viability across their range. Although genetic diversity among fishers sampled in northwest California is low and has been low since pre-European settlement (Tucker et al. 2012, p. 8), fishers have rebounded from substantial population reductions that resulted from historical trapping and habitat loss, and although reduced in population and range size relative to historical conditions, they are currently widespread and common across the DPS.

Determination

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a

species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

Our regulations direct us to determine if a species is endangered or threatened due to any one or a combination of these five threat factors identified in the Act (50 CFR 424.11(c)). Our 2016 final Species Report (Service 2016, entire) is the most recent detailed compilation of fisher ecology and life history, and has a significant amount of analysis related to the potential impacts of threats within the NCSO DPS's range. In addition, we collected and evaluated new information available since 2016, including new information made available to us during the recent comment periods in 2019, to ensure a thorough analysis, as discussed above.

Across the DPS, the actions or conditions we identified that were known to or were reasonably likely to negatively affect individuals of the DPS included:

- Habitat-based threats such as high-severity wildfire, wildfire suppression activities, and post-fire management actions (Factor A); climate change (Factor E); tree mortality from drought, disease, and insect infestation (Factor A); vegetation management (Factor A); and human development (Factor A).
- Direct mortality-based threats including trapping and incidental capture (Factor B); research activities (Factor B); disease or predation (factor C); collision with vehicles (Factor E); exposure to toxicants (Factor E); and the potential for effects associated with small population size (Factor E).

With the exception of trapping for fishers, which is no longer a lawful activity in the range of the NCSO DPS, all of these identified threats have the potential to negatively affect fishers, either through direct impacts to individual animals or to the resources they need. Regarding incidental capture resulting from legal trapping for other species, it is either very rare (Service 2016, p. 126) or has a low chance of causing injury (through use of live traps). Regarding the remainder of threats, we note that the extent and magnitude of them vary, relative to the distribution of the DPS across its range (*i.e.,* not all threats affect every fisher).

In conducting our status assessment of the DPS, we evaluate all identified threats under the section 4(a)(1) factors, and attempt to assess how the cumulative impact of all threats acts on the viability of the DPS as a whole. That is, all the anticipated effects from both habitat-based and direct mortality-based threats are examined in total and then evaluated in the context of what those combined negative effects will mean to the future condition of the DPS. However, for the vast majority of potential threats, the effect on the DPS (*e.g.,* total losses of individual fishers or their habitat) cannot be quantified with available information. Instead, we use the best available information to gauge the magnitude of each individual threat on the DPS, and then assess how those effects combined (and as may be ameliorated by any existing regulatory mechanisms or conservation efforts) will impact the DPS's future viability.

Based on our understanding of the available information indicating the potential magnitude and scale of how all identified threats may affect the DPS, we began under the premise that those with the greatest potential to become significant drivers of the future status of the NCSO DPS were: Wildfire and wildfire suppression; tree mortality from drought, disease, and insect infestation; the potential for climate change to exacerbate both wildfire and tree mortality; threats related to vegetation management; and exposure to toxicants. The available information about the remaining threats from the list identified above indicated a lower potential for becoming significant drivers.

After conducting our analyses on all these threats, we found that the NCSO DPS as a whole will experience:

- Changing climate conditions, likely in the manner of becoming generally warmer and drier, with subsequent potential to affect habitat conditions for fisher, as well as the potential for increased stress levels in individual fishers. However, these potential reactions to changing climate conditions will likely vary across the DPS, due to the DPS's wide variety of topography and vegetation in its physiographic provinces, and unpredictable variability in how these provinces will respond to the changing climate conditions.
- Increased potential for wildfire frequency and intensity, influenced by changing climate conditions. Wildfire, while having the potential to cause significant losses of fishers and their habitat resources where fires occur, is sporadic and episodic across the DPS, and moderated by the slope and aspect of terrain (*e.g.,* influencing susceptibility to wildfire, and creating a mosaic of fire severity) throughout the range.
- Low likelihood of widespread tree mortality resulting from climate-influenced susceptibility to diseases or insect infestations, similarly moderated by the slope and aspect of terrain.
- Limited exposure to potential effects from vegetation management actions. Although fishers may experience localized fragmentation of habitat conditions or an increased risk of predation where vegetation management actions will occur, the available information indicates only a small proportion of the suitable habitat in the DPS's range is likely to undergo these actions.
- Some continued level of exposure to toxicants from illegal marijuana grow sites. Such sites are generally widely dispersed within remote landscapes across the NCSO DPS range, suggesting potential significant exposure to fishers is limited to where the grow sites are located. However, where they do occur within fisher ranges, illegally used toxicants have the potential to harm those exposed individual fishers. While there is no certain discernible trend regarding whether illegal grow sites may increase or decrease as a result of marijuana legalization, it will still likely take many years before the currently existing sites can be found and remediated.
- Some continued level of risk regarding both the effects associated with small population size (*e.g.,* inbreeding depression) and the general risk of extinction. As we have described herein and previously, the NCSO DPS is isolated from other fisher populations, and small relative to the taxon as a whole. As such, the risks of small-population-size effects and of extinction exist. However, the broad distribution of the DPS across its range, in combination with the DPS occurring in multiple subpopulations with no barriers to genetic exchange within and between those subpopulations, and the low likelihood of a catastrophic event at a scale that could hypothetically affect the entire DPS, indicates that the risks of small-population-size effects and of extinction are very low.
- Potentially increased incidences of predation in localized settings (*e.g.,* vegetation management action sites), and continued low incidences of collisions with vehicles. Both of these threats are likely to continue, but likely accounting for losses of only small numbers of individuals.

• No change in normal incidence of disease across the range.

In summary, the NCSO DPS will experience mortality and sublethal effects to individual fishers across the range from the combined threats of changing climate conditions, wildfire and wildfire suppression activities, exposure to toxicants, predation, and collisions with vehicles. Localized effects to fisher habitat resources may also occur as a result of future tree mortality events or vegetation management actions, although these will have a low likelihood of causing individual fisher losses. All these effects will be in addition to any mortalities or sublethal effects the DPS would typically experience from things such as age or disease.

At the same time as we conduct our evaluation of threats to the DPS, we also assessed how any existing regulatory mechanisms or conservation efforts are likely to eliminate or ameliorate the effects of those threats on the DPS. We provided our analyses of existing regulatory conservation measures and voluntary conservations efforts above in this document. In that discussion, we identified a number of measures that are likely to provide benefits to the DPS, either directly or indirectly, in the manner of maintaining or improving habitat conditions. Federal and State agency management plans involving forest management, while designed, in part, for the harvesting of timber, also include provisions for the long-term maintenance of those forests, providing for the retention of forest habitat and structural elements beneficial to fishers. We also describe regulatory mechanisms at both the State and Federal level designed to minimize the potential for nontarget poisoning by pesticides, as well as State and voluntary efforts to remediate illegal marijuana sites contaminated by rodenticides. In addition, implementation of existing conservation measures in the form of a recently signed MOU will improve communication and coordination surrounding the implementation of fuels reduction projects, which in turn may help to ameliorate the loss of habitat due to wildfire. While the MOU is not specific to what fuels reduction projects will take place on the ground or where, the MOU will increase the effectiveness of fuels management by considering data and information for entire landscapes across multiple ownerships. This process will contribute to the vegetation management threat in the form of removing fisher habitat in the short or long term, depending on the treatment. However, by retaining structural elements important to fishers and their prey, the treatments are expected to reduce the risk of fisher habitat loss to severe wildfires over an area much larger than the treatment footprint.

As noted earlier, no information is available that would allow us to quantify either the cumulative effect of the identified threats on the DPS, or the cumulative effect of existing regulatory mechanisms or conservation efforts to ameliorate the effects of those threats. However, in evaluating the anticipated impact of both in total, we find that the sum of effects to the DPS are such that: The resiliency of the various subpopulations, and hence the DPS as a whole, will not be significantly negatively affected; its representation, *i.e.,* its breadth of genetic and environmental diversity, will not be reduced; and its redundancy will remain as it currently is, with multiple subpopulations distributed across a substantial range of habitat.

Upon careful consideration and evaluation of all of the information before us, we have analyzed the status of fishers within the NCSO DPS. In our 2019 Revised Proposed Rule, we evaluated the status of the West Coast DPS, the NCSO DPS and SSN DPS combined, and concluded that both the NCSO and SSN were reduced in size from historical conditions, and that threats were acting on fishers across the range of both. However, we also noted that the distribution of threats and their effects, both singly and cumulatively, were likely unequal in magnitude and scale across the full landscape. While multiple threats such as wildfire and wildfire suppression activities, climate change, exposure to toxicants, predation, and vehicle collisions will continue to occur within the range of the NCSO DPS, we conclude that the cumulative effect of threats acting on the DPS now, at their current scale and magnitude, does not cause the DPS to be in danger of extinction throughout its range, especially given the DPS's overall resiliency, redundancy, and representation. In addition, we conclude that the identified threats will not increase in scale or magnitude in the foreseeable future such that the DPS will become in danger of extinction throughout its range. Thus, after assessing the best available scientific and commercial information, we determine that the NCSO DPS of fishers is not in danger of extinction throughout its range, nor likely to become so in the foreseeable future.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the NCSO DPS of fisher is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range. The range of a species or DPS can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the DPS's range for which there is substantial information indicating that: (1) The portion may be significant; and (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. Conversely, we emphasize that answering both of these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a threshold step to determine whether a more detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the ''significant portion of its range'' prongs: (1) The portion is significant and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to

identify any that warrant further consideration, and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

For the NCSO DPS, we chose to address the status question (*i.e.,* identifying portions where the DPS may be in danger of extinction or likely to become so in the foreseeable future) first. To conduct this screening, we considered whether any of the threats acting on the DPS are geographically concentrated in any portion of the range at a biologically meaningful scale (*e.g.,* there are novel threats not seen elsewhere in the DPS; there is a greater concentration or intensity of threats, relative to the same threats seen elsewhere in the range; or there is a disproportionate response to the threats by the individuals in a portion of the range, relative to individuals in the remainder of the range).

In our assessment of the NCSO DPS's overall status, we evaluated throughout its range all of the threats identified in our Species Report, including those with the potential to become significant drivers of the DPS's future status: High-severity wildfire, wildfire suppression activities, and post-fire management actions (Factor A); climate change (Factor A); tree mortality from drought, disease, and insect infestation (Factor A); vegetation management (Factor A); exposure to toxicants (Factor E); and potential effects associated with small population size (Factor E). As we conducted our threats analysis, we determined that the most significant drivers of the NCSO DPS's future status were: Wildfire and wildfire suppression, and the potential for climate change to exacerbate this threat, as well as the threats related to vegetation management and exposure to toxicants. However, for the purposes of our SPR analysis, we examined the entirety of the DPS to evaluate whether there may be a geographic concentration of any of the identified threats in any portion of the range at a biologically meaningful scale.

We found no concentration of any of these threats in any portion of the NCSO DPS's range at a biologically meaningful scale. While high-severity wildfires, and associated suppression activities and post-fire management, act in a site-specific manner, the occurrence of them in the DPS's range is random (*i.e.,* not geographically concentrated in any portion), and we cannot predict the portions within the range of the NCSO DPS where these may occur. Similarly, climate change, and its associated influence on the potential threat of wildfires, will largely act throughout the NCSO DPS range. All other potential threats either present a risk of manifesting randomly in small, localized places across the range (*e.g.,* toxicant exposure, disease or predation, and vehicle collisions), or manifesting in a focused manner, but still having only localized, site-specific effects (*e.g.,* vegetation management). Regarding small population size, the potential for negative effects can arise in portions of a species' range in instances where there are small, isolated aggregations of individuals. However, there is no evidence to suggest that there are any areas within the NCSO DPS that are experiencing the deleterious effects associated with a small population size.

If both (1) a species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range and (2) the threats to the species are essentially uniform throughout its range, then the species cannot be in danger of extinction or likely to become so in the foreseeable future in any biologically meaningful portion of the DPS. For the NCSO DPS, we found both: The DPS is not in danger of extinction or likely to become so in the foreseeable future throughout its range, and there is no geographical concentration of threats within the DPS at a biologically meaningful scale, so the threats to the DPS are essentially uniform throughout its range. Therefore, we determine, based on this screening analysis, that no portions warrant further consideration through a more detailed analysis, and the DPS is not in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. Our approach to analyzing significant portions of the DPS's range in this determination is consistent with the court's holding in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018); *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017); and *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020).

Determination of Status

Our review of the best available scientific and commercial information indicates that the NCSO DPS of fisher does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(19) of the Act. Therefore, we find that listing the NCSO DPS of fisher is not warranted at this time.

Final Listing Determination for SSN

Current Condition

The SSN DPS of fisher is small and is geographically separated from the remainder of the species as described above in the DPS section. While this DPS has persisted in isolation since prior to European settlement (Knaus et al. 2011, entire), the DPS has recently experienced substantial loss of habitat and increase in habitat fragmentation following the 2012–2015 drought (Thompson et al. 2019a, pp. 8–9). This period of drought and associated insect infestation, fire, and tree mortality has resulted in a 39 percent decline in fisher foraging and denning habitat in the SSN DPS in a period of 5 years (Thompson et al. 2019a, pp. 8–9). The remaining habitat is much more fragmented (74 habitat patches prior to the drought compared with 558 following the drought), and the average patch size of remaining habitat for the SSN DPS is 92 percent smaller than prior to the 2012–2015 drought (Thompson et al. 2019a, pp. 8–9).

The SSN DPS is found in Mariposa, Madera, Fresno, Tulare, and Kern Counties in California. Historically, the SSN DPS likely extended farther north, but may have contracted due to unregulated trapping, predator-control efforts, habitat loss and fragmentation, or climatic changes. Today the approximate northern boundary is the Tuolumne River in Yosemite National Park (Mariposa County) and the southern limit is the forested lands abutting the Kern River Canyon, while the eastern limit is the high-elevation, granite-dominated mountains, and the western limit is the low-elevation extent of mixed-conifer forest. Multiple lines of genetic evidence suggest that the isolation of the SSN DPS from other populations of native fishers to the north in California is longstanding and predates European settlement (Knaus et al. 2011, entire; Tucker et al. 2012, entire; Tucker 2015, pers. comm., pp. 1–2). Ownership within the SSN DPS is shown in Table 3 below.

TABLE 3—LAND OWNERSHIP OR MANAGEMENT FOR THE SOUTHERN SIERRA NEVADA DISTINCT POPULATION SEGMENT OF FISHER

Agency	Acres	Percent of total
Bureau of Land Management	916,152	9.8
Forest Service	3,637,488	39.0
Bureau of Indian Affairs	56,003	0.6
National Park Service	1,337,482	14.4
State and Local	42,123	0.5
Private	3,099,276	33.3
Total Acres *	9,318,596	100.0

* Acres and % may not sum due to rounding and because some other owners with less land are not included.

Estimates for the SSN DPS prior to the 2012–2015 drought range from a low of 100 to a high of 500 individuals (Lamberson et al. 2000, entire). A recent estimate of 256 female fishers was based on habitat availability at the time (Spencer et al. 2016, p. 44). Other population estimates are: (1) 125–250 adult fishers based on fisher carrying capacity in currently occupied areas (Spencer et al. 2011, p. 788); and (2) fewer than 300 adult fishers or 276–359 fishers that include juveniles and subadults based on extrapolation from portions of the DPS where fishers have been intensely studied to the range of the entire population (Spencer et al. 2011, pp. 801–802). These population estimates pre-date the 2012–2015 drought and subsequent habitat loss and fragmentation; these drought-related effects may have caused population declines since the population estimates of the early 2000's.

An 8-year monitoring study throughout the SSN DPS sampled an average of 139.5 units (range 90–189) comprising six baited track plate stations per year during the period 2002–2009 throughout the SSN DPS showed no declining trend in occupancy (Zielinski et al. 2013, pp. 3–4, 10–14; Tucker 2013, pp. 82, 86–91). Recent analyses conducted over a 14-year period (2002–2015) showed that occupancy rates in 2015 were not statistically different from 2002, although rates dipped slightly from 2005–2011 (Tucker 2019 pers. comm.). Although occupancy patterns show no declining trends, these analyses do not provide details on demographic rates, such as survival and recruitment that provide more detailed information on population growth rates, size, or status. As with the population estimates described above, these patterns in occupancy were calculated prior to the 2012–2015 drought and subsequent 39 percent reduction in foraging and denning habitat and associated habitat fragmentation. It is unknown how occupancy and survival across the range of the SSN DPS of fisher have changed in response to these changes in their habitat.

Another study (the Sierra Nevada Adaptive Management Project (SNAMP Fisher Project)) of radio-collared fishers monitored from 2007 through 2014 in the northern portion of the SSN DPS on 49 mi^2 (128 km^2) of the Sierra National Forest showed the survival rate (calculated using demographic parameters) of adult males, but not females, is lower than sites in the NCSO DPS. Specifically, Sweitzer et al. stated that their analysis ''suggested slightly negative growth ($\lambda = 0.966$) for the period of the research. The upper range for λ (1.155) was well above 1.0, however, suggesting stability or growth in some years. The estimated range for λ was consistent with the estimated population densities, which did not indicate a persistent decline during 4 years from 2008–2009 to 2011–2012'' (Sweitzer et al. 2015a pp. 781–783; Sweitzer et al. 2015b, p. 10). Additionally, the SNAMP Fisher Project (later called Sugar Pine) was extended through 2017. They reanalyzed the data for radio-collared fishers monitored from 2007 through 2017 (totaling 139 collared fishers) and concluded the population was stable with an estimated lambda of 0.99 (C.I. 0.826 to 1.104) based on female fisher survival rates (Purcell et al. 2018, pp. 5–6, 17). These population estimates for the SSN DPS do not take into consideration the extensive tree mortality, habitat loss, and fragmentation that has impacted habitat from 2015 to present. Research is currently being conducted to determine any potential effects that tree mortality may have on fisher in the SSN DPS, but results are not yet available (Green et al. 2019a, entire).

Extensive areas of suitable habitat within the SSN DPS remain unoccupied by fishers, suggesting that habitat may not be the only limiting factor for this DPS (Spencer et al. 2015, p. 9). In the SSN DPS, the northern portion of the Stanislaus National Forest is largely unoccupied, with at least one confirmed detection north of the Merced River in Yosemite National Park and the Stanislaus National Forest (Stock 2020, pers. comm.). The interaction of all the threats within the SSN DPS are likely limiting northward expansion into what is considered suitable habitat for fisher. Fisher habitat is lacking landscape-scale forest heterogeneity in the SSN DPS compared to historical conditions, with wildfire and severe drought disturbances creating large patches of homogeneous habitat, a situation exacerbated by past logging practices and wildfire suppression (Thompson et al. 2019a, p. 13).

Recent habitat changes from drought, wildfire, and associated tree mortality are affecting many of the key components of fisher habitat such as complex forest canopy structure and connected closed-canopy forest conditions. Only preliminary analyses have been completed with updated vegetation information from 2016, revealing that almost 40 percent (reduction of 2.3 million acres to 1.4 million acres) of potential fisher foraging habitat has been lost to drought, insects and tree diseases, and wildfire between 2014 and 2016 (Thompson et al. 2019a, pp. 7–8). The spatial configuration of fisher foraging habitat also changed, with patch number increasing from 74 to 558 and patch size declining from 31,500 ac (12,748 ha) to 2,600 ac (1,052 ha), indicating a significantly more fragmented landscape (Thompson et al. 2019a, p. 8). Within the same affected area (*i.e.,* not an additive loss), denning habitat availability also declined by almost 40 percent and overall patch size declined from 3,169 ac (1,283 ha) to 2,868 ac (1,161 ha) (Thompson et al. 2019a, p. 9). Current efforts are underway to incorporate the most recent and precise vegetation data into a full revision of the SSN Fisher Conservation

Strategy in 2020 (Thompson 2020, pers. comm.).

The major threats for the SSN DPS are loss and fragmentation of habitat resulting from climate change, high-severity wildfire and wildfire-suppression activities, vegetation management, and forest insects and tree diseases, as well as direct impacts that include high mortality rates from predation, exposure to toxicants, and potential effects associated with small population size. Potential conservation measures are discussed in more detail in *Voluntary Conservation Mechanisms* below, and include the development of the Southern Sierra Nevada Fisher Conservation Strategy (Spencer et al. 2016, entire) and the associated interim guidelines that consider the recent tree mortality (Thompson et al. 2019a, entire).

Threats

Potential threats currently acting upon the SSN DPS of fisher or likely to affect the species in the future are evaluated and addressed in the final Species Report (Service 2016, pp. 53–162). Our most recent consideration of new data since 2016 coupled with our reevaluation of the entirety of the best available scientific and commercial information (including comments and information received during the two comment periods associated with the 2019 Revised Proposed Rule) is represented and summarized here.

As we conducted our threats analysis, we determined that the most significant drivers of the species' future status were: Wildfire and wildfire suppression, tree mortality from drought, disease, and insect infestation, and the potential for climate change to exacerbate both of these threats, as well as the threats related to vegetation management, exposure to toxicants, disease or predation, collisions with vehicles, and the potential for effects from small population size. While our assessment of the species' status was based on the cumulative impact of all identified threats, as explained above, we are only presenting our analyses on these specific primary threat drivers for the purposes of this final rule. For detailed analyses of all the other individual threats, we refer the reader to the Species Report (Service 2016, entire).

Wildfire and Wildfire Suppression

Wildfire is a natural ecological process in the range of the SSN DPS; however, the mean proportion of high-severity fire and patch size has shifted compared to historical conditions (Safford and Stevens 2017, p. viii.) with increases in the frequency of large wildfires greater than 24,700 acres (9,996 (ha) (Westerling 2016, pp. 6–7). Changes in future climate continue to predict large increases in the area burned by wildfire (Dettinger et al. 2018, p. 72). We expect these predicted changes to the fire regime to further reduce the habitat available for fisher in the SSN DPS (see Climate Change section for further detail on future conditions). We recognize there are mixed findings as to whether current conditions are outside of the natural range of variation and wildfire severity is increasing (Mallek et al. 2013, pp. 11–17; Stephens et al. 2015, pp. 12–16; Hanson and Odion 2016, pp. 12–17; Odion et al. 2016, entire; Spies et al. 2018, p. 140), but the scientific consensus accepts that mixed conifer forests were characterized by areas burned at low, moderate, and high severity, with higher proportions of low severity prior to European settlement than is currently being observed on the landscape (Safford and Stevens 2017, pp. 48–50).

Recent analyses show habitat loss from high-severity fire throughout the SSN DPS (Thompson et al. 2019a, p. 10). For this new analysis of effects of wildfire on fisher habitat in the southern Sierra Nevada, high-severity-fire data was analyzed from 2003 to 2017 (CBI 2019a, pp. 26–28) and showed a loss of fisher denning (8.5 percent), resting (9.3 percent), and foraging (7.6 percent) habitat of approximately 25 percent, with most of the loss occurring between 2013 and 2017 (approximately 22 percent) (CBI 2019a, p. 28). However, some areas of denning, resting, and foraging habitat overlap each other, so the total amount of habitat lost to high-severity fire is likely less than 25 percent. In addition, the wildfires occurring on the Sierra and Sequoia National Forests bisected and disrupted connectivity between—or reduced the overall size of—key core areas as identified in the SSN fisher conservation strategy, likely inhibiting northward population expansion (Spencer et al. 2016, p. 10; CBI 2019a, pp. 26–28). It is uncertain how fishers are using this changed landscape.

Prior to these substantial habitat changes as a result of recent fire, fishers persisted in burned landscapes characterized by lower fire severities that maintained habitat elements important to fisher. For example, the northern portion of the SSN DPS had lower fisher occupancy in units burned by either prescribed burning or wildfire but less than 1 percent of the study area burned; however, there was no consistent negative effect of fire on fisher's use of habitat (Sweitzer et al. 2016b, pp. 208, 214, and 221–222). Results of modeling the variables of forest structure important to fishers for denning habitat on the Sierra National Forest and Yosemite National Park suggest that suitable denning habitat is maintained in burned forests, though primarily those with low-severity wildfire conditions, as less than 5 percent of areas burned at high severity were associated with a high probability of fisher den presence (Blomdahl 2018, entire). Thus, forests that burn at lower fire intensities can create important habitat elements for fisher (*e.g.,* den trees) within a home range such that the burned habitat may continue to support both fisher foraging and reproduction.

Fisher avoided areas affected by high- and moderate-severity wildfires in the French (2014) and Aspen Fires (2013), and there was a higher probability of finding fishers in ravines or canyon bottoms in combination with unburned or lightly burned patches (Thompson et al. 2019a, pp. 13–14). In our final Species Report we reported fisher use of areas affected by high-severity fire (Hanson 2015, p. 500; Service 2016, p. 66), so results from these studies may differ due to the type of analysis used, the values chosen to identify wildfire severity classes, or the 2–4 year v. 10-year post-wildfire sampling period (Thompson et al. 2019a, pp. 15–18). Without demographic data on age class, survival, or reproduction, it is difficult to say with certainty whether fisher use of post-wildfire landscapes is for dispersal or whether such areas act as population sinks (Thompson et al. 2019a, pp. 17–18).

As stated above, wildfire has already resulted in habitat loss and is increasing in terms of frequency, severity, and magnitude in the Sierra Nevada. We conclude that if the severity and extent of wildfires are such that substantial areas of canopy and large trees are lost, multiple decades of forest growth and structural development are necessary for those burned areas to support fisher reproduction. Therefore, based on the research and data currently available (as described above and in Service 2014, p. 64; Sequoia Forest Keeper 2019, pers. comm.; Spencer et al. 2016, p. 10), large high-severity fires that kill trees and significantly reduce canopy cover in fisher habitat (of high and intermediate quality) are likely to negatively affect fisher occupancy and reproduction. The degree to which wildfire affects fisher populations depends on the forest type, landscape location, patch configuration, size, and intensity of the wildfire.

Climate Change

In the Sierra Nevada region, mean annual temperatures have generally increased by around 1 to 2.5 degrees °F (0.5 to 1.4 °C) over the past 75–100 years (Safford et al. 2012, p. 25). By the end of the 21st century, temperatures are projected to warm within the SSN DPS by 6 to 9 °F (3.3 to 5 °C) on average, enough to raise the transition from snow to rain during a storm by about 1,500 to 3,000 ft (457 to 914 m) (Dettinger et al. 2018, p. 5). In addition, California recently experienced extreme drought conditions due to lack of precipitation in the periods 2007–2009 and 2012–2014 (Williams et al. 2015, pp. 6,823–6,824). Climate change likely contributed to the 2012–2014 drought anomaly and increases the overall likelihood of drier conditions, including extreme droughts, within the SSN DPS into the future (Williams et al. 2015, pp. 6,819, 6,826; Bedsworth et al. 2018, p. 25).

The observed increases in wildfire activity and tree mortality in the SSN DPS are partially due to climate change. The red fir forests in the SSN DPS, currently found at the upper edge of fisher elevation range, are expected to have more frequent fire with species composition shifting to more fire-prone species, but it is unclear whether these forests will become more central to the range of fisher with warming climate conditions or if it will remain on the elevation edge of the SSN DPS (Restaino and Safford 2018, p. 497; Service 2016, pp. 87, 138–139). Climate change will likely continue to increase tree-mortality events into the future because drought conditions will increase, which will continue to weaken trees and make them susceptible to bark beetles and disease (Millar and Stephenson 2015, pp. 823–826; Young et al. 2017, pp. 78, 85).

Overall, at this time, the best available scientific and commercial information suggests that changing climate conditions (particularly increasing air temperatures coupled with prolonged and more frequent drought conditions) are exacerbating other threats to the fishers and their habitat within the SSN DPS, including high-severity wildfires, and tree mortality. Please see additional discussion about potential impacts to fishers or their habitat associated with wildfire (Wildfire and Wildfire Suppression section, above) and tree mortality (Tree Mortality from Drought, Disease, and Insect Infestation section, below).

Tree Mortality From Drought, Disease, and Insect Infestation

The recent drought and subsequent beetle outbreak in the Southern Sierra Nevada from 2012 to 2015 is one of the most severe and largest beetle outbreaks in recent decades (Fettig et al. 2019, p. 176). Over half of the potential fisher habitat in the SSN DPS has been significantly impacted by canopy loss from tree mortality, which is disproportionately affecting the largest conifer trees and which are most likely to serve as den or rest trees for fisher (CBI 2019a, pp. 3–9, 29; Fettig et al. 2019, pp. 167–168). Although fisher often use hardwoods for denning and resting, conifers appear to be more important for denning and resting in the SSN DPS than other fisher populations, and overall den-tree size is much larger than other portions of the fisher range, so the loss of large trees has the potential to disproportionately alter den availability in the landscape (Green et al. 2019c, p. 139). Drought effects on more than 6 million hectares of forest in California occurred over a multiyear period from 2011 through 2015, and more than 500 million large trees have been affected, primarily from canopy water content loss, with some of the largest impacts to forested areas within the range of the SSN DPS (Asner et al. 2016, p. E252). These trees, spread over millions of hectares of forest, are more vulnerable in future droughts, likely resulting in death and altering future forest structure, composition, and function (Asner et al. 2016, p. E253; Fettig et al. 2019, p. 176).

Limited information is available on the direct impacts to fisher from tree mortality; however, the combination of drought, forest insects, disease, and fire has led to a 39 percent decrease in available foraging and denning habitat along with a substantial increase in habitat fragmentation and 92 percent reduction in average habitat patch size. Both of these effects occurred over a period of approximately 5 years (Thompson et al. 2019b, pp. 8–9). The habitat changes associated with drought, forest insects, disease, and fire may result in increased use of areas by large predators that in turn could increase predation rates on fisher (Thompson et al. 2019b, p. 15; also see Predation and Disease, above in the General Species Information and Summary of Threats section, above). The usual patterns of localized outbreaks and low density of tree-consuming insects and tree diseases are beneficial and can create snags, providing structures conducive to rest and den site use by fishers or their prey. The large-scale beetle kill is concerning because USFS personnel are already reporting snag failures, indicating these snags may fall at a faster rate than other methods of snag creation (*e.g.,* wind, fire, age; Larvie et al. 2019, p. 11). Further, large, area-wide epidemics of forest disease and insect outbreaks may displace fishers if canopy cover is lost and salvage and thinning prescriptions in response to outbreaks degrade the habitat (Naney et al. 2012, p. 36; Tucker 2019, pers. comm.).

Preliminary information in the SSN DPS indicates fishers are avoiding areas with tree mortality and are more likely to be found in areas close to streams, drainages, and ravines where tree mortality effects were dampened (Green et al. 2019a, entire). In addition, increased tree mortality on the landscape may be associated with reduced female fisher survival within the SSN population due to increased stress hormones (cortisol) (Kordosky 2019, pp. 31–34, 36–40, 54–61, 65–68, 94); however, reduced fisher survival is also likely influenced by other factors. Although other studies indicate fishers tolerate certain levels of canopy loss in small-scale projects, fisher response to tree mortality may have been influenced by the large scale of the tree-mortality event (Thompson et al. 2019a, p. 16).

Loss of canopy cover and large trees from tree mortality caused by insects and tree diseases likely reduces habitat suitability for fishers, but it is unknown if the level of habitat loss will significantly impact the SSN DPS throughout its range. Although fishers are using riparian areas with intact forest canopy, it is uncertain how patches with sufficient canopy cover are connected in this changing landscape. It is likely that tree mortality will continue to be a threat into the future due to predicted increases in drought conditions that will likely continue to weaken trees and make them susceptible to bark beetles and disease (Millar and Stephenson 2015, pp. 823–826; Young et al. 2017, pp. 78, 85); therefore, we expect continued loss and fragmentation of remaining habitat across the range of the SSN DPS of fisher.

Vegetation Management

In the SSN DPS, we approximated fisher habitat change using a vegetation trend analysis to track changes in forests with large structural conditions thought to be associated with fisher habitat (Service 2016, pp. 98–101). Available data limited us to using predefined structure conditions describing forests with larger trees (greater than 20 in (50 cm)), although we realize this sample may not include all vegetation types

used by fishers. This analysis showed that net loss of forests with larger structural conditions in the SSN DPS from 1993 to 2012 was 6.2 percent across all ownerships, which equates to a loss of 3.1 percent per decade.

In the single analysis where fisher habitat was actually modeled and tracked through time for the SSN DPS, ingrowth of fisher habitat replaced habitat lost by all disturbances between 1990 and 2012, showing a net increase in fisher habitat at the female-home-range scale, albeit this net increase is less than 8 percent over 30 years (Spencer et al. 2016, pp. 44, A–21, A–26). However, the authors of this report have since cautioned that these conclusions may no longer be accurate based on the ''dramatic changes [that] have occurred in Sierra Nevada mixed conifer forests due to drought and extraordinary tree mortality'' from the 2012–2015 drought (Spencer et al. 2017, p. 1). Consequently, they recommended delaying application of habitat-conservation targets until vegetation data can be updated and fisher habitat condition reassessed (Spencer et al. 2017, pp. 1–2). Hence, although our earlier analysis concluded that fisher habitat in the SSN DPS may be increasing, we can no longer support that conclusion based on recent tree mortality.

Vegetation management that maintains structural complexity and canopy cover that reflect pretreatment conditions may only have a minor impact on fisher use of these habitats (Purcell et al. 2018, p. 60). Overall, vegetation management may result in short-term avoidance of fuels reduction treatments, with no longer term shift in fisher behavior, but likely depends on the amount treated each year (Purcell et al. 2018, p. 69).

On all ownerships combined, loss of forest with old-forest structures in the past two decades (1993–2012) was 3.1 percent per decade as a result of all disturbance types within the SSN DPS. Additionally, fisher habitat appeared to be increasing until recent (2012–2015) tree mortality due to fires and drought. However, it is difficult to conclude the degree to which vegetation management threatens fishers in the SSN DPS. Given the large home range of fishers and the geographic extent of forest-management activities throughout the range of the SSN DPS, some fisher individuals are likely affected as a result of habitat impacts (*e.g.,* Purcell et al. 2018, pp. 60–61). In addition, still other factors unrelated to habitat may be limiting fisher distribution. Consequently, based on the best available scientific and commercial information, we find that vegetation management effects to fisher will depend on the spatial distribution of the activities and whether structural elements important to fishers are maintained. Although vegetation management may threaten fisher now and in the foreseeable future, many of the effects are likely exacerbated by other forms of habitat loss such as tree mortality from drought and severe wildfires.

Exposure to Toxicants

As described above in the general threats section, rodenticides analyzed as a threat to the SSN DPS of fishers include first- and second-generation anticoagulant rodenticides and neurotoxicant rodenticides. Both the draft and final Species Reports detail the exposure of the SSN DPS of fishers to rodenticides in the Sierra Nevada (Service 2014, pp. 149–166; Service 2016, pp. 141–159). Data available since the completion of the final Species Report in 2016 continue to document exposure and mortalities to fishers from rodenticides in the SSN DPS (Gabriel and Wengert 2019, unpublished data, entire). Data for 97 fisher carcasses collected in the range of SSN DPS in the period 2007–2018 indicate 83 fishers (86 percent) tested positive for one or more rodenticides (Gabriel and Wengert 2019, unpublished data), while 5.2 percent of known-cause SSN DPS fisher deaths from 2007 through 2014 were attributable to rodenticide toxicosis (6 of 115 total known-cause mortalities) (Gabriel et al 2015, p. 6). The probability of fisher mortality increases with the number of anticoagulant rodenticides to which a fisher has been exposed (Gabriel et al. 2015, p. 15). Using data from both the SSN DPS and the NCSO DPS comparing the periods 2007–2011 and 2012–2014, mortalities due to rodenticide toxicosis increased from 5.6 to 18.7 percent (Gabriel and Wengert 2019, unpublished data, p. 2). From 2015 to 2018, additional SSN DPS fisher mortalities due to both anticoagulant and neurotoxicant rodenticides have been documented (Gabriel and Wengert 2019, unpublished data, p. 4).

In order to evaluate the risk to SSN DPS fishers from illegal grow sites, we use a Maximum Entropy model that was developed to identify high and moderate likelihood of illegal grow sites within habitat selected for by fisher (Gabriel and Wengert 2019, unpublished data, pp. 7–10). This model indicates that 22 percent of habitat modeled for SSN DPS fishers is within areas of high and moderate likelihood for marijuana cultivation. The extent to which the use of toxicants occurs on legal private land grow sites within the SSN DPS, as well as other agricultural, commercial, and public land sites within the range of the SSN DPS of fisher (and habitats that fishers select for) is unknown.

At this time, our evaluation of the best available scientific and commercial information regarding toxicants and their effects on fishers leads us to conclude that individual fishers within the SSN DPS have died from toxicant exposure. Data indicate a total of 19 mortalities specifically within the monitored fisher populations (in both NCSO and SSN DPSs in California) have been directly caused by toxicant exposure (Gabriel and Wengert 2019, unpublished data, p. 5). We view toxicants as a potentially significant threat given the small population size of the SSN DPS fishers because of the reported exposure rate of toxicants in the SSN DPS, reported mortalities of SSN DPS fishers from toxicants, the variety of potential sublethal effects due to exposure to rodenticides (including potential reduced ability to capture prey and avoid predators), and the degree to which illegal grow sites overlap with the range and habitat of the SSN DPS of fisher.

The effect of these impacts to the SSN DPS is of particular concern because of the small number of individuals in the SSN DPS. The exposure rate of more than 80 percent of fisher carcasses tested in the SSN DPS has not declined between 2007 and 2018 (Gabriel and Wengert 2019, unpublished data, pp. 3–4), while toxicosis has increased since 2007 (Gabriel et al. 2015, pp. 6–7). We do not know the exposure rate of live fishers to toxicants because this data is difficult to collect. The minimum amount of anticoagulant and neurotoxicant rodenticides required for sublethal or lethal poisoning of fishers is currently unknown; however, we have evidence of fisher mortality and sublethal effects as a result of rodenticides. Although uncertainty exists in the effect of toxicants on a small population such as the SSN DPS of fisher, the lethal and sublethal effects of toxicants on individuals have the potential to have population-level effects and reduce the resiliency of the DPS as a whole. Overall, rodenticides are a threat to fisher within the SSN DPS now and in the foreseeable future.

Potential for Effects Associated With Small Population Size

The SSN DPS exhibits the following attributes related to small population size, to varying degrees, which may affect its distribution and population growth:

(1) Loss of large contiguous areas of historical habitat, including a 39 percent

loss of foraging and denning habitat over the past 5 years (Thompson et al. 2019b, p. 9), in combination with restriction of the species to forested habitats that have been lost or modified due to timber-harvest practices; large, high-severity wildfires whose frequency and intensity are in turn influenced by the effects of climate change; and increasing forest fuel density from fire suppression and a lack of low-severity fire over the recent long term.

(2) Dependence on specific elements of forest structure that may be limited on the landscape, including microsites for denning and resting.

(3) Susceptibility to injury or mortality due to predation from co-occurring larger predators.

Each of these vulnerabilities may separately, or together, influence the magnitude of other threats described in this analysis for the SSN DPS of fisher.

Some information is available that demonstrates fisher's vulnerability to small-population effects in the SSN DPS, including overall low genetic diversity (mitochondrial DNA haplotype and nuclear DNA allelic richness) for the entire SSN DPS, limited gene flow, and existing barriers to dispersal (Wisely et al. 2004, pp. 642–643; Knaus et al. 2011, p. 7; see also additional discussion in Service 2016, pp. 134–137; Tucker et al. 2014, pp. 131–134), albeit some of these barriers allow some gene flow (Tucker et al. 2014, p. 131). However, the recent tree mortality and several recent large-scale fires acting on the narrow, linear range of the SSN DPS have resulted in substantial habitat fragmentation and reduction in habitat patch size (Thompson et al. 2019b, pp. 8–9) and are likely to increase barriers to dispersal, potentially limiting movement among habitat patches and preventing northward expansion, particularly for females, given female dispersal and associated genetic connectivity is facilitated by dense forest habitat (Tucker et al. 2017, p. 10).

At this point in time, the SSN DPS is considered relatively small, especially when taking into account the original/historical range of the species within the West Coast States, and the population growth rates do not indicate that the SSN DPS is increasing. The recent post-drought declines in foraging and denning habitat and associated habitat fragmentation further isolate the SSN DPS from other fishers and limit the opportunities for movement among remaining patches within the range of the SSN DPS. The best available information suggests the SSN DPS is expected to remain isolated from other fishers (as has been apparent since pre-European settlement). The SSN DPS is likely to remain small or be reduced even further into the future, primarily given the other stressors that have the potential to exacerbate the impacts from threats on small populations. In addition, average litter size for the SSN DPS is the lowest reported for the species, potentially due to diet limitations, smaller body size, and lower genetic diversity compared to other populations (Green et al. 2018a, pp. 545, 547). Estimates of fisher population growth rates for the SSN DPS do not indicate any overall positive or negative trend.

Population estimates for the SSN DPS of fisher prior to recent fires, drought and tree mortality and subsequent 39 percent loss of foraging and denning habitat range anywhere in size from 100 to 500 individuals (Service 2016, pp. 48–50). Population-growth-rate analyses have been estimated as 0.97 (C.I. 0.79–1.16) from 2007 through 2014 throughout the SSN DPS (Sweitzer et al. 2015a, p. 784), and more recently 0.99 (C.I. 0.826 to 1.104) from 2007 through 2017 in a small portion of the SSN DPS at Sugar Pine (Purcell et al. 2018, pp. 5–6, 17). Available population estimates and trend information for the SSN DPS do not take into consideration extensive tree mortality that has impacted the habitat from 2015 to present. Research is currently being conducted to determine any potential effects that tree mortality may be having on the SSN DPS, but results are not yet available (Green et al. 2019a, entire). At this point in time, we do not have sufficient information to predict whether population trends of the SSN DPS will be positive or negative into the foreseeable future; however, we anticipate continued loss and fragmentation of fisher habitat.

Overall, a species (or DPS) with relatively few individuals may be of concern when there are significant threats to the species. The SSN DPS is considered relatively small and has not appeared to grow or expand, despite the availability of unoccupied suitable habitat. The SSN DPS has been found to have relatively low genetic diversity, but there is currently no evidence of inbreeding depression. The small population may make the SSN DPS more vulnerable to threats, but there is no evidence at this time that small populations are causing impacts such as loss of genetic variability or large fluctuations in demographic parameters of the SSN DPS.

Disease and Predation

A general description of disease and predation on fishers overall was provided earlier (see General Species Information and Summary of Threats, above). Specific to the SSN DPS, of 94 fisher mortalities analyzed, 71 percent were a result of predation and 14 percent were caused by disease (Gabriel et al. 2015, p. 7, Table 2). Further, predation may be one of the limiting factors in overall population growth for fishers in the SSN DPS. For example, research on effects of mortalities on population growth of fishers in the SSN DPS found that reducing predation by 25 or 50 percent would increase lambda from 0.96 to 1.03 or 1.11, respectively; conversely, removing all mortality sources but predation would only increase lambda to 0.97 (Sweitzer et al 2016a, p. 438). While we did not consider this threat as a potentially significant driver of future status in the 2019 Revised Proposed Rule, the information we received during a public comment period providing updated information on mortalities associated with these factors (*i.e.,* Sweitzer et al 2016a, p. 438), indicated that predation may be, in fact, be a potentially significant driver of future status for the SSN DPS.

Vehicle Collisions

In the SSN DPS, vehicle collisions contributed to 8 percent of documented causes of mortality for fishers (Sweitzer et al. 2016a, p. 438). At the northernmost boundary of the SSN DPS, 10 fisher roadkill mortalities have been documented in Yosemite National Park over the past two decades (Service 2016, p. 137). Although many factors affect dispersal and northward population expansion, it is likely that roads and associated traffic in Yosemite National Park combined with other stressors may inhibit northward expansion of the SSN DPS (Spencer et al. 2015, p. 21).

Existing Regulatory Mechanisms

U.S. Forest Service (USFS)

The USFS is the landowner for approximately 39 percent of the SSN DPS. A number of Federal agency regulatory mechanisms pertain to management of fisher (and other species and habitat). Most Federal activities must comply with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*). NEPA requires Federal agencies to formally document, consider, and publicly disclose the environmental impacts of major Federal actions and management decisions significantly affecting the human environment. NEPA does not regulate or protect fishers, but it requires full evaluation and disclosure of the effects of Federal actions on the environment. Other Federal regulations

affecting fishers are the Multiple-Use Sustained Yield Act of 1960, as amended (16 U.S.C. 528 *et seq.*) and the National Forest Management Act of 1976, as amended (NFMA) (90 Stat. 2949 *et seq.;* 16 U.S.C. 1601 *et seq.*).

The NFMA specifies that the USFS must have a land and resource management plan to guide and set standards for all natural resource management activities on each National Forest or National Grassland. Additionally, the fisher in the SSN DPS has been identified as a species of conservation concern by the USFS; thus, all Forest Plans within the DPS include standards and guidelines designed to benefit fisher. Overall, per USFS guidelines under the NFMA, planning rules must consider the maintenance of viable populations of species of conservation concern.

In 2004 the USFS amended the Forest Plans in the SSN DPS with the Sierra Nevada Forest Plan Amendment (USFS 2004, entire). The Sierra Nevada Forest Plan Amendment included measures to increase late-successional forest, retain important wildlife structures such as large-diameter snags and coarse downed wood, and manage about 40 percent of the plan area as old-forest emphasis areas. The Sierra Nevada Forest Plan Amendment also established a 602,100–ha (1,487,800–ac) Southern Sierra Fisher Conservation Area with additional requirements intended to maintain and expand the fisher population of the southern Sierra Nevada. Conservation measures for the Southern Sierra Fisher Conservation Area include maintaining a minimum of 50 percent of each watershed in mid-to-late- successional forest (28-cm [11-in] diameter at breast height (dbh) and greater) with forest-canopy closure of 60 percent or more. The plan also includes seasonal protections for known fisher natal and maternal den sites. The USFS is currently updating the National Forest Management Plans (NFMPs) within the SSN DPS according to the Forest Service 2012 Planning Rule (36 CFR part 219). A conservation strategy is in progress (described below in SSN Voluntary Conservation Measures) that will provide fisher specific guidance for the updated NFMPs.

National Park Service

The NPS is the land manager for approximately 14 percent of the SSN DPS. Statutory direction for the NPS lands within the SSN DPS is provided by provisions of the National Park Service Organic Act of 1916, as amended (54 U.S.C. 100101). Land management plans for the National Parks within California do not contain specific measures to protect fishers, but areas not developed specifically for recreation and camping are managed toward natural processes and species composition and are expected to maintain fisher habitat where it is present.

Rodenticide Regulatory Mechanisms

The threats posed to fishers from the use of rodenticides are described under Exposure to Toxicants, above. In the 2016 final Species Report (Service 2016, pp. 187–189), we analyzed whether existing regulatory mechanisms are able to address the potential threats to fishers posed from both legal and illegal use of rodenticides. As described in the 2016 final Species Report, the use of rodenticides is regulated by several Federal and State mechanisms (*e.g.,* Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended, (FIFRA) 7 U.S.C. 136, *et seq.;* California Final Regulation Designating Brodifacoum, Bromadiolone, Difenacoum, and Difethialone (Second Generation Anticoagulant Rodenticide Products) as Restricted Materials, California Department of Pesticide Regulation, 2014). The primary regulatory issue for fishers with respect to rodenticides is the availability of large quantities of rodenticides that can be purchased under the guise of legal uses, but are then used illegally in marijuana grows within fisher habitat. Both the EPA and California's Department of Pesticide Regulation developed an effort to reduce the risk posed by the availability of second-generation anticoagulants to end-users, through the 2008 Risk Mitigation Decision for Ten Rodenticides (EPA 2008, entire). This effort issued new legal requirements for the labeling, packaging, and sale of second-generation anticoagulants, and through a rule effective in July 2014, restricted access to second-generation anticoagulants (California Food and Agricultural Code Section 12978.7).

State Regulatory Mechanisms

California

At the time of the 2014 Proposed Rule, fishers were a Candidate Species in California; thus, take (under the CESA definition) was prohibited during the candidacy period. On June 10, 2015, CDFW submitted its status review of the fisher to the CFGC, indicating that listing of the fisher in the Southern Sierra Nevada Evolutionarily Significant Unit (ESU) as threatened was warranted (CDFW 2015, entire). CDFW made their final determination to list the Southern Sierra Nevada ESU as threatened on April 20, 2016 (CFGC 2016, p. 10); thus, take as defined under CESA continues to be prohibited. It remains illegal to intentionally trap fishers in all of California (Cal. Code Regs. title 14, § 460 (2017).

The California Environmental Quality Act (CEQA) can provide protections for a species that meets one of several criteria for rarity (CEQA 15380). Fishers in the SSN DPS meet these criteria, and under CEQA, a lead agency can require that adverse impacts be avoided, minimized, or mitigated for projects subject to CEQA review that may impact fisher habitat. All non-Federal forests in California are governed by the State's FPRs under the Z'Berg Nejedly Forest Practice Act of 1973, a set of regulations and policies designed to maintain the economic viability of the State's forest products industry while preventing environmental degradation. The FPRs do not contain rules specific to fishers, but they may provide some protection of fisher habitat as a result of timber harvest restrictions.

Voluntary Conservation Mechanisms

There are currently two MOU agreements in California within the range of the SSN DPS for wildfire and fuels management. The first MOU was signed in 2015 by Sierra Forest Legacy, California Department of Forestry and Fire Protection, State of California Sierra Nevada Conservancy, The Wilderness Society, The Nature Conservancy, The Sierra Club, Center for Biological Diversity, DOI–NPS–Pacific Region, Northern California Prescribed Fire Council, Southern Sierra Prescribed Fire Council, and the USDA–USFS–Pacific Southwest Region. The MOU is titled ''Cooperating for the purpose of increasing the use of fire to meet ecological and other management objectives.'' The purpose of this MOU is to document the cooperation between the parties to increase the use of fire to meet ecological and other management objectives. A second MOU was signed in 2017 by the National Fish and Wildlife Foundation and the USFS–Pacific Southwest Region–Regional Office. The MOU is titled ''Pacific Southwest Fuels Management Strategic Investment Partnership.'' The purpose of this agreement is to document the cooperation between the parties to implement a hazardous-fuels-management program that reduces the risk of severe wildfire, protects ecological values, and reduces the chance of damage to public and private improvements. While neither MOU contains specific fisher conservation activities, projects that reduce the likelihood of catastrophic wildfire

provide benefit to fisher by reducing habitat loss. Both of these fuel-reduction MOUs provide collaboration between Federal partners and non-governmental partners to organize and fund fuel-reduction projects within the SSN DPS, which could reduce the impact of large-scale high-severity fire. So far, no projects have been funded within the SSN DPS.

The Sierra Nevada Fisher Working Group, which includes CBI, Sierra Nevada Conservancy, USDA–USFS, NPS, the Service, and CDFW, completed a conservation strategy in 2016 (Spencer et al. 2016, entire). The authors of the conservation strategy later released a changed-circumstances letter due to new tree-mortality information (Spencer et al. 2017, entire). The changed-circumstances letter provides details on the conservation measures that may no longer be applicable and an interim process for designing and evaluating vegetation-management projects. Current benefits that still exist for fisher from the conservation strategy and the changed-circumstances letter include long-term desired conditions representing a range of characteristics to strive for in various areas to inform fine-scale assessment of key fisher habitat elements, including their connectivity within potential home ranges and across the landscape (Spencer et al. 2017, pp. 2–6). A revised/final conservation strategy that addresses the new tree-mortality information is still in progress by the CBI. However, preliminary Draft Interim Recommendations from December 2019 recognize the importance of stabilizing key habitat, restoring landscape permeability, and promoting landscape heterogeneity while offering a suite of suggestions to mitigate potential negative effects of management actions (Thompson et al. 2019b, pp. 17–33).

Resiliency, Redundancy, and Representation

In this section, we use the conservation biology principles of resiliency, redundancy, and representation to evaluate how the threats, regulatory mechanisms, and conservation measures identified above relate to the current and future condition of the SSN DPS.

As noted above, the resiliency of species' population(s), and hence an assessment of the species' overall resiliency, can be evaluated by population size and growth rate. While data on these parameters is often not readily available, inferences about resiliency may be drawn from other demographic measures. In the case of the SSN DPS, the population size component of resiliency is lower than historical levels because the total population size is small and fragmented and has been reduced in distribution relative to historical levels. While there is some evidence that the SSN DPS of fishers may have persisted for some time at relatively low numbers, the DPS has recently experienced a 39 percent loss of foraging and denning habitat, a substantial increase in habitat fragmentation, and a 92 percent reduction in habitat patch size following the 2012–2015 drought (Thompson et al. 2019a pp. 8–9). These negative effects on fisher habitat have likely had additional cascading effects on numbers of individuals through reduction in habitat, potential increases in predator abundance, and decreases in connectivity across the range of the DPS.

Threats acting on a species or DPS that cause losses of individuals from a population have the potential to affect the overall resiliency of that population, and losses occurring at a scale large enough that the overall population size and growth rate are negatively impacted could reduce the population's ability to withstand stochastic events. The SSN DPS exists in low numbers across its range and faces a variety of ongoing threats that will result in losses of individual fishers or impede population growth, including continued loss and fragmentation of habitat (*i.e.,* from high-severity wildfire and wildfire-suppression actions, climate change, tree mortality from drought, disease, and insect infestation, vegetation management, and development) and potential direct impacts to individuals (*e.g.,* increased mortality, decreased reproductive rates, increased stress/hormone levels, alterations in behavioral patterns) from wildfire, increased temperatures, increased tree mortality, disease and predation, exposure to toxicants, vehicle collisions, and potential effects associated with small population size. These present and ongoing threats cumulatively play a large role in both the current and future resiliency of the DPS. Of greatest importance at this time are:

(1) The long-term suitability of habitat conditions throughout the range of the SSN DPS given the continued presence/extent of high-severity and wide-ranging wildfires and prolonged drought conditions that exacerbate tree mortality from drought, disease, and insect infestation. These conditions: (a) Reduce the availability of the natural resources (*e.g.,* appropriate canopy cover, old-growth forest structure with large trees and snags, patch size) that the species relies on to complete its essential life-history functions; (b) contribute to increased stress hormones (cortisol) and reduced female fisher survival (as noted in one study in a portion of the SSN DPS); and (c) increase habitat fragmentation within and between populations. The recent 2012–2015 drought and associated tree mortality and wildfire demonstrated that this suite of threats can act rapidly to reduce and fragment fisher habitat across the range of the DPS.

(2) The sustained presence of toxicants from marijuana grow sites across a likely significant proportion of the landscape that contribute to continued fisher mortalities and sublethal effects. Fisher mortalities continue to occur either by direct consumption or sublethal exposure to anticoagulant rodenticides, the latter of which may increase fisher death rates from other impacts such as predation, disease, or intraspecific conflict. In a small population, such as the SSN DPS of fisher, the lethal and sublethal effects of toxicants on individuals have greater potential to reduce the resiliency of the population.

(3) Continued fragmentation of habitat in conjunction with the isolation and potential inbreeding of the SSN DPS, especially when taking into account the threats of toxicant exposure and habitat losses. These ongoing threats increase this DPS's vulnerability to extinction from stochastic events particularly as fragmentation continues to reduce habitat patch size and limit connectivity across the landscape. Regardless of this DPS's potential for growth into the small amount of available but unoccupied suitable habitat present, we do anticipate this DPS will be small into the long-term future and is at risk of future reductions in population size due to continued habitat loss from drought, wildfire, and tree mortality into the future (see also Service 2016, pp. 133–137). Comments received on the 2014 Proposed Rule and 2019 Revised Proposed Rule generally agree that the SSN DPS is small.

The SSN DPS of fisher has maintained its presence across its current range despite the degree of habitat loss and fragmentation from prolonged drought conditions and wildfire impacts, coupled with mortalities from toxicants (both anticoagulant and neurotoxicant rodenticides), and at least some reduced female survival associated with increased stress hormones and reduced habitat suitability documented in a portion of the SSN DPS (see Tree Mortality from Drought, Disease, and Insect Infestation, above). However, the long-term demographic effects of the large-scale loss of habitat and increase

in habitat fragmentation following the 2012–2015 drought are not yet understood. Historical reductions in range in combination with recent range-wide habitat loss and fragmentation along with other ongoing threats such as exposure to toxicants indicate that the current resiliency of the SSN DPS of fishers may be quite low. The best available science and information at this time indicate that the current resiliency of the SSN DPS of fisher is low and it is likely that resiliency of this DPS will decrease further in the near-term future. This conclusion is based on the 39 percent loss of foraging and denning habitat along with 92 percent decrease in habitat patch size that has occurred across the range of the SSN DPS of fisher in the past 5 years and likelihood that the threats that caused these declines will continue to operate across the range of the SSN DPS. The current and ongoing cumulative impacts to the SSN DPS associated with current climate-change-model predictions for continued periodic but prolonged drought conditions, predictions of continued and increased intensity of wildfires and subsequent habitat loss and fragmentation in the southern Sierra Nevada, the high likelihood of continued presence and spread of forest insect and tree diseases, and the low likelihood that a significant proportion of existing toxicants on the landscape would be removed in the near-term future indicate that the range of SSN DPS is likely to decrease in available habitat and habitat patch size along with continued exposure to threats to individual survival resulting in continued declines in resiliency.

With regard to redundancy, multiple, interacting populations across a broad geographic area or a single wide-ranging population (redundancy) provide insurance against the risk of extinction caused by catastrophic events. Prior to the 2012–2015 drought, redundancy was limited across the range of the SSN DPS as a result of the DPS being a single fragmented population distributed over a relatively confined (for a carnivorous mammal) geographic area. Redundancy was further limited by the range-wide loss of foraging and denning habitat along with the associate increase in habitat fragmentation and decrease in habitat patch size, which make the species as a whole more susceptible to catastrophic events by further limiting their distribution. The limited redundancy of the SSN DPS decreases the DPS's chance of survival in the face of potential environmental, demographic, and genetic stochastic factors and catastrophic events (extreme drought, wildfire, Allee effects, etc.).

Lastly, we consider the current representation across the SSN DPS of fisher to be limited, considering the DPS's existence as only a single fragmented population with low genetic diversity. The SSN DPS exists in a limited range of environmental conditions and has narrow representation in the environments that it occupies. An additional concern for current and future representation in the SSN DPS of fisher is that fragmented populations can be more susceptible to local declines, contributing further to loss of genetic diversity. As future droughts, wildfire, and tree mortality continue to fragment remaining fisher habitat, the opportunity for loss of genetic diversity may increase because of limited connectivity among habitat patches. Overall, SSN DPS fishers are represented across a small, fragmented range and occur in small numbers.

Determination

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

In our 2019 Revised Proposed Rule we proposed that the Western DPS of fisher met the definition of a threatened species. Recognizing the SSN as a separate DPS, we now conduct an analysis of the SSN DPS to determine its status considering the current condition of the DPS and current and ongoing threats. We evaluated threats to the SSN DPS of fishers and assessed the cumulative effect of the threats under the section 4(a)(1) factors. Our 2016 final Species Report (Service 2016, entire) is the most recent detailed compilation of fisher ecology and life history, and it has a significant amount of analysis related to the potential impacts of threats within the SSN DPS's range. In addition, we collected and evaluated new information available since 2016, including new information made available to us during the recent comment periods in 2019, to ensure a thorough analysis, as discussed above. Our analysis as reflected in this rule included our reassessment of the previous information and comments received on the 2014 Proposed Rule regarding the potential impacts to the SSN DPS of fisher, as well as our consideration of new information regarding the past, present, and future threats to the DPS, and the comments and information received during the two comment periods associated with the 2019 Revised Proposed Rule.

We find that the SSN DPS is currently in danger of extinction throughout all of its range due to the existing threats that have resulted in a small population size, reduced geographic distribution, and reduced habitat quality resulting in habitat fragmentation. Because it is limited to a single, fragmented population with few individuals and has experienced recent and rapid loss of habitat, and given the threats acting upon it, the current condition of the SSN DPS across the southern Sierra Nevada does not demonstrate resiliency, redundancy, and representation such that persistence into the future is likely.

At this time, the best available information suggests that future resiliency for the SSN DPS of fisher is low. As discussed above in the ''Risk Factors for the SSN DPS of Fisher'' section (along with some detail in the 2014 draft and 2016 final Species Reports (Service 2014 and 2016, entire)), the SSN DPS faces a variety of threats including: loss and fragmentation of habitat resulting from high-severity wildfire and wildfire suppression, climate change, tree mortality from drought, disease, and insect infestations, vegetation management, and development; and potential direct impacts to individuals (*e.g.,* increased mortality, decreased reproductive rates, increased stress/hormone levels, alterations in behavioral patterns) from wildfire, increased temperatures, increased tree mortality, disease and predation, exposure to toxicants, vehicle collisions, and potential effects associated with small population size.

Currently, fishers in the SSN DPS exist in one small population. Estimates of population size and trend prior to the severe 2012–2015 drought suggested the

SSN DPS consisted of approximately 300 individuals (range = low of 100 to a high of 500 individuals), while there is no statistically detectable trend in population size or growth. No estimates are available for population size or trend following the 39 percent loss of foraging and denning habitat and 92 percent reduction in average habitat patch size. Overall, the SSN DPS of fisher exists as a single small population that has persisted but does not appear to be expanding and has experienced recent substantial habitat loss, fragmentation, and reduction in habitat patch size.

We took into consideration all of the threats operating within the range of SSN DPS. This DPS is reduced in size due to historical trapping and past loss of late-successional habitat and, therefore, is more vulnerable to extinction from random events and increases in mortality. Some examples of multiple threats on the SSN DPS of fisher include:

- Destruction, modification, or curtailment of habitat, which may increase fisher's vulnerability to predation and loss of genetic diversity (Factors A, C, and E);
- Impacts associated with climate change, such as increased risk of wildfire and tree mortality (tree insects and disease) (Factors A, C, and E).

Depending on the scope and degree of each of the threats and how they combine cumulatively, these threats can be of particular concern where populations are small and isolated. The cumulative effect (all threats combined) is currently causing rapid loss of habitat and habitat patch size across the range of the SSN DPS and exposing SSN DPS fishers to increased threats from direct mortality, resulting in low resiliency and reducing viability for the SSN DPS as a whole. The SSN DPS is particularly vulnerable in areas not managed for retention and recruitment of fisher habitat attributes, areas sensitive to climate change, areas susceptible to large high-severity fires and tree mortality, and areas where direct mortality of fishers reduces their ability to maintain or expand their populations (Service 2014, pp. 166–169). Additionally, although there is currently a wide array of regulatory mechanisms and voluntary conservation measures in place to provide some benefits to the species and its habitat (see ''Existing Regulatory Mechanisms'' and ''Voluntary Conservation Measures,'' above), these measures have not ameliorated the threats to such a degree that the DPS is not currently in danger of extinction. In particular, threats acting on this small population related to illegal rodenticide use, increasing high-severity wildfires, and prolonged droughts that exacerbate the effects from wildfire, forest insects, and tree disease are operating at a scale much larger than the current scope of the beneficial actions. Further, the two MOU agreements in California within the range of the SSN DPS for wildfire and fuels management have no specific conservation measures for fisher.

The best available information suggests that identified threats are of concern across the range of the SSN DPS because of the narrow band of habitat that comprises this DPS and its vulnerability to negative impacts associated with small population size. As noted in our analysis, preliminary habitat-based population models suggest that the configuration of habitat affects population numbers in this region, and that some areas with high-quality habitat may remain unoccupied even at equilibrium population sizes, probably due to restricted connectivity between these locations and the main body of the population (Service 2016, p. 44; Rustigian-Romsos 2013, pers. comm.). Therefore, the cumulative impacts related to the habitat-based threats are likely to have a negative effect on the SSN DPS because connectivity would likely decrease further (Service 2016, p. 69).

For the mortality-related threats, we reaffirm our quantitative assessment from 2014 regarding potential cumulative impacts in those portions of the range of the SSN DPS where data were available to do so. Modeling completed for the SSN DPS demonstrates that a 10 to 20 percent increase in mortality rates could prevent fisher populations from the opportunity to expand in the future (Spencer et al. 2011, pp. 10–12). Coupled with an increasing trend in habitat-related threats, the best available information suggests that cumulative effects to the SSN DPS of fisher are reducing its resiliency to such a degree that the DPS is currently in danger of extinction throughout all of its range. Based on our review of the best scientific and commercial data available, we have determined the SSN DPS of fisher meets the definition of an endangered species under the Act. Per our 2014 draft and 2016 final Species Reports, as well as our most recent analysis summarized herein and based on the comments and information received on the 2019 Revised Proposed Rule, we find the cumulative impact of all identified threats on the SSN DPS, especially habitat loss and fragmentation due to high-severity wildfire (Factor A) and vegetation management (Factor A) (noting that tree mortality from drought, disease, and insect infestation is exacerbated by changing climate conditions and thus also plays a role under Factor A), and exposure to toxicants (Factor E), are acting upon the SSN DPS to such a degree that it is currently in danger of extinction. The existing regulatory mechanisms (Factor D) are not addressing these threats to the level that the species does not meet the definition of an endangered species.

Thus, after assessing the best available information, we conclude that the SSN DPS of fisher is currently in danger of extinction throughout all of its range. In reaching this conclusion, we have considered all information received from species experts, partners, the public, and other interested parties, including the variety of available conservation measures and existing regulatory mechanisms that may ameliorate the threats.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the SSN DPS is in danger of extinction throughout all of its range, and accordingly, did not undertake an analysis of any significant portion of its range. Because we have determined that the SSN DPS warrants listing as endangered throughout all of its range, our determination is consistent with the decision in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020), in which the court vacated the aspect of the 2014 Significant Portion of its Range Policy that provided the Service and the National Marine Fisheries Service do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the SSN DPS of fisher meets the definition of an endangered species. Therefore, we are listing the SSN DPS of fisher as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices.

Recognition through listing results in public awareness and conservation by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery-planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Yreka Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California would be eligible for Federal funds to implement management actions that promote the protection or recovery of the SSN DPS of fisher. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities as well as toxicant use on Federal lands administered by the U.S. Fish and Wildlife Service, USFS, BLM, and NPS; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

Based on the best available information, the following actions may potentially result in a violation of section 9 of the Act; this list is not

comprehensive: (1) Unauthorized modification of the forest landscape within the range of the SSN DPS; and (2) unauthorized use of first- and second-generation anticoagulant rodenticides and neurotoxicant rodenticides within the range of the SSN DPS.

Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive: (1) Any actions that may affect the SSN DPS of fisher that are authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with the consultation requirements for listed species pursuant to section 7 of the Act; (2) any action taken for scientific research carried out under a recovery permit issued by us pursuant to section 10(a)(1)(A) of the Act; (3) land actions or management carried out under a habitat conservation plan approved by us pursuant to section 10(a)(1)(B) of the Act; and (4) recreation activities that comply with local rules and that do not result in take of listed species, including hiking and backpacking.

Critical Habitat

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. In the 2019 Revised Proposed Rule (84 FR 60278, November 7, 2019), we determined that designation of critical habitat was prudent but not determinable because specific information needed to analyze the impacts of designation was lacking. We are still in the process of assessing this information. We plan to publish a proposed rule to designate critical habitat for the SSN DPS of fisher in the near future.

Summary of Comments and Responses

In the 2014 Proposed Rule published on October 7, 2014 (79 FR 60419; Docket No. FWS–R8–ES–2014–0041), we requested that all interested parties submit written comments on the proposal by January 5, 2015. We electively held one public hearing and seven public information meetings between November 13 and December 4, 2014. The comment period for this rule was extended (79 FR 76950, December 23, 2014) and reopened (80 FR 19953, April 14, 2015) for additional comments. Following our withdrawal of this proposed rule (81 FR 22710, April 18, 2016) and subsequent litigation (see Previous Federal Actions, above), the District Court for the Northern District of California reinstated the 2014 Proposed Rule on September 21, 2018. Given the time that had elapsed and the availability of new information, we reopened the comment period on the 2014 Proposed Rule on January 31, 2019 (84 FR 645), requesting that all interested parties submit new information or comments by March 4, 2019. We published the 2019 Revised Proposed Rule on November 7, 2019 (84 FR 60278), again requesting that all interested parties submit written comments on the proposal by December 9, 2019, and noting that all previously submitted comments would be fully considered in the preparation of our final determination. Finally, we reopened the comment period on the 2019 Revised Proposed Rule for additional comments and information to be submitted by January 3, 2020 (84 FR 69712, December 19, 2019), reiterating that our final determination would take into consideration all comments and any additional information we have received during the comment periods described herein.

Notices were published in a variety of newspapers during the comment periods inviting general public comment on the various announcements between 2014 and 2019 outlined above. Newspaper notices covered the range of the DPS and included one or more of the following: Bellingham World, Chico Enterprise Record, Eureka Times-Standard, Fresno Bee, Klamath Falls Herald and News, Olympian, Oregonian, Peninsula Daily News, Redding Record Searchlight, Sacramento Bee, Wenatchee World, and Yakima Herald Republic. We also contacted appropriate Federal and State agencies, Tribes, scientific experts and organizations, and other interested parties and invited them to comment on both the 2014 draft Species Report and the 2014 Proposed Rule. Information received from these parties was used to update the 2016 Species Report and the 2019 Revised Proposed Rule. We also used information received from Federal and State agencies, Tribes, organizations, and other partners throughout the process. All substantive information provided during the comment periods outlined above has either been incorporated directly into this final determination or addressed below.

In connection with development of this final rule, we reviewed comments received from the public and peer reviewers on the 2014 Proposed Rule and the Draft Species Report, and from the public on the 2019 Revised Proposed Rule. As outlined in the April 2016 Withdrawal (81 FR 22710, April 18, 2016), which provided our full response to all comments received to the initial documents, we added new information, made clarifications, and made necessary corrections to our final Species Report (Service 2016, entire) to reflect the peer and public comments received to that time. As necessary, these prior comments have been reevaluated to inform the development of this final rule. For those comments where we determined a further response was required, they are addressed in our response to comments section below or are incorporated in our analysis in the specific section of the final rule as appropriate.

4(d) Rule

(1) Comment: Multiple commenters raised concerns, provided suggestions, and asked for clarification on the 4(d) rule in the 2019 Revised Proposed Rule.

Our Response: Under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of a species listed as threatened, and can by regulation prohibit with respect to such species any act prohibited under section 9(a)(1) for threatened wildlife species. In this final rule, we determine that the NCSO DPS does not warrant listing under the Act and that the SSN DPS meets the definition of an endangered species under the Act; therefore, since neither DPS will be listed as threatened, the section 4(d) provisions do not apply and the proposed 4(d) rule has been removed from this final rule.

Climate Change

(2) Comment: One commenter asserted that voluntary conservation efforts on non-Federal lands mitigate and decrease the threats of climate change to fisher.

Our Response: We considered both regulatory and voluntary conservation measures that are currently being implemented to reduce the impacts of the stressors to the species in the final Species Report (Service 2016, pp. 162–189) and updated in this document (see Existing Regulatory Mechanisms and Voluntary Conservation Measures, above), including important voluntary conservation contributions on non-Federal lands.

We found that listing of the NCSO DPS was not warranted. We have found that the SSN DPS meets the definition

of an endangered species. At this time, we continue to assert that fisher habitat is likely to be affected by changing climate conditions, but the severity will vary, potentially greatly, between the NCSO DPS and the SSN DPS, with effects to fishers ranging from negative, neutral, or potentially beneficial. We cannot at this time conclude that conservation efforts on non-Federal lands are mitigating or decreasing the threats of climate change to fisher within the NCSO DPS or the SSN DPS. That said, voluntary actions on non-Federal lands (*e.g.,* CCAA, SHAs, HCPs, and MOUs), particularly within the NCSO DPS, provide a conservation benefit to the species (*e.g.,* actions that retain key elements of fisher habitat and/or improve collaboration to reduce significant spread of high-severity wildfires) and may contribute to reducing the overall cumulative impacts to the NCSO DPS and its habitat. Overall, anything that reduces impacts to the species in the future would help increase its resilience to climate change.

(3) Comment: One commenter claimed that the best available science on climate change should be added to our analysis, including recent modeling and analysis information related to warming climate, wildfire severity, and droughts. This comment also was raised in comments received on the 2014 Proposed Rule stating that there are conflicting perspectives on the potential impacts associated with changing climate conditions, and the Service needs to evaluate the best available information.

Our Response: We have evaluated new information on climate change that has become available since the 2014 Proposed Rule, including literature received and suggested citations during the comment periods on the 2019 Revised Proposed Rule. All information received has been reviewed and analyzed as part of our determination; the information is included in the decision record for this determination, but not necessarily cited in this rule. Significant new information or updates are included in the Climate Change sections above.

Completeness and Accuracy

(4) Comment: Several commenters stated that the 30-day comment period for the 2019 Revised Proposed Rule did not provide the public enough time to evaluate the changes made to the proposed rule, which had significant differences from our previous determinations.

Our Response: In response to multiple requests seeking more time to fully evaluate the information in the 2019 Revised Proposed Rule, we added an additional 15-day comment period (ending on January 3, 2020) to the original 30-day comment period for the 2019 Revised Proposed Rule. Moreover, as noted in our discussion of the DPS above, we provided the public with notice of two alternative DPS configurations in our 2014 Proposed Rule, which included DPS boundaries that are very similar to the DPS configurations that were analyzed in the 2019 Revised Proposed Rule and this final determination.

(5) Comment: One commenter mentioned that significant new information has been developed since the completion of the 2016 final Species Report, and that the 2019 Revised Proposed Rule mentioned some of the new data. However, the commenter stated that the Service did not clarify how much weight was given to the new information in the decision to propose listing the fisher.

Our Response: New information became available between completion of the 2016 final Species Report and the 2019 Revised Proposed Rule to list the fisher as a threatened species, and new information became available since the publication of our 2019 Revised Proposed Rule. We are obligated under the Act to carefully consider whether or not any new information would affect our decision to list a species (*i.e.,* meeting the definition of an endangered or a threatened species according to section 3 of the Act). All new information provided since the 2016 final Species Report was carefully analyzed. Our 2019 Revised Proposed Rule indicated that our conclusion in the final determination may change based on the new information we received in response to the 2019 Revised Proposed rule (84 FR at 60279). And in fact, we found that the new information and information submitted during public comment provided substantial evidence that threats to the fisher have been reduced or eliminated to the extent that listing of the fisher is not warranted in the NCSO DPS but is warranted for listing as an endangered species in the SSN DPS.

Critical Habitat

(6) Comment: Many commenters articulated the need for designated critical habitat for the West Coast DPS of fisher. Two of these commenters asserted that critical habitat should have been proposed concurrent with the proposed listing rule.

Our Response: We stated in the 2019 Revised Proposed Rule that we were in the process of working with the States and other partners in acquiring the complex information needed to perform an economic analysis. As stated in II. Critical Habitat, above, we are still assessing information and we anticipate publishing a proposed rule to designate critical habitat in the near future.

Current Conservation Agreements

(7) Comment: One commenter asked if landowners will be able to enroll in CCAAs after a final rule is published.

Our Response: Landowners within the area of the NCSO DPS can enroll in CCAAs because we found that listing of the NCSO DPS was not warranted. Once a species is listed as threatened or endangered under the Act, landowners are not able to enroll in CCAAs for that species; this applies to the SSN DPS. However, other conservation tools such as Safe Harbor Agreements (SHA) can provide assurances for landowners. A SHA is a voluntary agreement between the Service and private or other non-Federal property owners whose actions contribute to the recovery of federally listed species. Landowners who fulfill the conditions of the SHA will not be subject to any additional or different management activities without their consent.

(8) Comment: One commenter stated that the completion of a marten/fisher conservation strategy would complement work being done by the Forest Service. A second commenter provided a summary of a draft conservation strategy for fisher in the SSN subpopulation, claiming that the strategy will update fisher and fisher habitat status, summarize new science, provide recommendations for identifying and maintaining key habitat elements, provide recommendations for increasing resilience of fisher habitat, identify potential mitigation for necessary management (*e.g.,* hazard tree removal), and identify potential management options for forest conditions that support fisher conservation.

Our Response: The Service supports a conservation strategy for the benefit of marten and fisher to complement work being done by the Forest Service. The new draft conservation strategy for fisher in the SSN DPS was reviewed and discussed above under Final Listing Determination for SSN under ''Current Condition'' and ''Voluntary Conservation Measures.''

(9) Comment: One commenter stated the 2019 Revised Proposed Rule was unclear as to whether or not conservation measures currently being implemented for fisher were evaluated. Therefore, the commenter advised that the Service cannot rely on those measures to support conclusions for

unregulated take of individuals on Federal land.

Our Response: The Service evaluates voluntary conservation measures when considering the status of a species under section 4 of the Act. As such, voluntary conservation measures were considered in this final rule for fisher. See the Voluntary Conservation Measures section, above.

(10) Comment: One commenter stated that sustainable forestry practices on private land support fisher conservation by providing healthy forests, forest products, and wildlife enhancements. The commenter claimed that unnecessary regulations and restrictions of sustainable forestry practices will negatively affect fisher populations and the ability of private landowners to maintain working forests on their lands.

Our Response: We appreciate the efforts on private lands to support healthy forests and provide wildlife enhancements that benefit fisher, and we will continue to work with landowners. We assume the commenter is concerned that sustainable forestry practices would be regulated as a result of listing the fisher under the Act. We found that listing of the NCSO DPS was not warranted. We determined that the SSN DPS meets the definition of endangered; thus, we are required by the Act to list it. The Service will work with partners to continue forest practices that retain key elements of fisher habitat that will continue to contribute to the overall conservation of the species.

(11) Comment: Multiple commenters stated that voluntary conservation measures and multi-entity partnerships are in place, should receive Federal support or funding assistance, and should be the focus of the evaluation of the status of the fisher. Specifically, the commenters claimed that Federal and non-Federal land managers are engaging in collaborative efforts (*e.g.,* CCAAs, HCPs, MOUs) to maintain fisher habitat and minimize wildfire risk, and the Service failed to acknowledge these efforts and their contribution to fisher conservation. Some of these commenters also stated that the Service provided little justification to the determination that conservation agreements are not acting at a scale and magnitude sufficient to ameliorate threats, and that the extent of the agreements was not considered. An additional commenter is similarly concerned that listing the fisher would mandate section 7 consultation under the Act for actions implemented under MOUs, which would hinder implementation and increase the risk of catastrophic wildfire. Finally, another commenter suggested that CCAAs, which cover several million acres, are being implemented or are sufficiently certain to be implemented, which should compel the Service to withdraw the proposed listing rule.

Our Response: The Service supports conservation efforts for the benefit of fisher in both the NCSO DPS and the SSN DPS. We incorporated additional information that was received during the comment period into our analysis including CCAAs, HCPs, and MOUs that benefit the NCSO DPS and/or the SSN DPS of fisher. We found that listing of the NCSO DPS was not warranted. We have found that the SSN DPS meets the definition of endangered; therefore, it is necessary to carefully assess actions that may impact the DPS to avoid extinction. The Service will work with partners to continue forest practices that retain key elements of fisher habitat that will continue to contribute to the overall conservation of the species. See also the response to *Comment 10* above.

(12) Comment: One commenter stated that the Service did not apply the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) and asserted that application of this policy will result in a determination that listing fisher as a threatened species is not necessary.

Our Response: In this final rule, the NCSO DPS is not warranted for listing, so a PECE analysis is not appropriate. The SSN DPS is warranted for listing as an endangered species, and we conclude that the existing conservation efforts are not to the level that prevents the SSN DPS from meeting the Act's definition of an endangered species.

(13) Comment: One commenter is concerned that timber management at a landscape scale is likely to be unaffected by listing fisher. Specifically, the commenter asserted that agreements with timber companies that exempt timber management activities will not provide landscape-scale contiguous tracts of habitat or sufficient trees with cavities.

Our Response: We assume the agreements the commenter refers to are HCPs, CCAAs, and SHAs. Each HCP, CCAA, and SHA contains measures to protect habitats for listed species. While these may not individually operate at a landscape scale, the combined efforts across the range of the species contribute to the ability of fishers to move across larger landscapes and to find trees for denning and resting.

Distinct Population Segment (DPS)

(14) Comment: Several commenters believed there should be more than one DPS (with separate listing decisions) in the area described in the 2019 Revised Proposed Rule as the West Coast DPS of fisher. Some commenters stated that the NCSO and SSN subpopulations are two separate/isolated geographic areas with no genetic interchange, and therefore they should be two separate DPSs, especially given the apparent differences in landscape-level threats and information that they believe qualifies the SSN as distinct and significant according to our DPS Policy. Some of these commenters further articulated that the DPSs should be consistent with the ESUs designated in 2015 by the CDFW, including that we should consider their decision that listing the Northern California ESU was not warranted. Two commenters asserted that the SSN subpopulation should be a DPS that is listed as endangered and the NCSO subpopulation should be a DPS that is listed as threatened given the differences in existing conditions and threats into the future. Finally, another commenter asserted that the NCSO, SSN, NSN, and SOC subpopulations should all be individual DPSs.

Our Response: We received multiple comments on our DPS approach in both the 2014 Proposed Rule and 2019 Revised Proposed Rule. As explained in further detail in this document's Summary of Changes from the 2019 Revised Proposed Rule section, we carefully considered all these comments, and as a result reevaluated our DPS approach. We determined that what we had proposed as the West Coast DPS in the 2019 Revised Proposed Rule should instead be two separate DPSs, one for the SSN subpopulation, and one for the several subpopulations comprising the NCSO geographic area. We determined our analysis would focus on the conservation of extant subpopulations historically indigenous to the California and southern Oregon region with unique genetic characteristics (as outlined in the 2014 Proposed Rule), while also allowing for separate management of the two DPSs if either or both were warranted for listing. For a complete discussion of the logical outgrowth that led to this outcome, please refer to the Summary of Changes section mentioned above, as well as the detailed Distinct Population Segment analyses presented herein.

(15) Comment: One commenter agreed that the DPS configuration should not include the State of Washington, and two commenters disagreed, requesting that we reconsider and include this area to address the connectivity needs of the species and consideration of habitat needed for dispersal. One of the two commenters that disagreed also

suggested that population monitoring of recent fisher reintroductions in Washington would be more readily supported if this area was included in the DPS configuration. Relatedly, we also received multiple comments on the 2014 Proposed Rule suggesting that the Service needs to consider connectivity between subpopulations and dispersal habitat within the DPS configuration, including habitat in Washington and Oregon that is north of the current distribution.

Our Response: As explained in further detail in both the 2019 Revised Proposed Rule, and in this document's Distinct Population Segment analyses, the determination of a DPS is based on where a population segment actually occurs on the landscape. A DPS does not set a geographic boundary, nor ''set aside'' connectivity or dispersal habitat for conservation purposes, but rather identifies the segment of a population that is discrete from, and significant to the taxon as a whole, and that may or may not require protection under the Act. Our DPS approach focused on the extant subpopulations historically indigenous to the California and southern Oregon region with unique genetic characteristics, and such subpopulations do not occur in Washington, nor in Oregon north of the current distribution.

(16) Comment: One commenter asserted that it is inappropriate to consider fishers reintroduced in the State of Washington as nonnative, as this term typically describes a taxon occurring outside of its historical range. The commenter stated that reintroduced fishers in Washington are from source populations in British Columbia and Alberta, which were likely contiguous and interbreeding with fishers that historically occurred in Washington.

Our Response: In both the 2014 Proposed Rule and 2019 Revised Proposed Rule, we explained that our use of the term ''nonnative'' was intended to articulate the difference between the extant fisher subpopulations that have been indigenous to the three West Coast States since before the time of the original petition (''native''), and those current fisher subpopulations that were established with fishers from outside the three West Coast States (''nonnative''). We recognize that the fisher populations currently established in Washington are genetically similar to historically indigenous Washington fishers prior to their extirpation, and our only purpose in the use of the term ''nonnative'' was to distinguish the reintroduced Washington fishers from those fishers in California and northern Oregon that are historically extant.

(17) Comment: One commenter stated that the revised DPS delineation/description limits opportunities to implement future conservation measures throughout the historical range of the species. They also stated that excluding historically occupied fisher habitat in Washington and Oregon limits opportunities for recovery.

Our Response: Please see our response to *Comment 15*. Conservation measures are not limited throughout the range of the species by this listing determination.

(18) Comment: Several commenters requested that we clearly define the boundary of the DPS. For example, one commenter stated that there are only dispersing fishers in one area within the delineated boundary as described in the 2019 Revised Proposed Rule, and there does not appear to be a breeding population there. Two commenters suggested that specific extant subpopulations are delineated that include a predicted movement distance, such as the approach used for the Humboldt marten (*Martes caurina humboldtensis*). Two other commenters stated that the proposed boundary does not represent the extant subpopulations or the specific predicted habitat areas, noting their belief that the basis for the current depiction is unclear.

Our Response: Please see our responses to *Comment 14* and *Comment 15* regarding the final determination of DPSs. Additionally, there is no requirement that all areas of a DPS be used for breeding. And, when we identify a DPS, we are simultaneously evaluating the current range of the animals comprising the DPS. This process is identical to our process for any listed species. Any maps accompanying these determinations are intended to illustrate that range, based on the best available scientific and commercial information regarding the species' (or DPS's) ecology and the availability of its resource needs on the landscape, but do not represent a determination by the Service that all areas within a generalized range are occupied by the species. The maps presented herein depict our understanding of the current ranges of both DPSs, with the further understanding that these ranges are not necessarily static, and individuals from either DPS have the potential to expand or contract from what are the current range limits.

(19) Comment: One Federal partner stated their support of listing native fisher populations wherever they occur, but suggested the area east of Highway 97 in Oregon be excluded.

Our Response: As presented herein, our final analysis determines that the NCSO DPS, which includes fishers in Oregon, does not meet the definition of either a threatened or endangered species. As a result, fishers east of Highway 97 would not be considered listed under the Act.

(20) Comment: One commenter asserted that fishers residing in the SOC subpopulation (reintroduced from British Columbia and Minnesota) experience significantly different threats and existing conditions (*e.g.,* small population size, surrounding habitat for expansion) than the NCSO subpopulation; therefore, these factors should lead to not including this subpopulation area in any DPS.

Our Response: As presented herein, our final analysis includes the SOC subpopulation within the NCSO DPS. Although the SOC subpopulation was established with fishers from British Columbia and Minnesota, the area where the SOC occurs lies within the historical range of the NCSO DPS, and more importantly, includes documentation of SOC fishers interbreeding with fishers of the NCSO subpopulation (Pilgrim and Schwartz 2016, entire; Pilgrim and Schwartz 2017, entire). Given this interbreeding activity and the use of suitable habitat between these two population areas, it was a sound and logical conclusion to include all fishers across these areas as part of the NCSO subpopulation. However, we found that listing of the NCSO DPS was not warranted.

Distribution

(21) Comment: One commenter provided new fisher detection locations from systematic camera surveys conducted from October 2018 to February 2019 and from October 2019 through December 2019 within their private timberlands in coastal northern California. The commenter asserts that the new information indicates that fishers remain well distributed across their coastal California timberlands and that fishers may have expanded into portions of northern coastal California where they were not detected during earlier survey efforts.

Our Response: We thank the commenter for the new fisher detection information, which augments our knowledge of the distribution and relative abundance of the fisher within the NCSO. We have included this information in the NCSO Current Condition above. We agree that the submitted information demonstrates that fishers are well distributed across

portions of the commenter's California timberlands where surveys were conducted.

(22) Comment: One commenter disagreed with information we presented in the 2019 Revised Proposed Rule regarding the historical and current distribution of fishers in the SSN subpopulation. The commenter suggested that our statement that historically the SSN subpopulation likely extended farther north than our current DPS boundary in the Sierra Nevada was conjecture and that historical museum specimens are limited to south of the Tuolumne River, which is currently the northern boundary of what was identified in the 2019 Revised Proposed Rule as the Sierra Nevada portion of the DPS. Further, the commenter mentioned that our statement that multiple lines of genetic evidence suggests that the NCSO and SSN subpopulations have been isolated since before European settlement contradicts the previous assertion that fishers historically occupied the area between the NCSO and SSN portions of the DPS. The commenter also disagreed with our statement that the current northern boundary of the SSN subpopulation is the Tuolumne River in Yosemite National Park, asserting that the northern extent of the current occupied distribution of the SSN subpopulation is actually the Merced River, varying from about 10 to 20 miles south of the Tuolumne River. They stated that only a single male fisher was recently detected north of the Merced River and that there is no fisher population between the Merced and Tuolumne Rivers.

Our Response: Although not confirmed, there are numerous historical sightings of fishers, many of them from reported trapping locations from 1919 through 1924, in the areas between the SSN and NCSO DPSs (summarized in CDFW 2015, pp. 17–19). Thus, we conclude that, at some point, fishers occupied portions of the northern Sierra Nevada at least temporarily. Whether the northern Sierra Nevada contained a viable population or only served as a movement corridor between the current NCSO and SSN DPSs is unknown. That said, genetic information supports that the NCSO and SSN DPSs have been largely separated for thousands of years (Tucker et al. 2014, p. 3), so we determined that separating the NCSO DPS and SSN DPS was appropriate.

We included the area between the Tuolumne and Merced Rivers in the SSN DPS because the area contains suitable habitat, and fishers found in this area would be a part of the SSN DPS. In addition, the recent detection of at least one fisher north of the Merced River indicates that the SSN DPS has the capability to expand into the area between the Tuolumne River and the Merced River (Stock 2020, pers. comm.).

Existing Regulatory Mechanisms

(23) Comment: Several commenters stated that the proposed rule fails to adequately consider existing conservation efforts that benefit the fisher and other actions that benefit other forest species. These efforts include such things as CCAAs, MOUs, HCPs, ongoing enforcement agreements implemented by State and Federal parties, and conservation agreements for other species such as spotted owls, which can benefit fisher. Although many of these efforts are mentioned in the 2019 Revised Proposed Rule, the commenters believed that there is no evaluation, both individually and cumulatively. Other commenters stated that these efforts must be considered in combination with the extensive regulatory framework that already exists (*e.g.,* the Sierra Nevada Forest Plan Amendment for the Forest Service; the California Forest Practice Rules and the California Environmental Quality Act and their roles in the timber harvest planning process in the State).

Our Response: As noted by the commenter, our 2019 Revised Proposed Rule mentions existing conservation efforts that provide benefits to fisher and other forest species. In that proposed rule, we provided an in-depth discussion about how existing regulatory mechanisms and other voluntary conservation efforts benefit fishers. Each of these regulatory mechanisms and conservation efforts were evaluated individually for how they may provide benefits, and cumulatively to assess how in combination they may ameliorate threats. A similar in-depth analysis is provided in this current rule, albeit with analyses specific to both the NCSO DPS and SSN DPS. Further discussion of how all of the regulatory mechanisms and conservation efforts were considered in the context of the existing regulatory frameworks and our status evaluations can be found in the Determination sections for each DPS in this final rule document.

(24) Comment: One commenter stated that the proposed rule does not consider the widespread participation in sustainable forest management certification programs such as the Sustainable Forestry Initiative and the Forest Stewardship Council that promote forest health and resilience in opposition to climate change with sequestration of carbon in wood products and renewable reforestation and harvest cycles.

Our Response: While sustainable forest management certification programs require actions by participants that are ecologically beneficial, the certification standards are too general to evaluate the effects of participation on fisher conservation. As an example, one of the certification programs lists the following standards: (1) A program to protect threatened and endangered species; (2) a program to locate and protect known sites of flora and fauna associated with viable occurrences of critically imperiled and imperiled species and communities also known as Forests with Exceptional Conservation Value; and (3) support of and participation in plans or programs for the conservation of old-growth forests in the region of ownership or forest tenure'' (SFI 2015, p. 6). We believe these sustainable forest management certification programs can and do promote and lead to fisher conservation. We are not implying that these standards are faulty. However, as written these general standards are too vague to consider their benefit to fishers and how they may reduce existing threats. The Service requires specific information from the participants of the sustainable forest management certification program and how they meet these standards in order to be able to assess the degree to which they affect fisher conservation and address the threats to the species.

(25) Comment: One commenter stated that the Service cannot rationally assume that BLM lands in the DPS will be managed in a way to promote viability or recovery of fisher because of recent court rulings regarding the Oregon and California Railroad (O&C) lands under BLM management. If these rulings stand, BLM will no longer be able to place O&C timberlands in reserves. The final rule must address how the Service intends to achieve recovery in light of these rulings.

Our Response: We have acknowledged the recent court ruling regarding BLM O&C lands in this rule and that this decision has been appealed. However, we must base our decision on the regulatory mechanisms currently in place, which are the 2016 revisions to BLM's western Oregon resource management plans. We cannot speculate how the court's ruling will ultimately effect BLM management going forward. For example, the ruling may stand, it may be overturned by a higher court, or a settlement may be reached to implement yet a different

management action. Opportunities to assess any such changes in BLM management, once final, will occur through a new listing petition. Consequently, we base our conclusion on the plans in place at the time of our decision, which are the 2016 western Oregon resource management plans.

(26) Comment: One commenter said that assuming the NEPA process will do good things for fisher is incorrect. Federal agencies document their actions under NEPA and whether they comply with the Endangered Species Act, but the process itself does not provide a conservation benefit.

Our Response: We have not assumed that NEPA will benefit fishers. We explicitly stated in our 2019 Revised Proposed Rule (84 FR at 60296, November 7, 2019), ''NEPA does not regulate or protect fishers, but requires full evaluation and disclosure of the effects of Federal actions on the environment.'' We continue to affirm that statement in this document.

(27) Comment: One commenter stated that the regulatory mechanisms embodied in law enforcement agencies have failed to control illegal cultivation of marijuana on public lands, leading directly to the issues described under the toxicants section of the proposed rule. The proposed rule should acknowledge this fact, recognizing and calling attention to the limitations imposed on the funding and priorities under which these agencies operate.

Our Response: We have acknowledged the difficulties experienced by law enforcement to address illegal cultivation of cannabis on public lands in this rule (see Exposure to Toxicants section).

(28) Comment: One commenter observed that the proposed rule does not acknowledge existing efforts to address illegal cannabis cultivation on public lands (*e.g.,* increasing California State agency staff; CROP Project (Cannabis Removal on Public Lands), whose goal is to increase funding for trespass grow reclamation, increase USFS Law Enforcement presence, and implement statewide education on health risks of unregulated cannabis). Evaluation of toxicant threat is incomplete without considering the regulatory mechanisms related to cannabis cultivation.

Our Response: We recognize and commend efforts to clean up illegal grow sites and remove toxicants from the landscape. We acknowledge the CROP Project and their efforts to reduce and reclaim illegal cannabis cultivation on public lands (see Exposure to Toxicants section). We also acknowledge that CDFW provided money in 2017 through their Cannabis Restoration Grant Program to clean up illegal grow sites, and that they may continue to do so in the future. And we recognize efforts by private timber companies (*e.g.,* GDRC HCP) to restrict access and patrol their lands. Conversely, we note that Forest Service law enforcement personnel have observed that State and local resources for combatting illegal cultivation on Federal lands has diminished since State cannabis legalization, as resources have been redirected to State and local regulatory compliance (Klassen and Anthony 2019, p. 45). There are still both many unremediated and undiscovered illegal marijuana sites across the landscape where further clean-up efforts are needed. We commend on-going efforts and encourage all future funding and clean-up efforts. We also recognize the magnitude and scope of the problem that makes the threat of exposure to toxicants difficult to manage across the landscape. Please see the NCSO DPS and SSN DPS discussions above in their respective Exposure to Toxicants sections for our assessment of this threat.

(29) Comment: One commenter stated that if the fisher is listed, then positive relationships with landowners will be impossible and harm proactive, collaborative, voluntary conservation.

Our Response: We are committed to creating positive relationships with landowners. As an example, by working with commercial timber landowners in Oregon on fisher CCAAs, we have built collaborative relationships that have spilled over into work on proactive conservation for other species considered for listing under the Act, such as the Pacific marten (*Martes caurina*) and red tree vole (*Arborimus longicaudus*). There are many tools available to incentivize collaborative, voluntary conservation for the fisher. Potential voluntary conservation opportunities include: CCAAs (such as the existing agreement with SPI); HCPs (such as the existing plan with GDRC for the northern spotted owl); and SHAs (such as the existing agreement in Oregon). These agreements and plans allow landowners to manage their lands while conserving species, and at the same time provide landowners regulatory assurance and incidental take coverage under the Act for agreed upon activities. Also, our Partners for Fish and Wildlife Program works with and funds landowners to implement on-the-ground conservation efforts on their lands. Though not all landowners participate in these various voluntary conservation opportunities, many continue to work with us to conserve species.

(30) Comment: One commenter stated that listing the fisher would also increase wildfire risk within the fisher's range and blunt the effectiveness of wildfire prevention measures that are already in place. Private landowners are currently implementing an MOU that is designed to lessen wildfire risks within the fisher's range. If the fisher were listed as threatened or endangered, these wildfire reduction measures would be slowed down and would become less effective. Listing the fisher would also have the consequence of requiring Federal agencies to consult under section 7 of the ESA before taking actions that could affect fisher habitat, including the fuels reduction efforts contemplated under the MOU.

Our Response: The MOU referenced by the commenter pertains to the NCSO DPS area, which is found not warranted for listing in this determination. There is no similar agreement applicable to the SSN DPS. Consequently, we believe the concerns expressed are not applicable to this listing determination. We do not believe that listing the fisher would increase wildfire risk in the SSN DPS because the Service is working with Federal agencies to develop a programmatic consultation process to streamline wildfire reduction activities that provide for the conservation of fisher.

Fisher Biology

(31) Comment: Two commenters pointed out new studies showing that fishers use managed landscapes. They both noted that fishers have been documented using slash piles for denning. One of them also added that fishers use areas near timber harvest units, possibly due to the availability of prey.

Our Response: Fishers use managed landscapes on private industrial timberlands, and this determination reflects this use. Rather than specifically mentioning fisher use of slash piles in our analysis, we considered fisher use of managed landscapes more broadly in vegetation management.

Fuels Treatment

(32) Comment: Some commenters expressed that protecting fishers from extreme wildfire is important, stating that wildfires are prevalent in the DPS and are predicted to increase in frequency. They indicated that high-severity burns take decades if not centuries to replace habitat structures necessary to support fishers and their prey; therefore, thinning projects and

prescribed burns are necessary to prevent stand-replacing wildfires.

Our Response: High-severity fires can remove or substantially reduce fisher habitat; thus, we assessed the conservation measures in place to conduct fuel reduction projects (see Voluntary Conservation Mechanisms). The Service is working with Federal agencies within the SSN DPS to develop a programmatic consultation process to streamline wildfire reduction activities that provide for the conservation of fisher.

Habitat

(33) Comment: Once commenter states that the use of OGSI–80 as a surrogate for fisher habitat underrepresents substantial areas of occupied fisher habitat in the NCSO and NSN areas and presented their analysis of citations (Zielinski et al. 2012; Niblett et al. 2017; Powell et al. 2019) to support this interpretation. Specifically, they referenced application of the Zielinski et al. (2004) fisher habitat model on managed landscapes. They claim that the model is similar to OGSI–80 in that it is derived from observed fisher use of large, old trees in old forests, primarily on public lands. Applying the model on managed landscapes resulted in lands classified as ''poor'' by the model actually being occupied by fishers (Niblett et al. 2017; Powell et al. 2019). Thus, the commenter opined that projections of trends based on the OGSI–80 surrogate cannot be relied upon to represent amounts of trends in fisher habitat. The commenter further recommended the Service address the proportion of occupied habitat actually represented by OGSI–80, stating that the OGSI–80 definition excludes substantial amounts of occupied private and Federal land.

Our Response: In addressing the last portion of the comment, our intended use of OGSI–80 is not as a surrogate for fisher habitat, nor to delineate areas on the landscape where fishers may or may not be found. That would not be an appropriate use because the data sources for OGSI–80 (gradient nearest neighbor or GNN) limit the application of the index to the landscape or regional scale and not the site-specific or local scale (Ohman and Gregory 2002, p. 738).

We are not sure why the commenter concluded that the Zielinski et al. (2004) model, derived from observed fisher use of very large old trees and logs in old forests primarily on public lands, is similar to OGSI–80. First, OGSI–80 is not based on fisher use of stands. Second, OGSI–80 does not indicate a forest age, but rather structures that are characteristic with where forests are on a general forest succession continuum, regardless of their age. Hence, a stand meeting the OGS–I80 condition may be younger than 80 years old, and stands substantially older than 80 may not meet the OGSI80 condition. Third, OGSI–80 was derived from a network of plot data systematically placed across all ownerships, not just Federal lands (Davis et al. 2015, pp. 13–15). We compared OGSI–80 trends between Federal and non-Federal lands in our analysis.

The commenter's conclusion as to why the Zielinski model did not perform as well on private lands assessed by Niblett et al. (2017) does not comport with the conclusion Niblett et al. (2017, pp. 14–15) made. They note that Zielinski compiled a resting habitat suitability score that was a composite of multiple features of fisher resting habitat, such as live tree basal area, large down wood abundance, hardwood basal area, canopy cover, and mean tree age. Such an overall composite may be less meaningful in characterizing fisher habitat on landscapes assessed by Niblett et al. (2017, entire) than just assessing the structural attributes that fishers use, especially because forest cover is so low for such a large part of their study area. In that light, OGSI–80 is similar in that it is characterizing a single component of fisher habitat, the structural habitat components that fishers are associated with, so long as forest canopy cover meets a minimum of 10 percent. We note that Niblett et al. (2017, p. 15) still found that, even in their heavily managed landscape with large areas absent of forest cover, fishers still denned in the largest available trees on the landscape. Depending on the vegetation zone that encompasses the Niblett et al. (2017, entire) study area, the OGSI–80 minimum structural element thresholds (Davis et al. 2015, pp. 16–18) may or may not exceed the den tree and snags used by fishers in Niblett et al. (2017, p. 15). Nevertheless, OGSI–80 is not meant to map where fishers may occur on the landscape, or to quantify fisher habitat characteristics, but to characterize trends in those structural elements that fishers use.

(34) Comment: One commenter stated that in areas occupied by breeding female fishers on the Stirling Management Unit, some habitat suitability models based on fisher use of forests with large trees performed very poorly in predicting fisher home ranges (Powell et al. 2019, Figure 28 and others). Consequently, OGSI–80, being based on large trees, will not represent areas used by fishers on these landscapes.

Our Response: As stated in earlier comments, OGSI–80 is not meant to map where fishers may occur on the landscape, or to quantify fisher habitat characteristics, but to characterize trends in those structural elements that fishers use. We also want to clarify the results of the analysis that the commenter is describing (Powell et al. 2019, Figure 28 and others). There are certainly areas of habitat classed by the different models assessed as either moderate fisher habitat or even relatively high-quality fisher habitat (*e.g.,* Powell et al. 2019, Appendix 2, pp. 64–65) that fishers avoided. The authors suspect lack of other vital habitat components in these stands, such as hardwoods, may be the reason, though this needs further study (Powell et al. 2019, Appendix 2, pp. 69–70). Nevertheless, for most of the models assessed in Powell et al. (2019, Appendix 2), fishers still selected habitats on the landscape that generally encompassed largest tree category and greatest canopy cover.

(35) Comment: One commenter believed our statement that substantial amounts of unoccupied fisher habitat could suggest that habitat is not limiting for fisher and, therefore, habitat loss is not a threat was misleading. They note that there is not a lot of unoccupied habitat in the SSN south of the Merced River, and, indeed, habitat may very likely be a limiting factor, especially for females in the currently occupied area. Unoccupied habitat north of the Merced may not be accessible due to dispersal barriers (Merced River, high-severity fire areas, and heavily used roads in Yosemite National Park) and, therefore, is not de facto evidence that habitat is not a limiting factor.

Our Response: We recognize in the final rule that the interaction of all the threats within the SSN DPS are likely limiting northward expansion into what is considered suitable habitat for fisher. In general, fisher habitat is lacking landscape-scale forest heterogeneity in the SSN DPS compared to historic conditions, with wildfire and severe drought disturbances creating large patches of homogeneous habitat, which are exacerbated by past logging practices and wildfire suppression (Thompson et al. 2019a, p. 13).

(36) Comment: The proposed rule's estimation of habitat trend is inconclusive and does not indicate substantial decline. If the definition of habitat is corrected to include the known fisher distribution, fisher habitat has in fact dramatically expanded. This expanded range is demonstrated by a 24 percent increase in the occupied range since the CDFW estimate in 2010.

Our Response: We do not agree with the conclusion that habitat usable by fisher has dramatically expanded. A range expansion for fisher or any other species does not automatically mean that habitat has increased. Many factors serve to limit species distribution (*e.g.,* connectivity and fragmentation, prey and predators, population demographics), and these factors may or may not be affected by habitat. Although not perfect, our analyses for vegetation management and wildfire show losses of either fisher habitat or structural elements used by fishers (as represented by OGSI–80). Further, the OGSI–80 analysis, which incorporates ingrowth and is only for the NWFP portion of the NCSO DPS, indicates a net loss of this structural condition type. In the SSN, areas within the previously known fisher distribution experienced a reduction of nearly 40 percent due to fire, drought, and associated tree mortality. Although we expect ingrowth to occur, we are uncertain how soon the landscape will be considered fisher habitat, particularly because large trees that often act as a seed source for future regeneration were disproportionately affected.

The number of fishers in the NSN subpopulation is increasing and with this increase, fishers are expanding and using new habitats. We are encouraged by this expansion and commend SPI, CDFW, and other partners for their efforts. However, we conclude that this expansion is due to reintroduction efforts, not because of an increase or expansion of new habitat. Prior to the reintroduction, the habitat existed and was available, but it was unoccupied.

The commenter suggests that fisher's range has expanded by 24 percent since a CDFW estimate in 2010. Based on the maps provided and the comment, we assume this refers to a 24 percent increase in the occupied range for NCSO. Judging expansions or contractions in fisher populations from ranges drawn by humans on a map can be problematic because the polygons created might not capture areas that have not been surveyed, they likely do not consider variable survey efforts (*i.e.,* opportunistic versus systematic camera surveys), or a line may closely or loosely follow a boundary (which can greatly skew comparisons). In this case, the CDFW polygon does not include the NSN subpopulation, nor does it include all the known fisher sightings in the area at the time, nor does it consider areas that may have been under-surveyed. Furthermore, since CDFW's 2010 estimate is from a California-specific analysis, it does not include areas in Oregon that are occupied by fisher.

In the most recent review of fisher, CDFW concludes that fishers currently occupy much of their historical range in northwestern California and may have expanded in the redwood region (CDFW 2015, p. 23); fisher detections have increased in northern coastal California since the 1990s, though it is not known as to whether this increase is due to a range expansion, recolonization, increased survey effort, or whether fishers remained undetected in earlier surveys (CDFW 2015, p. 50).

In our draft and final Species Report, we reviewed fisher data (1994–2013) for accuracy and minimized repetitive individual sightings. When we use the data from our species report and overlay it with (1) newer locations from the California Natural Diversity Database (reviewed for accuracy), (2) newer SPI locations, (3) newer locations from Collins Pine Company, (4) multiple newer efforts in southern Oregon (captured for NCSO in Current Condition, above), and (5) also consider historical locations before 1994, the majority of new locations are infill within the bounds of our 1994–2013 data (Service 2020, map). There are a few areas where we see new fisher sightings, particularly along the eastern edge of the species' range. In Oregon, we expect these new locations are largely a product of increased survey effort or research activity rather than an actual increase in the range, because there are numerous historical sightings in these areas. In California, some of this expansion is because of reintroduction efforts at NSN, but some may also be because of an increase in range, or increased survey efforts. We are also aware of a few areas where contractions have been reported in Southern Oregon near the Biscuit Fire and the SOC subpopulation. We conclude that there has been a recent range expansion because of the reintroduction effort in the NSN subpopulation. There have also been some small contractions. And, there have been some small expansions, but we are unclear if these are actual expansions or the result of increased survey effort.

Habitat Recruitment

(37) Comment: A couple of commenters stated that OGSI–80 is a poor surrogate for fisher habitat and demonstrably under-represents substantial areas of occupied fisher habitat in the NCSO and NSN areas and is not the best scientific information. There is little evidence that OGSI–80 represents or correlates with fisher habitat. It may be appropriate for predicting northern spotted owl habitat, but there is little evidence that predicted habitat for northern spotted owl is similar to fisher habitat (cites Zielinski et al. 2006). Trends in OGSI–80 should only be used to represent habitat in areas where that habitat type occurs and should not be relied upon to represent fisher habitat trends elsewhere.

Our Response: We have revised our vegetation management section to clarify our use of the OGSI–80 forest condition. We have explored several avenues to assess trends in fisher habitat in the absence of an available DPS-wide model that displays changes in fisher habitat over time. For our 2014 Proposed Rule, we used northern spotted owl habitat as a surrogate for fisher habitat because that allowed us to estimate losses through timber harvest. However, comments from peer reviewers and the public criticized our use of spotted owl habitat and that it may not properly represent fisher habitat. They also wanted us to consider ingrowth of fisher habitat and its role in replacing habitat lost to disturbances such as vegetation management and fire. Hence, we have used OGSI–80 because it is a forest stand condition that is mapped throughout most of the NCSO portion of the DPS. We do not consider it as a model for fisher habitat and realize that it may include areas that are not considered suitable for fishers, as well as not capturing all suitable fisher habitat. It does, however, allow us to assess regional-scale trends in the forests that contain the structural elements consistently used by fishers (large snags, down wood, and large live trees). Although several commenters believe this is not the best available data, they have provided no alternatives to assess trends in this structural condition (both loss and recruitment) at a regional scale across the DPS.

Regarding the comment that OGSI–80 should be used to represent habitat only in areas where the habitat type occurs, we do not consider OGSI–80 a habitat type. It represents a structural condition used by fishers. The OGSI–80 condition has the potential to be found anywhere the forest vegetation zones upon which it was built occur (Davis et al. 2015, pp. 9–10, Figure 4), which is all forested zones within the NWFP portion of the DPS. Hence, we are not applying it in areas outside of its intended use.

(38) Comment: Regarding our use of OGSI–80 to document trends in vegetation important to fishers, one commenter believed it is unlikely that 80-year-old conditions would represent fisher habitat unless those stands contained much older features. Another

commenter noted that in using OGSI to measure ingrowth of fisher habitat, the Service has no idea if the stands with ingrowth have structures needed by fisher. Hence, the Service should not assume that recently developed OGSI–80 stands are of a quality 80 years post-harvest to support fisher denning.

Our Response: See our responses above regarding our intent in our use of OGSI–80. OGSI–80 stands are meant to represent mature forest stands with old-forest remnants. The OGSI–80 threshold represents the general point in the forest succession time scale when forests in the NWFP area begin to develop stand structure associated with older forest (Davis et al. 2015, p. 18, Figure 2) and includes older forest stands on that succession time scale as well. For stands to meet the OGSI–80 threshold, they had to have greater than 10 percent canopy cover and meet minimum tree and log size criteria, depending on the vegetation zone (Service 2016, p. 102). For the Douglas-fir and white fir/grand fir forest vegetation zones, which comprise much of the NCSO, OGSI–80 stands had to have at least one large live tree greater than 75 cm (29.5 in) dbh or an average stand diameter greater 37.5 cm (14.25 in) dbh. In addition, stands had a minimum snag size of 50 cm (19.7 in) dbh and minimum log diameter of 25 cm (9.8 in) (Davis et al. 2015, pp. 17–18, Table 5). Although average size of trees and snags used by fishers are often substantially larger than the minimum tree and snag diameters used to define OGSI stands, structures of this size have been used by resting and denning fishers in study areas in the DPS (*e.g.,* Lofroth et al. 2011, pp. 38, 52, 57, 78). As we acknowledged in the vegetation management section, OGSI–80 does not represent all fisher habitat, and it may define areas that are not used by fishers, but it fairly represents trends through time of forest structures used by fishers.

(39) Comment: One commenter stated that the proposed rule seems to significantly overstate the threats to the NCSO population and the cited data seems contradictory. Specifically, the rule states that fire is removing 8 percent of habitat/decade, yet the OGSI–80 analysis shows only a 1 percent loss/decade, if that, because of ingrowth (which is ignored when describing removal by wildfire). The rule further states that ingrowth is expected to increase in the coming decade, which would seemingly more than compensate for any loss from any of the disturbances evaluated.

Our Response: We have revised our discussion of wildfire threats to clarify the distinction between the Davis et al. (2015, entire) analysis of loss of OGSI–80 forest to wildfire in the NWFP portion of the DPS (which covers the NCSO portion of the DPS) and the analysis done by the Service to more directly assess fisher habitat loss to wildfire. We assume that the commenter's statement that fire is removing 8 percent/decade of fisher habitat is referring to our projection that 4 to 8 percent of fisher habitat would be lost to wildfire over the next 40 years in the NCSO portion of the DPS, based on our analysis done in the draft species report (Service 2014, p. 64). That analysis was done by overlaying mapped fisher habitat (as determined through modeling) with severity data from fires that had occurred from 1984 to 2011. We updated that analysis to include more recent fires in the NCSO area (data from 2008 to 2018) and found that 7 percent of fisher habitat was lost to high-severity wildfires during that time period. Davis et al. (2015, pp. 30–31, Tables 6 and 7) looked at loss of OGSI–80 stands to wildfire from 1993 through 2012, and their results differ from ours likely for several reasons, with the primary one being that they looked at a different time period than we did and did not capture more recent fires. In addition, their analysis did not include portions of the NCSO DPS that are outside of the NWFP area.

While forest ingrowth is expected to increase in the coming decades, so is loss of habitat to wildfire. Hence, we cannot conclude whether or not ingrowth will fully compensate for projections of loss of fisher habitat. Upon reconsideration of the threats and the current condition of the NCSO DPS, we have determined that the NCSO DPS of fisher is not in danger of extinction throughout its range, nor likely to become so in the foreseeable future.

(40) Comment: One commenter stated that habitat trend analysis based on OGSI–80 is inadequate to fully describe fisher habitat ingrowth. Growth is occurring on all lands excluded from OGSI–80 definition, yet growth is recognized on Federal lands only for the OGSI–80 type. Growth on remaining occupied Federal lands and private lands is acknowledged, but its importance is not considered. The Service should consider the implications of estimated future habitat ingrowth and fisher population response (see Powell et al. 2019 final report, p. 25).

Our Response: We are not using OGSI–80 to quantify the amount of fisher habitat ingrowth. It is a means to assess the trends of those old-forest structural components used by fishers throughout the DPS (see our responses above). Our analysis accounted for ingrowth on non-Federal lands, in including the data from Davis et al. (2015, pp. 30–31), which addressed ingrowth from both Federal and non-Federal lands. Ingrowth was over three times greater on non-Federal lands than on Federal lands (13.5 percent on non-Federal lands and 4.2 percent on Federal lands, for a total ingrowth of 8 percent on the combined ownerships over the 20-year analysis period) within the combined provinces of the Oregon Klamath, California Klamath, California Coast Range, and California Cascades within the NWFP area of the DPS. Regarding the reference to Powell et al. (2019, p. 25), we have incorporated their assessment of the status of the NSN reintroduced population into our analysis.

(41) Comment: One commenter stated that habitat trends in the HCP/CCAA covered lands within the NCSO will be stable to increasing over the foreseeable future. Combined, these habitat trends do not support a habitat-related likelihood of endangered status in the foreseeable future.

Our Response: Upon further analysis and consideration of comments, we have determined that the NCSO DPS is not in danger of extinction in the foreseeable future.

Implementation of Specific Conservation and Recovery Actions

(42) Comment: One commenter requested implementation of specific conservation or recovery actions for fishers throughout the West Coast States, including research and management activities that would improve the overall landscape for fishers. The actions (*e.g.,* cessation of logging and trapping) were recommended to the Service because the commenter believed they would ensure the long-term conservation of the fisher.

Our Response: We appreciate the recommendations provided to conserve fishers and their habitat. Although no comprehensive strategy for fishers in the West Coast States exists, we acknowledge conservation measures, strategies, and actions that may benefit fisher conservation in this rule. We also recognize that specific management activities can increase forest resiliency, and although there may be short-term negative effects to fishers, certain actions are likely to have an overarching, net beneficial impact for the conservation of fishers in this DPS.

Other Stressors

(43) Comment: One commenter took issue with the following statement from the 2019 Revised Proposed Rule: ''Now,

these small populations of Pacific Fisher are threatened by the use of toxic rodenticides by marijuana growers, and increasing fire severity exacerbated by climate change, along with loss of habitat due to logging.'' The commenter states that increasing fire severity exacerbated by climate change and loss of habitat due to logging are theory only, and that only rodenticide is the real threat. The commenter asserts that no significant climate change has taken place in the western Cascades since 1650 and that there has been little to no logging taking place that affects the habitat in question. Protection of fisher from the threat of poisoning due to toxic rodenticides can, and should be, done by local ordinance, not by putting our lands at risk from further mismanagement by restricting activity and efforts to reduce current catastrophic fuel loads. The commenter then went on to state that the true danger to fisher is, and will continue to be, catastrophic wildfire, and management efforts for that purpose must continue unimpeded.

Our Response: Our threats analysis considered the best available science and considered them holistically when making our final decision (see Threats sections, above, for specific information about each threat). In addition, we recognize the importance of fuels reduction treatments that promote forest heterogeneity while retaining structural elements important to fishers (for example, see Voluntary Conservation Measures section, above).

Policy

(44) Comment: One commenter asserted that we should more closely evaluate the five listing factors to ensure that we are acting on the basis of the best scientific and commercial data available, rather than speculation or supposition.

Our Response: Our Policy on Information Standards under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines (*www.fws.gov/informationquality/*), provide criteria and guidance, and establish procedures to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to list a species (or DPS) as an endangered or threatened species. We use information from many different sources, including articles in peer-reviewed journals, scientific status surveys and studies completed by qualified individuals, Master's thesis research that has been reviewed but not published in a journal, other unpublished governmental and nongovernmental reports, reports prepared by industry, personal communication about management or other relevant topics, conservation plans developed by States and counties, biological assessments, other unpublished materials, experts' opinions or personal knowledge, and other sources. We have relied on published articles, unpublished research, habitat modeling reports, digital data publicly available on the internet, and the expert opinion of subject biologists to aid in the determination that the SSN DPS of fisher meets the definition of an endangered species.

Also, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited peer review of the 2014 Species Report (Service 2014, entire) from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles; their feedback was incorporated into the 2016 final Species Report (Service 2016, entire), which remains the foundation of our research along with our additional analysis presented in the 2019 Revised Proposed Rule and this final rule. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties over multiple comment periods for both the 2014 Proposed Rule and the 2019 Revised Proposed Rule (see Previous Federal Actions, above). Comments and information we received helped inform this final rule. Also, we revisited our threats analysis and determined that the NCSO DPS is not warranted for listing.

(45) Comment: Three commenters stated that our discussion of the PECE Policy in the proposed rule was insufficient, and asserted that we should conduct a PECE analysis. Two of these commenters stated that conducting this analysis would result in a decision that the species is not warranted for listing. The third commenter also claimed that we failed to consider numerous existing conservation efforts (*e.g.,* MOUs or HCPs that address wildfire risk and enforcement programs) that were developed to benefit fishers and other species that inhabit forested lands. The third commenter also claimed that the 2019 Revised Proposed Rule did not explain why the variety of existing regulatory mechanisms and voluntary conservation measures are not at a scale or magnitude sufficient to ameliorate the primary significant threats. Generally, these commenters stated or implied that we could not reach a conclusion to list the species as endangered or threatened when no analysis under the PECE Policy or a cumulative effects analysis is conducted.

Our Response: Upon determining that our status assessments would be conducted individually on the NCSO DPS and SSN DPS, we then evaluated threats and any potentially ameliorating measures specific to each. For the NCSO DPS, as discussed above in its specific Determination section, our analysis found that the cumulative effect of threats acting on the DPS at their current scale and magnitude did not cause the DPS to be in danger of extinction throughout all or a significant portion of its range, now or in the foreseeable future, especially given the DPS's overall resiliency, redundancy, and representation. While we acknowledged and evaluated various regulatory mechanisms and conservation efforts, and the potential benefits they may provide to the DPS, we did not rely on them for our conclusion that the NCSO DPS did not meet the definition of either an endangered or threatened species. As such, no PECE analysis was necessary.

For the SSN DPS, our analysis found that the cumulative effect of threats acting on the DPS at their current scale and magnitude do cause the DPS to be in danger of extinction throughout all of its range, in light of the anticipated effect of the identified threats on the DPS's overall resiliency, redundancy, and representation. Our analysis included consideration of any potential benefits provided to the SSN DPS by existing regulatory mechanisms, as well as potential benefits that may result collaterally from existing voluntary conservation efforts that were not developed for fisher conservation. In addition, we considered the benefits resulting from an existing voluntary conservation strategy, while noting that changed circumstances arising from tree mortality events in the range of the SSN DPS will require revisions to some of the strategy's conservation measures. While all of the conservation efforts identified are being implemented and are effective in some measure, and therefore do not require a PECE analysis, we found that they are not

ameliorating the threats such that the SSN DPS did not meet the definition of an endangered species.

(46) Comment: One commenter claimed that we did not explain what new scientific and commercial information was developed between the 2016 withdrawal (81 FR 22710, April 18, 2016) and the 2019 Revised Proposed Rule. The commenter stated that we changed our position regarding the efficacy and desirability of establishing conservation agreements even though developing and adopting these types of agreements has expanded over time.

Our Response: The *Summary of Changes* section of the 2019 Revised Proposed Rule noted new information since completion of the 2016 final Species Report (Service 2016, entire) that we evaluated in that proposal. Our analysis of all new information since the 2016 final Species Report was summarized and cited where applicable in the 2019 Revised Proposed Rule and this final rule, including new information received during the public comment periods on the 2019 Revised Proposed Rule.

With regard to conservation agreements, we heavily rely on voluntary conservation efforts to provide for the conservation and aid in recovery of listed species. As stated above, we have previously and continue to believe that our relationship with private, State, tribal, and Federal landowners is imperative for the conservation of fishers. We intend to continue to work cooperatively with partners and assist where possible.

(47) Comment: One commenter claimed that the Revised Proposed Rule failed to provide a rational explanation for changing a conclusion (in the 2016 withdrawal) that none of the threats were resulting in species-level impacts. Additionally, the commenter asserted that we eliminated discussion of species-wide threats and instead argued that individual-level threats cumulatively rise to the level that listing is required without showing how each of the potential threats actually affects the species.

Our Response: In this final rule, the Service has examined again the threats and impacts to the fisher populations, and that analysis has led to the conclusions and rationale supporting this final determination. Addressing the commenter's concern, our rationale in the Threats sections in this final rule explains how the various threats impact the species.

(48) Comment: One commenter argued that we should have analyzed whether the West Coast DPS of fisher is endangered in a significant portion of its range.

Our Response: Please see our response to *Comment 14* regarding the DPSs analyzed for this effort. As presented herein, our analysis of the NCSO DPS indicated that it was not in danger of extinction throughout all of its range, nor likely to become so in the foreseeable future. Upon reaching that conclusion, we conducted an analysis to see if there were any portions of the NCSO DPS that warranted further consideration as being in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. We did not find any such portion, and concluded that the NCSO DPS is not in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. Regarding the SSN DPS, our analysis indicated it was in danger of extinction throughout all of its range, and therefore did not conduct an SPR analysis.

Population Estimates

(49) Comment: The proposed rule incorrectly states that the Hoopa population was declining during 2005–2012 (84 FR, at 60285, column 2, November 7, 2019). This conclusion is not valid because reported lambda confidence intervals overlapped 1.0. The relevance of these data 7 years later is not evaluated. Also, as noted in comments on the 2014 listing proposal, this decline only brought the Hoopa population from an atypical high density to a density similar to other populations in the surrounding region, a fact not noted in the rule.

Our Response: While there is uncertainty in concluding whether the population is increasing or decreasing given that the lambda confidence intervals overlap 1, the lambda value of 0.992 for the Hoopa study is a statistic that indicates a declining population during the time period measured. We do not have additional population data from that study area to indicate the population trend since 2012. Regarding the decline from an ''atypical high density'' to a level similar to other fisher populations in the area, the commenter is referring to Matthews et al. (2011, p. 72) where fishers declined from a density estimate of 52 (per 100 km^2 (38.6^2)) to 14 between 1998 and 2005. This decline preceded the 2005 to 2012 analysis. We do not know whether the slight population decline observed between 2005 and 2012 is a continuation of the overall decline from 1993, a reflection of a population that is currently fluctuating around carrying capacity, or some other phenomenon.

(50) Comment: One commenter stated that Green et al. (2019b) (as yet unpublished) acknowledged that their results only describe a short-term situation and confined speculation about implications to their discussion section. The 2019 Revised Proposed Rule did not acknowledge that some of the fishers displaced by fire may have survived to emigrate and may not have been lost to the larger regional population. The commenter also stated that the proposed rule did not acknowledge or evaluate the overlap in credible interval values from the post-fire and pre-fire population estimates, nor that the upper credible value post-fire estimates approached the mean pre-fire estimates (see Green et al. 2019b, Table 2 and Figure 2). The commenter asserted that the proposed rule uncritically applies this estimate of post-fire loss to the analysis that concluded there has been a 7 percent loss in habitat since 2008. The commenter claimed that these oversights create unacknowledged uncertainty as to the validity and application of this estimate, compounded by issues with the 2014 modeling that was addressed in comments at that time, but not acknowledged in the 2019 Revised Proposed Rule.

Our Response: We elaborate more on Green et al. (2019b, entire) in this rule, noting the observation that the post-fire population estimates have confidence intervals that overlap with pre-fire estimates, as well as the uncertainties in the ultimate fate of fishers in response to wildfire.

Regarding our evaluation of fisher habitat loss to wildfires and the commenter's assertion that we ''uncritically'' applied the estimate of post-fire habitat loss in Green et al. (2019b, p. 6) to that analysis, we are referring to the authors' definition of high-severity fire, which is a basal area mortality of greater than or equal to 50 percent. We acknowledge that fishers may begin moving about these stands within a decade or two after fires once stand growth is initiated. However, our use of the Green et al. (2019b, p. 6) definition of high-severity fire for the purposes of quantifying the acres of fisher habitat that may be unavailable to fishers in the short term is a reasonable approach and is not inconsistent with observations of fisher avoidance of areas with less than or equal to 30 percent canopy cover (Spencer et al. 2016, p. 10, footnote 7).

The use of the fisher habitat model continues to remain the best available science regarding a large-scale map of fisher habitat across the fisher range.

The comments and responses regarding the fisher habitat model in the 2016 Withdrawal do not lead us to conclude that our assessment of habitat loss was flawed, particularly because it was done at the DPS-wide scale. We cannot know whether the estimate of 7 percent of fisher habitat lost based on modeling is precise, but it is a reasonable estimate given the landscape-scale application of the fisher habitat model.

(51) Comment: One commenter pointed out that the 2019 Revised Proposed Rule concedes that it is unknown whether fisher populations are stable or declining. The commenter asserted that the proposed rule should evaluate the implications of the lack of conclusive information that fishers in the DPS are declining. Additionally, they stated that the lack of conclusive evidence of decline should increase the burden of proof that the other threats are indeed demonstrable, conclusive, and serious. According to the commenter, given the substantial expansion of the range, the Service must also consider whether the population size within the NCSO and SSN subpopulations is likely to be expanding, and if there is no evidence of population decline, evidence of effects of threats must be conclusive.

Our Response: To clarify the statement relied upon by the commenter, we stated in our 2019 Revised Proposed Rule that, based on the information available regarding population growth data, we could not conclude that populations were stable, increasing, or declining. All three scenarios are plausible, given the available data. However, we also note that the lack of conclusive evidence of a decline is also not conclusive evidence that there is no decline. The commenter further suggests that, in the face of inconclusive evidence for a population decline, we must then provide conclusive evidence that threats acting on a species must be demonstrable and serious. In response, we reiterate that we did not conduct our analyses using an assumption that populations are declining. We merely presented the available information regarding population growth, while at the same time presenting our analyses of how both threats and conservation measures are likely to affect the viability of each DPS.

(52) Comment: One commenter noted that the proposed rule considers Higley et al. (2014) and Green et al. (2019b), but does not evaluate other material in our possession, specifically Powell et al. 2019, which stated, ''Our best estimates of survival and reproduction are consistent with a stable or growing population on Stirling.'' Although this study differs from the Higley and Green studies in that it was initiated in an area newly occupied by fishers, it was of similar duration to both of them and the population size was similar to Higley et al. (2019) and larger than that of Green et al. (2019b). The conclusions from Powell et al. (2019) are worthy of qualified evaluation in an objective assessment of fisher population trend in NCSO.

Our Response: We incorporated information from Powell et al. (2019, entire) regarding the growth trend of the Stirling (NSN) reintroduced population into our analysis for this rule.

(53) Comment: One commenter stated that available scientific information indicates that fisher population trends are not declining and, in Northern California, they likely are stable or increasing. The commenter asserted that these trends have probably contributed to the substantial expansion of the species' range within the last 9 years. The commenter concluded that there is no evidence of declines at the population scale.

Our Response: In the Current Condition section for the NCSO DPS in this final rule, we elaborate on population variability in general and how that may affect any interpretation of the available data on NCSO populations. We are not aware of any substantial expansion beyond the NSN translocation and the subsequent growth of that subpopulation.

(54) Comment: One commenter stated that the 2019 Revised Proposed Rule describes significant uncertainty regarding fisher population status and trend using prior data, despite the availability of scientific studies that were developed with robust sample design and effort. This commenter cited multiple references for inclusion such as Furnas et al. 2017 and Powell et al. 2019.

Our Response: We incorporated the population estimate of Furnas et al. (2017, p. 12) and the conclusions regarding the NSN subpopulation into our analysis of the NCSO DPS (see the Current Condition section of the NCSO DPS analysis). We incorporated a discussion of the fluctuating nature of populations over time and acknowledge the fisher's ability to sustain populations within the DPS in the presence of ongoing stressors.

(55) Comment: One commenter claimed that the Service changed its interpretation of confidence intervals with no rationale for the change. They request that the Service explain how to interpret a confidence interval so the public and reviewing courts will understand the technical basis for the Service's conclusions.

Our Response: For population monitoring studies, we have moved away from discussing confidence intervals around lambda, preferring instead in this final determination to discuss the fluctuations in lambda we see and how they likely represent normal fluctuations of a population at or near carrying capacity (see NCSO Current Condition, above).

(56) Comment: One commenter noted that even though one catastrophic wildfire damaged habitat for several individual fishers, it would be improper for the Service to use one event as justification for listing a species. Instead, the Service should be reviewing the entire administrative record, and affording one event the weight it deserves in terms of predicting overall population trends for the species.

Our Response: We have based our determinations for the NCSO DPS and the SSN DPS on the best scientific and commercial data available. We evaluated threats to the species and assessed the cumulative effect of the threats under section 4(a)(1) of the Act. For the NCSO DPS, we determined that, in part, because of the population's widespread distribution combined with resiliency and redundancy, it did not warrant listing. For the SSN DPS, we concluded that, in part, the small population size, combined with substantial habitat loss as a result of recent tree mortality among other factors, warranted listing as endangered. In conclusion, we have based our decisions on a multitude of factors, not on a single event.

Rodenticides

(57) Comment: Several commenters asserted that rodenticides (anticoagulants or neurotoxicants) are a significant threat to the DPS, and that we underestimated the risks to the species in the 2019 Revised Proposed Rule. Some of these commenters provided information on this threat, such as illegal grow site activity in Oregon. Another commenter expressed concerns related to staffing constraints on Federal lands that have delayed and likely will continue to delay cleanup activities. Another commenter was concerned that emotional reaction stimulated by the proposed rule's description of the potential effects of anticoagulant rodenticides and the potential extent of this threat may influence the perception of the actual magnitude of the effect to fishers. Additionally, the commenter claimed that the Service did not address an important gap in present knowledge

about anticoagulant rodenticides within the species' range, *i.e.,* the degree to which exposure influences mortality of fishers within the DPS, which the commenter asserts should have substantial bearing on any conclusion about the magnitude of this threat.

Our Response: Toxicants, especially rodenticides, are a threat to fisher in both the NCSO and the SSN DPSs. And, we agree that finding and cleaning up after illegal grow sites is problematic from an ecological, funding, and staffing perspective. We also agree that the description of toxicant poisoning elicits an emotional response. At this time, our evaluation of the best available scientific and commercial information regarding toxicants and their effects on fishers leads us to conclude that individual fishers within both DPSs have died from toxicant exposure, fishers suffer a variety of sublethal effects from exposure to rodenticides, and the potential for illegal grow sites within fisher habitat is high. But it is difficult for us to accurately estimate the effects these rodenticides are having to fisher as a whole because we do not understand what proportion of the population is being negatively affected (*i.e.,* mortality or sublethal effects).

For the NCSO DPS, in spite of the ongoing impacts from toxicants, the NCSO population seems to be withstanding this threat. For example, the NSN subpopulation has grown to the point where the population is self-sustaining, despite the fact that rodenticide exposure rates are similar to other areas in California (Gabriel et al. 2015, entire; Powell et al. 2019, p. 16). And, fisher at EKSA in the Klamath Mountains in California near the Oregon border do not show a long-term decline (Powell et al. 2014, p. 18), despite the fact that illegal grow sites are in the area. For the SSN DPS, because this DPS is much smaller, the lethal and sublethal effects of toxicants to individuals have the potential to have population-level effects and reduce the resiliency of the DPS as a whole.

(58) Comment: Two commenters stated that rodenticides are subject to increased regulation in Oregon and California; although a timeframe for this comment was not included, we assume the commenters were referring to the time since recreational marijuana use became legalized in Oregon (2015) and California (2016). Further, one commenter argued that legalized and increased regulation will reduce trespass and improve environmental cleanup and restoration of public lands damaged by illegal marijuana cultivation (although no data was provided by the commenter).

Our Response: As discussed in the general Exposure to Toxicants section above, the data are mixed with respect to how legalization is affecting illegal grow sites on public lands. For example, some information shows that illegal grow sites on National Forests have decreased in States where marijuana was legalized (Klassen and Anthony 2019, p. 39; Prestemon et al. 2019, p. 1). On the other hand, many law enforcement officials have found no indication that illegal grow sites have decreased with cannabis legalization, and it may in fact be increasing, in part due to legalization providing an effective means to launder illegal marijuana (Hughes 2017, entire; Bureau of Cannabis Control California 2018, pp. 28, 30; Sabet 2018, pp. 94–95; Fuller 2019, no page number; Klassen and Anthony 2019, p. 45). Illegal grow sites appear to be dropping in number but are getting larger (impacting more fisher home ranges) (Gabriel 2018, pers. comm.). And, law enforcement actions have caused illegal grow sites to disperse further which makes them more difficult to locate (Gabriel 2018, pers. comm.). At this time, it is difficult to reach conclusions about trends in the abundance and frequency of illegal grow sites this soon after legalization.

(59) Comment: One commenter claimed that it is valid to extrapolate known levels of anticoagulant exposure to areas where little exposure research has occurred (*e.g.,* Stanislaus National Forest), given the high rate of fisher's exposure in the Southern Sierras. The commenter also claimed that the risk to small population(s) from rodenticides undercuts any chance of population recovery.

Our Response: Illegal grow sites are distributed as discrete patches throughout much of the NCSO and SSN DPSs. In the absence of data, it is reasonable to assume the opportunity for fisher to be exposed to toxicants is similar across much of the NCSO and SSN DPSs (except at higher elevations where the growing season is shorter and it is harder to grow marijuana). We also agree for the SSN DPS, because this DPS is much smaller, the lethal and sublethal effects of toxicants to individuals have the potential to have population-level effects and reduce the resiliency of the DPS as a whole. As to the comment stating the risk to small population(s) from rodenticides undercuts any chance of population recovery, no further evidence was provided to support this claim. It is the intent of the ESA that species will eventually be recovered.

(60) Comment: One commenter asserted that voluntary conservation efforts on non-Federal lands (CCAAs and HCPs) mitigate and decrease the threats to fishers from toxicants, further articulating that these conservation measures aggressively prevent illegal drug growing that use anticoagulant rodenticides.

Our Response: We do not have information that allows us to compare and assess the distribution of illegal grow sites on private versus public lands. Nor do we have information on how many acres may benefit from limiting access to private lands or information on how many patrols are being added across what area and at what frequency. Similarly, we do not have information that allows us to address how the voluntary conservation measures may or may not be affecting illegal grow sites. Further, not all voluntary conservation efforts include measures that address illegal grow sites (*e.g.,* the Oregon CCAAs). The job of preventing illegal grow sites across large areas is extremely difficult and comes with large staffing and resource needs. Although we cannot quantify the effectiveness of these voluntary conservation measures at lessening the threat from toxicant exposure at illegal grow sites, we do expect limiting access will make it more difficult to establish illegal grow sites. And increased patrols (depending on the number of patrols and the scale of the landscape they are visiting) will act as a deterrent. We support voluntary conservation efforts to limit the impact of toxicant exposure from illegal grow sites to fisher.

Range Expansion

(61) Comment: Several commenters claimed that the range of the fisher in the NCSO subpopulation expanded. Some of these commenters provided maps delineating occupied fisher range (as determined by CDFW in 2010 and 2015), fisher location data from 1980 to 2019, and the Service's West Coast Fisher DPS boundary in support of their conclusion. Further, they questioned the magnitude of impact of purported threats in light of this expansion.

Our Response: The maps provided by the commenters were developed using data sets from different time periods and are not directly comparable. Further, we did not receive data during the 2019 Revised Proposed Rule comment periods to suggest that the range of the fisher had expanded. The data we did receive confirmed what we understood about the distribution of fisher and presented in our 2019 Revised Proposed Rule. We find that the fisher NCSO DPS is widespread and common to the point where listing is not warranted at this time.

Cumulative Effects

(62) Comment: One commenter asserted that the Service's analysis of cumulative effects was missing from the proposed rule. Further, the commenter claimed that the threats analysis did not support the Service's determination that the existing regulatory mechanisms are not sufficient to address the cumulative impacts of the primary threats, specifically referring to exposure to toxicants and habitat loss and fragmentation due to wildfire and vegetation management. Additionally, and in contrast, we note our receipt of a peer review comment on the 2014 Proposed Rule indicating that synergistic (cumulative) effects, primarily climate change and its secondary effects from wildfire, pose the most serious long-term threat to fisher populations, especially in California.

Our Response: In evaluating the status of a species or DPS, we identify both the threats acting upon it and any conservation efforts or mechanisms that may ameliorate those threats. In identifying threats, we describe them in the context of the five listing factors, and evaluate the scale and magnitude of their effect on the species in light of their impacts on the resilience, redundancy, and representation of the species. A species' overall status with regard to whether it warrants listing is based on our assessment of the cumulative effect of all threats and ameliorating measures combined. This cumulative analysis is found in the *Determination* section of both our 2019 Revised Proposed Rule and this current document.

(63) Comment: One commenter claimed that little, if any, actionable measures exist that could address the individual-level threats identified by the Service in order to recover the species. The commenter asserted that those who wish to help the species recover have no clear direction forward, because the threats described in the 2019 Revised Proposed Rule are not assigned any values and often are inconsistent with one another. The commenter claimed that many of these identified threats are competing in nature. For example, the commenter stated that severe wildfire can often be prevented by proper vegetation management. Similarly, the commenter stated that vegetation management can help prevent losses due to forest insects and tree diseases by preventing widespread loss of forest vegetation.

Our Response: Threats acting on the fisher are complex and interact with each other such that some threats can influence how other threats act on the fisher. These influences can be either positive (*e.g.,* appropriate vegetation management that may reduce forest vulnerability to large-scale tree diseases or insect outbreaks) or negative (*e.g.,* climate change influencing the potential for high-severity wildfires). In this context of competing threat influences, the commenter further suggests the need to provide a direction forward for those attempting to recover listed species, as threats are not assigned any ''values.'' While we do not assign values to threats when conducting a status assessment for a species, we identify those threats that may have the most significant impacts to the species' viability. However, we also note that efforts to recover a species, once determined it warrants listing, are subsequently developed in light of all the identified threats, where they occur within the species' range, and how they interact with each other and the species and its environment. Recovery actions may therefore be location- or habitat-specific, and address the competing nature noted by the commenter.

Threatened v. Endangered

(64) Comment: Several commenters urged the Service to list the proposed West Coast DPS of fisher as either endangered or threatened, or urged listing without specifying which status is most appropriate. In contrast, several other commenters urged the Service not to list the taxon. Some comments urging the Service not to list the DPS are either focused on not listing specifically in the State of Oregon or not listing the NCSO subpopulation. All of these comments with varied opinions are similar in content and rationales to those received on the 2014 Proposed Rule.

Our Response: Sections 3(6) and 3(20) of the Act, respectively, define an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Our task in evaluating a species for a potential listing under the Act is to determine whether that species meets the definition of either a threatened species or an endangered species, based solely on the best scientific and commercial data available. For this reason, comments merely expressing support for or opposition to a proposed listing, without supporting scientific rationale or data, do not meet the standard of information required by section 4(b)(1)(A) of the Act. There is significant information available on fishers and their habitat in the West Coast States; we note there could always be more data for most analyses to help lessen uncertainties.

The determination for the NCSO DPS is that listing is not warranted. Regarding the SSN DPS, at this time the best available scientific and commercial information suggests that the cumulative impact of the stressors adversely affecting the SSN DPS of fisher is such that listing the SSN DPS of fisher as an endangered species is appropriate. Of greatest concern at this time are stressors related to illegal rodenticide use, increasing high-severity wildfires, and prolonged droughts that exacerbate the effects from wildfire, forest insects, and tree disease. For all of these reasons and as detailed in the *Determination* section of this document, we conclude that the SSN DPS of fisher meets the definition of an endangered species under the Act.

(65) Comment: Two commenters urged the Service to list the NCSO subpopulation as a threatened species and SSN subpopulation as an endangered species, the latter because they believe protections for this small, isolated subpopulation are insufficient to prevent its extinction and threats are more immediate (*e.g.,* high-severity wildfires and drought within its narrow range have increased in recent years).

Our Response: Please see our response to *Comment 14* and *Comment 64,* and the analysis for each DPS contained in this document.

(66) Comment: One commenter stated that the Rogue-River and Siskiyou area, where the Ashland fisher population resides, is recognized as a rich environment of floristic biodiversity. The commenter stated that habitat characteristics deemed important for fishers are equally critical for smaller mammals and birds that rely on similar, if not exact, habitat requirements, and that species of special concern that also cohabit this region, such as the northern spotted owl, the Humboldt marten, and the northern flying squirrel, would certainly benefit from the overarching protection of fisher resources that this listing could provide. Further, the commenter claimed that protection of habitat characteristics for both predator and prey species would retain an ecological balance important to the functionality of forest health and successional stages (*e.g.,* insect population control and seed dispersal roles by mammalian and avian species).

Our Response: We cannot base our listing decision on the benefits of habitat protection to other plants and animals. Section 4(a)(1) of the Act directs us to ''determine whether any species is an endangered species or a

threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.'' We recognize the ecological value of the Rogue River and Siskiyou area, as well as its contribution to fishers and other plants and animals. However, this information did not contribute to our overall determinations on the status of the fisher.

Tree Mortality

(67) Comment: One commenter expressed concern that canopy cover loss from tree mortality will increase fragmentation and reduce female fisher gene flow. The commenter claimed that tree mortality is resulting in extensive management along road corridors, which may further impede connectivity.

Our Response: We discussed the best available science regarding tree mortality in both the NCSO DPS and SSN DPS of this final rule.

Vegetation Management

(68) Comment: One commenter stated that the Revised Proposed Rule fails to justify wildfire suppression and vegetation management activities as threats. The commenter asserted that the Service should evaluate the benefits associated with these activities, including the decreased risk of severe wildfire when vegetation is managed appropriately.

Our Response: Fishers use managed landscapes, particularly when key elements such as den and rest trees are retained and when forest heterogeneity is promoted (see Vegetation Management). There can be benefits associated with vegetation management including decreased risk of wildfire; however, there are potential trade-offs to these activities (*e.g.,* loss of fisher habitat to reduce wildfire risk in fisher habitat), which should be weighed carefully when implementing such actions.

(69) Comment: One commenter claimed that wildfire mitigation activities, which can include vegetation management, can be effective in long-term preservation of fisher habitat. Meanwhile, the commenter pointed out that other Federal agencies, such as the Forest Service, have recognized that active forest management is necessary to address threats from widespread tree mortality. Overall, the commenter asserted that the Service failed to acknowledge the beneficial effects on fisher habitat associated with forest and fuels management.

Our Response: We acknowledge the benefit of carefully applied fuels reduction strategies in reducing wildfire risk while also retaining fisher habitat structural elements in the final Species Report (Service 2016, pp. 60, 68–69). We further acknowledge in this rule conservation measures designed to reduce fire risk while also retaining fisher habitat structural elements.

(70) Comment: One commenter stated that the Service provides no analysis or supporting citations for its conclusory statements that removal of ''snags and other large habitat structures'' for safety reasons is a threat to the DPS.

Our Response: For clarification purposes, we use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species, including alteration of habitat or required resources. Because the fisher uses snags and large trees for resting and denning, their removal would have a negative effect on the species and is, by this definition, a threat. However, the mere identification of a threat does not necessarily mean that the species meets the statutory definition of an endangered or threatened species. For both DPSs, we weighed the cumulative effects of the threats, along with existing conservation measures, to make our determination.

(71) Comment: One commenter stated that over the last 5 years, a variety of logging projects within the fisher's range have degraded habitat. The commenter claimed that if current trajectories continue, we can expect to see more habitat loss through logging.

Our Response: We recognize that timber harvest is and will continue to be an ongoing activity within the fisher DPSs. However, it affects a small portion of conditions used by fishers (as represented by the OGSI–80 condition in the NCSO DPS). For the NCSO DPS, we concluded that timber harvest (vegetation management), combined with other analyzed threats and the existing population condition, are not acting on the DPS to the degree that it meets the definition of endangered or threatened under the Act. Conversely, for the SSN DPS we concluded that timber harvest (vegetation management), combined with other analyzed threats and the existing population condition, are such that the DPS meets the definition of endangered under the Act.

(72) Comment: One commenter observed that the proposed rule discusses the effects of fire on fisher habitat and the extended time to recover habitat features. The commenter stated that timber harvest on Federal lands under existing management plans allows the removal of live and dead woody features that are important components of denning habitat. Furthermore, the commenter asserted that timber harvest does not provide the same ecological effects of fire, also noting that timber harvest, as currently practiced by the Forest Service and BLM, can remove and downgrade fisher habitat.

Our Response: In this rule and in the final Species Report (Service 2016, pp. 60–77, 98–111), we acknowledge the wide variety of effects on fisher habitat as a result of wildfire and vegetation management, as well as the different ecological effects of fire vs. vegetation management. We also recognize that timber harvest on Federal lands has removed, and will continue to remove, fisher habitat and have factored that information into our decision, concluding that such harvest results in removal of a small portion of fisher habitat.

(73) Comment: One commenter stated that the Service is inconsistent with our handling of vegetation management as a tool to reduce the risk of large-scale, high-severity wildfire. The commenter noted that we conclude it is a threat to fisher in the proposed rule, yet in the recent finding for the California spotted owl, the Service concluded that vegetation management was necessary to reduce the overall potential for wildfires to be detrimental to California spotted owl habitat and ultimately concluded that the owl did not warrant listing.

Our Response: The Service relied on conservation efforts to reduce large-scale high-severity fires within the range of California spotted owl that included specific measures to identify the greatest risks to the owl's known occupied activity centers and prioritize fuels reduction work that helps to protect the greatest number of activity centers on Federal and private lands, while not reducing the quality of the highest quality owl habitat in treated areas. While these California spotted owl conservation measures benefit fisher, they do not explicitly describe how implementation will benefit fisher. Since the 2019 Revised Proposed Rule, we received new MOUs designed to reduce high-severity wildfire that include specific conservation measures to protect fisher habitat within the NCSO DPS. We have incorporated this new information into our analysis.

(74) Comment: One commenter stated that the Service acknowledges in the 2019 Revised Proposed Rule that it has

no basis to conclude that fuels reduction, restoration thinning, or indeed any other management activity is a threat to the DPS; there is no information on how different vegetation management activities affect fisher subpopulations and their persistence within the DPS's range. The commenter also claimed that the Service proceeds to conclude that some forms of vegetative management, without specifying which kinds, ''may threaten fisher.'' The commenter asserted that, based on this ''slim reed,'' the Service then identified vegetative management as a threat to the species, specifically including fuels reduction and restoration thinning.

Our Response: As noted in our analyses, a wide range of activities fall under the broad term, ''vegetation management.'' Thus, fisher response to vegetation management activities can vary, depending on the type of activity and its duration and magnitude (Service 2016, p. 110; see Vegetation Management section). Our analysis of the effects of vegetation management (changes in OGSI–80 stands or in GNN analyses; actual loss of fisher habitat within the SSN) is somewhat driven by the features measured in the data sets we used. That is, in the case of OGSI–80 stands, activities that reduce canopy cover to below 10 percent or remove large structural elements would be recorded as a reduction in that stand condition. Such activities may include clearcuts and some fuels reduction activities, but likely not thinning activities. Hence, our analysis focuses on those vegetation management activities that likely have the greatest effect on fishers in terms of removing canopy cover or structural elements. These types of vegetation management activities seem to have the greatest effect on fishers, although the portion of the DPS affected by vegetation management is small.

Wildfire

(75) Comment: One commenter stated that the duration of impact from high-severity wildfire is not adequately addressed. In particular, the commenter claimed that the Service assumes that habitat lost to high-severity wildfire is permanent, and therefore does not consider effects into the foreseeable future. The commenter specifically stated that we failed to consider fisher re-occupancy of the 1992 Fountain Fire, which was salvage-logged with little retention of structures used by fisher.

Our Response: The Wildfire and Wildfire Suppression section of this rule and the 2016 final Species Report (Service 2016, pp. 62–66, 77) include discussions of short- and long-term effects of wildfire on fisher habitat. Further, the 2016 final Species Report includes a discussion of fisher re-occupancy of the 1992 Fountain Fire area (Service 2016, p. 66). Neither the 2019 Revised Proposed Rule, this final rule, nor the 2016 final Species Report assumes that habitat loss as a result of high-severity fire is permanent. The 2019 Revised Proposed Rule and this final rule also consider vegetation ingrowth (see Vegetation Management, above) and its ability to represent trends in forest structural conditions used by fishers. Therefore, we have already determined that habitat affected by fire is not permanent and that fishers may re-occupy burned areas in the foreseeable future.

(76) Comment: One commenter stated that the 2019 Revised Proposed Rule does not make a conclusive statement regarding the degree to which wildfire threatens fisher. The commenter cites Powell et al. (2019, pp. 23–27) and examples of fisher reoccupying burned areas (*e.g.,* Fountain Fire) as a reason to reconsider the threat of extinction from wildfire within the foreseeable future. Specific to Powell et al. (2019), the commenter claimed that extinction risk for fisher did not exceed 0.25 unless more than 40 percent of the simulated area burned, with a decrease in risk when SPI management was included. Thus, the commenter asserted there is a low risk of extinction when modeled at a high rate of short-term, high-intensity habitat loss. Lacking any analysis, the commenter believed the conclusion should be that the reported rate of loss of habitat (7 percent over 10 years; citing 84 FR 60278, p. 60288, November 7, 2019) is not likely to lead to endangered status in the foreseeable future.

Our Response: Contrary to the comment, the 2019 Revised Proposed Rule and this final rule include statements regarding the degree of impacts of wildfire on fisher, at the species level and for both subpopulations (see Wildfire and Wildfire Suppression). As we explain, the impacts are highly variable and depend on forest type, landscape location, size, and intensity of the wildfire. The conclusions reached by the commenter regarding data in Powell et al. (2019, pp. 23–27) appear to be extrapolations of data presented in figure 16 (Powell et al. 2019, p. 26). We acknowledge the point the commenter brings forward, but also note the model used by Powell et al. 2019 and the data used to determine the loss of habitat at 7 percent per year are different. As we describe in Wildfire and Wildfire Suppression above, our analysis addressed potential habitat loss from wildfires. The analysis completed by Powell et al. 2019 (entire) more generally addresses area burned rather than the potential fisher habitat loss within that area. Therefore, these two methods are not directly comparable.

(77) Comment: Multiple commenters indicated that we did not analyze the impact of fuel breaks and fuel reduction projects occurring under MOUs for the northern spotted owl and the California spotted owl across Federal, State, and private ownerships.

Our Response: The final rule includes an updated discussion of the MOUs (see Existing Regulatory Mechanisms and Voluntary Conservation Measures) suggested by the commenter. In summary, the MOUs have not been in place very long; therefore, it is difficult to understand their effectiveness and subsequently their actual benefits to fishers and their habitat. However, we view these MOUs as important collaboration tools that can achieve the conservation needs of the fisher across large landscapes. We will continue to monitor these efforts into the future.

(78) Comment: One commenter is concerned that entire populations and subpopulations of fisher could be eliminated by stochastic wildfire events unless steps are taken to increase protections. Two other commenters are similarly concerned that climate-related factors are predicted to increase wildfire activity; thus, the commenters stated that forest management is a necessary tool to minimize the impacts and spread of wildfire.

Our Response: We agree that the impacts of wildfire are a significant concern for fisher (see Wildfire and Wildfire Suppression section of this rule). We are optimistic that actions implemented under voluntary conservation measures (*e.g.,* MOUs, CCAAs, HCPs; see Existing Regulatory Mechanisms and Voluntary Conservation Measures section of this rule), including forest management will provide protection of fisher habitat in the near and long term.

(79) Comment: One commenter stated that the analysis of wildfire was not thoroughly evaluated. Specifically, the commenter raised concerns about the Service's use of OGSI–80 to determine a less than 1 percent loss of habitat per decade from wildfire and an analysis conducted by the Service that showed a 7 percent of high and intermediate fisher habitat loss to wildfire since 2008.

Our Response: We have revised our discussion of wildfire threats to clarify the distinction between the Davis et al. (2015, entire) analysis of loss of OGSI–

80 forest to wildfire and the analysis done by us to more directly assess fisher habitat loss to wildfire. Please see our response to comments above and the Wildfire and Wildfire Suppression section of this rule.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. In development of the 2014 Species Report, we sent letters noting our intent to conduct a status review and requested information from all tribal entities within the historical range of the West Coast DPS of fisher, and we provided the draft Species Report to those tribes for review. We also notified the tribes via email to ensure they were aware of the January 31, 2019, document in the **Federal Register** to reopen the comment period on the October 7, 2014, proposed rule to list the DPS as a threatened species. As we move forward in this listing process, we will continue to consult on a government-to-government basis with tribes as necessary.

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 Yreka Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Unified Interior's California-Great Basin Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend part 17.11(h) by adding an entry for ''Fisher (Southern Sierra Nevada DPS)'' in alphabetical order under Mammals to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Mammals				
*	*	*	*	*
Fisher (Southern Sierra Nevada DPS).	*Pekania pennanti*	U.S.A. (Southern Sierra Nevada, CA).	E	85 FR [INSERT **Federal Register** PAGE WHERE THE DOCUMENT BEGINS], 5/15/2020.
*	*	*	*	*

* * * * *

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–09153 Filed 5–14–20; 8:45 am]

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